

Senate Bill 313

By: Senators Burke of the 11th, Watson of the 1st, Dugan of the 30th, Kennedy of the 18th, Hufstetler of the 52nd and others

AS PASSED SENATE

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 64 of Title 33 of the Official Code of Georgia Annotated, relating to
2 regulation and licensure of pharmacy benefits managers, so as to provide extensive revisions
3 regarding pharmacy benefits managers; to revise definitions; to revise provisions relating to
4 license requirements and filing fees; to revise a provision regarding the prohibition on the
5 practice of medicine by a pharmacy benefits manager; to provide additional authority for the
6 Insurance Commissioner to regulate pharmacy benefits managers; to revise provisions
7 relating to rebates from pharmaceutical manufacturers; to revise provisions relating to
8 administration of claims; to revise provisions relating to prohibited activities; to provide for
9 surcharges on certain practices; to provide for statutory construction; to provide for related
10 matters; to provide for an effective date and applicability; to repeal conflicting laws; and for
11 other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 **SECTION 1.**

14 Chapter 64 of Title 33 of the Official Code of Georgia Annotated, relating to regulation and
15 licensure of pharmacy benefits managers, is amended by revising Code Section 33-64-1,
16 relating to definitions, as follows:

17 "33-64-1.

18 As used in this chapter, the term:

19 (1) 'Affiliate pharmacy' means a pharmacy which, either directly or indirectly through
20 one or more intermediaries:

21 (A) Has an investment or ownership interest in a pharmacy benefits manager licensed
22 under this chapter;

23 (B) Shares common ownership with a pharmacy benefits manager licensed under this
24 chapter; or

25 (C) Has an investor or ownership interest holder which is a pharmacy benefits manager
26 licensed under this chapter.

- 27 ~~(1)~~(2) 'Business entity' means a corporation, association, partnership, sole proprietorship,
 28 limited liability company, limited liability partnership, or other legal entity.
- 29 ~~(2)~~ 'Covered entity' means an employer, labor union, or other group of persons organized
 30 in this state that provides health coverage to covered individuals who are employed or
 31 reside in this state.
- 32 ~~(3)~~ 'Covered individual' means a member, participant, enrollee, contract holder, policy
 33 holder, or beneficiary of a covered entity who is provided health coverage by a covered
 34 entity.
- 35 ~~(3.1)~~(3) 'Dispenser' shall have the same meaning as in paragraph (10) of Code Section
 36 16-13-21.
- 37 (4) 'Health plan' means an individual or group plan or program which is established by
 38 contract, certificate, law, plan, policy, subscriber agreement, or any other method and
 39 which is entered into, issued, or offered for the purpose of arranging for, delivering,
 40 paying for, providing, or reimbursing any of the costs of health care or medical care,
 41 including pharmacy services, drugs, or devices. Such term includes any health care
 42 coverage provided under the state health benefit plan pursuant to Article 1 of Chapter 18
 43 of Title 45; the medical assistance program pursuant to Article 7 of Chapter 4 of Title 49;
 44 the PeachCare for Kids Program pursuant to Article 13 of Chapter 5 of Title 49; and any
 45 other health benefit plan or policy administered by or on behalf of this state.
- 46 ~~(4)~~(5) 'Health system' means a hospital or any other facility or entity owned, operated,
 47 or leased by a hospital and a long-term care home.
- 48 (6) 'Insured' means a person who receives prescription drug benefits administered by a
 49 pharmacy benefits manager.
- 50 ~~(5)~~(7) 'Maximum allowable cost' means the per unit amount that a pharmacy benefits
 51 manager reimburses a pharmacist for a prescription drug, excluding dispensing fees and
 52 copayments, coinsurance, or other cost-sharing charges, if any.
- 53 (8) 'National average drug acquisition cost' means the monthly survey of retail
 54 pharmacies conducted by the federal Centers for Medicare and Medicaid Services to
 55 determine average acquisition cost for Medicaid covered outpatient drugs.
- 56 ~~(6)~~(9) 'Pharmacy' means a pharmacy or pharmacist licensed pursuant to Chapter 4 of
 57 Title 26 or another dispensing provider.
- 58 ~~(7)~~(10) 'Pharmacy benefits management' means the administration of a plan or program
 59 that pays for, reimburses, and covers the cost of drugs, devices, or pharmacy care to
 60 insureds on behalf of a health plan. The term shall not include the practice of pharmacy
 61 as defined in Code Section 26-4-4. service provided to a health plan or covered entity,
 62 directly or through another entity, including the procurement of prescription drugs to be

63 dispensed to patients, or the administration or management of prescription drug benefits,
 64 including, but not limited to, any of the following:

65 ~~(A) Mail order pharmacy;~~

66 ~~(B) Claims processing, retail network management, or payment of claims to~~
 67 ~~pharmacies for dispensing prescription drugs;~~

68 ~~(C) Clinical or other formulary or preferred drug list development or management;~~

69 ~~(D) Negotiation or administration of rebates, discounts, payment differentials, or other~~
 70 ~~incentives for the inclusion of particular prescription drugs in a particular category or~~
 71 ~~to promote the purchase of particular prescription drugs;~~

72 ~~(E) Patient compliance, therapeutic intervention, or generic substitution programs; and~~

73 ~~(F) Disease management.~~

74 ~~(8)~~(11) 'Pharmacy benefits manager' means a person, business entity, or other entity that
 75 performs pharmacy benefits management. The term includes a person or entity acting for
 76 a pharmacy benefits manager in a contractual or employment relationship in the
 77 performance of pharmacy benefits management for a ~~covered entity~~ health plan. The
 78 term does not include services provided by pharmacies operating under a hospital
 79 pharmacy license. The term also does not include health systems while providing
 80 pharmacy services for their patients, employees, or beneficiaries, for indigent care, or for
 81 the provision of drugs for outpatient procedures. The term also does not include services
 82 provided by pharmacies affiliated with a facility licensed under Code Section 31-44-4 or
 83 a licensed group model health maintenance organization with an exclusive medical group
 84 contract and which operates its own pharmacies which are licensed under Code Section
 85 26-4-110.

86 (12) 'Point-of-sale fee' means all or a portion of a drug reimbursement to a pharmacy or
 87 other dispenser withheld at the time of adjudication of a claim for any reason.

88 (13) 'Rebate' means any and all payments that accrue to a pharmacy benefits manager or
 89 its health plan client, directly or indirectly, from a pharmaceutical manufacturer,
 90 including but not limited to discounts, administration fees, credits, incentives, or penalties
 91 associated directly or indirectly in any way with claims administered on behalf of a health
 92 plan client.

93 (14) 'Retroactive fee' means all or a portion of a drug reimbursement to a pharmacy or
 94 other dispenser recouped or reduced following adjudication of a claim for any reason,
 95 except as otherwise permissible as described in Code Section 26-4-118.

96 (15) 'Steering' means:

97 (A) Ordering an insured to use its affiliate pharmacy for the filling of a prescription or
 98 the provision of pharmacy care;

99 (B) Ordering an insured to use an affiliate pharmacy of another pharmacy benefits
 100 manager licensed under this chapter pursuant to an arrangement or agreement for the
 101 filling of a prescription or the provision of pharmacy care;
 102 (C) Offering or implementing plan designs that require an insured to utilize its affiliate
 103 pharmacy or an affiliate pharmacy of another pharmacy benefits manager licensed
 104 under this chapter or that increases plan or insured costs, including requiring an insured
 105 to pay the full cost for a prescription when an insured chooses not to use any affiliate
 106 pharmacy; or
 107 (D) Advertising, marketing, or promoting its affiliate pharmacy or an affiliate
 108 pharmacy of another pharmacy benefits manager licensed under this chapter to
 109 insureds. Subject to the foregoing, a pharmacy benefits manager may include its
 110 affiliated pharmacy or an affiliate pharmacy of another pharmacy benefits manager
 111 licensed under this chapter in communications to patients, including patient and
 112 prospective patient specific communications, regarding network pharmacies and prices,
 113 provided that the pharmacy benefits manager includes information regarding eligible
 114 nonaffiliated pharmacies in such communications and that the information provided is
 115 accurate."

116

SECTION 2.

117 Said chapter is further amended by revising Code Section 33-64-2, relating to license
 118 requirements and filing fees, as follows:

119 "33-64-2.

120 (a) No person, business entity, or other entity shall act as or hold itself out to be a
 121 pharmacy benefits manager in this state, other than an applicant licensed in this state for
 122 the kinds of business for which it is acting as a pharmacy benefits manager, unless such
 123 person, business entity, or other entity holds a license as a pharmacy benefits manager
 124 issued by the Commissioner pursuant to this chapter. The license shall be renewable on
 125 an annual basis. Failure to hold such license shall subject such person, business entity, or
 126 other entity to the fines and other appropriate penalties as provided in Chapter 2 of this
 127 title.

128 (b) An application for a pharmacy benefits manager's license or an application for renewal
 129 of such license shall be accompanied by a filing fee of ~~\$500.00~~ \$2,000.00 for an initial
 130 license and ~~\$400.00~~ \$1,000.00 for renewal.

131 (c) A license shall be issued or renewed ~~and shall not be suspended or revoked~~ by the
 132 Commissioner unless the Commissioner finds that the applicant for or holder of the license:

133 (1) Has intentionally misrepresented or concealed any material fact in the application for
 134 the license;

- 135 (2) Has obtained or attempted to obtain the license by misrepresentation, concealment,
 136 or other fraud;
- 137 (3) Has committed fraud; ~~or~~
- 138 (4) Has failed to obtain for initial licensure or retain for annual licensure renewal a net
 139 worth of at least \$200,000.00; or
- 140 (5) Has violated any provision of this chapter while on probation, if for license renewal.
- 141 (d) If the Commissioner moves to suspend, revoke, or nonrenew a license for a pharmacy
 142 benefits manager, the Commissioner shall provide notice of that action to the pharmacy
 143 benefits manager, and the pharmacy benefits manager may invoke the right to an
 144 administrative hearing in accordance with Chapter 2 of this title.
- 145 (e) No licensee whose license has been revoked as prescribed under this Code section shall
 146 be entitled to file another application for a license within five years from the effective date
 147 of the revocation or, if judicial review of such revocation is sought, within five years from
 148 the date of final court order or decree affirming the revocation. The application when filed
 149 may be refused by the Commissioner unless the applicant shows good cause why the
 150 revocation of its license shall not be deemed a bar to the issuance of a new license.
- 151 (f) Appeal from any order or decision of the Commissioner made pursuant to this chapter
 152 shall be taken as provided in Chapter 2 of this title.
- 153 (g)(1) The Commissioner shall have the authority to issue a probationary license to any
 154 applicant under this title.
- 155 (2) A probationary license may be issued for a period of not less than three months and
 156 not longer than 12 months and shall be subject to immediate revocation for cause at any
 157 time without a hearing.
- 158 (3) The Commissioner shall prescribe the terms of probation, may extend the
 159 probationary period, or refuse to grant a license at the end of any probationary period in
 160 accordance with rules and regulations.
- 161 (h) A pharmacy benefits manager's license may not be sold or transferred to a nonaffiliated
 162 or otherwise unrelated party. A pharmacy benefits manager may not contract or
 163 subcontract any of its negotiated formulary services to any unlicensed ~~nonaffiliated~~
 164 business entity ~~unless a special authorization is approved by the Commissioner prior to~~
 165 ~~entering into a contracted or subcontracted arrangement.~~
- 166 (i) In addition to all other penalties provided for under this title, the Commissioner shall
 167 have the authority to assess a monetary penalty against any person, business entity, or other
 168 entity acting as a pharmacy benefits manager without a license of up to ~~\$1,000.00~~
 169 \$2,000.00 for each transaction in violation of this chapter, unless such person, business
 170 entity, or other entity knew or reasonably should have known it was in violation of this

171 chapter, in which case the monetary penalty provided for in this subsection may be
 172 increased to an amount of up to ~~\$5,000.00~~ \$10,000.00 for each and every act in violation.

173 (j) A licensed pharmacy benefits manager shall not market or administer any insurance
 174 product not approved in Georgia or that is issued by a nonadmitted insurer or unauthorized
 175 multiple employer self-insured health plan.

176 (k) In addition to all other penalties provided for under this title, the Commissioner shall
 177 have the authority to place any pharmacy benefits manager on probation for a period of
 178 time not to exceed one year for each and every act in violation of this chapter and ~~may~~ shall
 179 subject such pharmacy benefits manager to a monetary penalty of up to ~~\$1,000.00~~
 180 \$2,000.00 for each and every act in violation of this chapter, unless the pharmacy benefits
 181 manager knew or reasonably should have known he or she was in violation of this chapter,
 182 in which case the monetary penalty provided for in this subsection ~~may~~ shall be increased
 183 to an amount of up to ~~\$5,000.00~~ \$10,000.00 for each and every act in violation. In the
 184 event a pharmacy benefits manager violates any provision of this chapter while on
 185 probation, the Commissioner shall have the authority to suspend the pharmacy benefits
 186 manager's license. For purposes of this subsection, a violation shall be considered to have
 187 occurred each time an act in violation of this chapter is committed.

188 ~~(l) A pharmacy benefits manager operating as a line of business or affiliate of a health~~
 189 ~~insurer, health care center, or fraternal benefit society licensed in this state or of any~~
 190 ~~affiliate of such health insurer, health care center, or fraternal benefit society shall not be~~
 191 ~~required to obtain a license pursuant to this chapter. Such health insurer, health care center,~~
 192 ~~or fraternal benefit society shall notify the Commissioner annually, in writing, on a form~~
 193 ~~provided by the Commissioner, that it is affiliated with or operating as a line of business~~
 194 ~~as a pharmacy benefits manager."~~

195 **SECTION 3.**

196 Said chapter is further amended by revising Code Section 33-64-4, relating to a prohibition
 197 on the practice of medicine by a pharmacy benefits manager, as follows:

198 "33-64-4.

199 (a) No pharmacy benefits manager shall engage in the practice of medicine, except as
 200 otherwise provided in subsection (b) of this Code section.

201 (b) A pharmacy benefits manager shall not employ or contract with a physician for the
 202 purpose of advising on or making formulary development, formulary management, step
 203 therapy, or prior authorization determinations unless the physician:

204 (1) Is licensed by the Georgia Composite Medical Board to practice medicine or is
 205 licensed in another state and has a pending application filed with the Georgia Composite
 206 Medical Board;

- 207 (2) Has actively seen patients within the past five years; and
 208 (3) Has practiced in the same specialty area for which he or she is providing advisement
 209 within the past five years."

210 **SECTION 4.**

211 Said chapter is further amended by revising Code Section 33-64-7, relating to a prohibition
 212 on the extension of rules and regulations and the enforcement of specific provisions of the
 213 chapter and rules and regulations, as follows:

214 "33-64-7.

215 ~~(a) The Commissioner may not enlarge upon or extend the specific provisions of this~~
 216 ~~chapter through any act, rule, or regulation; provided, however, that the Commissioner is~~
 217 ~~authorized to~~ shall enforce any specific provision the provisions of this chapter and may
 218 promulgate rules and regulations to ~~effectuate the specific~~ implement the provisions of this
 219 chapter to ensure the safe and proper operations of pharmacy benefits managers in this
 220 state.

221 (b) In addition to all other authority granted by this title, the Commissioner may:

222 (1) Conduct financial examinations and compliance audits of pharmacy benefits
 223 managers to ensure compliance with the provisions of this chapter and rules and
 224 regulations implemented pursuant to this chapter. The pharmacy benefits manager
 225 subject to a financial examination or compliance audit shall pay all the actual expenses
 226 incurred in conducting the examination or audit. When the examination or audit is made
 227 by an examiner or auditor who is not a regular employee of the department, the pharmacy
 228 benefits manager examined or audited shall pay the proper expenses for the services of
 229 the examiner or auditor and his or her assistants and the actual travel and lodging
 230 expenses incurred by such examiners, auditors, and assistants in an amount approved by
 231 the Commissioner. The examiner or auditor shall file a consolidated accounting of
 232 expenses for the examination or audit with the Commissioner. No pharmacy benefits
 233 manager shall pay, and no examiner or auditor shall accept, any additional emolument
 234 on account of any examination or audit. When the examination or audit is conducted in
 235 whole or in part by regular salaried employees of the department, payment for such
 236 services and proper expenses shall be made by the pharmacy benefits manager examined
 237 or audited to the Commissioner. The Commissioner shall be authorized to keep a portion
 238 of examination or audit fees paid by the pharmacy benefits manager examined or audited
 239 to pay for any costs incurred as a result of the examination or audit, and any fees
 240 remaining shall be deposited in the state treasury; provided, however, that when a
 241 pharmacy benefits manager is examined or audited because of a complaint filed against
 242 such pharmacy benefits manager and it is determined by the Commissioner that the

243 complaint was not justified, the expenses incurred as a result of the examination or audit
 244 shall not be assessed against the pharmacy benefits manager but shall be borne by the
 245 department;

246 (2) Investigate complaints of alleged violations of this chapter;

247 (3) Issue cease and desist orders when a pharmacy benefits manager is taking or
 248 threatening to take action in violation of this chapter or rules and regulations
 249 implemented pursuant to this chapter; and

250 (4) Order reimbursement to an insured, pharmacy, or dispenser who has incurred a
 251 monetary loss as a result of a violation of this chapter or rules and regulations
 252 implemented pursuant to this chapter as well as order payment of a fine not to exceed
 253 \$1,000.00 per violation to an insured, pharmacy, or dispenser who has been aggrieved as
 254 a result of a violation of this chapter or rules and regulations implemented pursuant to this
 255 chapter. Such fine shall be in addition to and shall not preclude any other fines imposed
 256 pursuant to this title. For purposes of this paragraph, a violation shall be considered to
 257 have occurred each time a prohibited act is committed.

258 (c) A pharmacy benefits manager shall make its records available to the Commissioner,
 259 deidentified of any protected health information, upon written demand and provide
 260 cooperation in connection with financial examinations, compliance audits, and
 261 investigations.

262 (d) In the event a violation of this chapter or rules and regulations implemented pursuant
 263 to this chapter is found following a complaint, the Commissioner may, at his or her
 264 discretion, conduct a compliance audit to identify whether any other similar violations have
 265 occurred within the state."

266 **SECTION 5.**

267 Said chapter is further amended by adding a new Code section to read as follows:

268 "33-64-9.1.

269 (a)(1) Any methodologies utilized by a pharmacy benefits manager in connection with
 270 reimbursement pursuant to Code Section 33-64-9 shall be filed with the Commissioner
 271 for use in determining maximum allowable cost appeals.

272 (2) A pharmacy benefits manager shall utilize the national average drug acquisition cost
 273 as a point of reference for the ingredient drug product component of a pharmacy's
 274 reimbursement for drugs appearing on the national average drug acquisition cost list and
 275 shall file with the Commissioner every three months a report, which shall be available to
 276 the public, of all drugs appearing on the national average drug acquisition cost list
 277 reimbursed 10 percent and below the national average drug acquisition cost, as well as
 278 all drugs reimbursed 10 percent and above the national average drug acquisition cost. For

279 each drug in the report, a pharmacy benefits manager shall include the month the drug
 280 was dispensed, the quantity of the drug dispensed, the amount the pharmacy was
 281 reimbursed per unit or dosage, whether the dispensing pharmacy was an affiliate, whether
 282 the drug was dispensed pursuant to a state or local government health plan, and the
 283 national average drug acquisition cost on the day the drug was dispensed.

284 (3) This subsection shall not apply to Medicaid under Chapter 4 of Title 49 when the
 285 department reimburses providers directly for each covered service; provided, however,
 286 that it shall apply to Medicaid managed care programs administered through care
 287 management organizations.

288 (b) A pharmacy benefits manager shall not:

289 (1) Reimburse a pharmacy in this state an amount less than the amount that the pharmacy
 290 benefits manager reimburses an affiliate pharmacy for providing the same pharmacy
 291 services; or

292 (2) Engage in any practice that:

293 (A) In any way bases pharmacy reimbursement for a drug on patient outcomes, scores,
 294 or metrics; provided, however, that nothing shall prohibit the reimbursement of a
 295 pharmacy for providing pharmacy care, including reimbursement incentives based on
 296 patient outcomes, scores, or metrics;

297 (B) Includes imposing a point-of-sale fee or retroactive fee; or

298 (C) Derives any revenue from a pharmacy or insured in connection with performing
 299 pharmacy benefits management services.

300 (c) This Code section shall also apply to pharmacy benefits managers' reimbursements
 301 to dispensers."

302 **SECTION 6.**

303 Said chapter is further amended by revising Code Section 33-64-10, relating to
 304 administration of claims by pharmacy benefits manager, as follows:

305 "33-64-10.

306 (a) A pharmacy benefits manager shall administer claims in compliance with Code Section
 307 33-30-4.3 and shall not require insureds to use a mail-order pharmaceutical distributor
 308 including a mail-order pharmacy.

309 (b) A pharmacy benefits manager shall offer a health plan the ability to receive 100
 310 percent of all rebates it receives from pharmaceutical manufacturers. In addition, a
 311 pharmacy benefits manager shall report annually to each client, including but not limited
 312 to, insurers and payors, health plan and the department the aggregate amount of all rebates
 313 and other payments that the pharmacy benefits manager received from pharmaceutical
 314 manufacturers in connection with claims if administered on behalf of the client and the

315 ~~aggregate amount of such rebates the pharmacy benefits manager received from~~
 316 ~~pharmaceutical manufacturers that it did not pass through to the client health plan.~~

317 (c) A pharmacy benefits manager shall offer a health plan the option of charging such
 318 health plan the same price for a prescription drug as it pays a pharmacy for the prescription
 319 drug.

320 (d) A pharmacy benefits manager shall report in the aggregate to the health plan and the
 321 department the difference between the amount the pharmacy benefits manager reimbursed
 322 a pharmacy and the amount the pharmacy benefits manager charged a health plan. Such
 323 information shall be confidential and shall not be subject to Article 4 of Chapter 18 of Title
 324 50, relating to open records; provided, however, that such information as it relates to health
 325 plans administered by or through the Department of Community Health, including
 326 Medicaid care management organizations, or any other state agency shall not be
 327 confidential and shall be subject to disclosure under Article 4 of Chapter 18 of Title 50.

328 (e) Unless otherwise prohibited by law, a pharmacy benefits manager shall apply any
 329 third-party payment, financial assistance, discount, product voucher, or other reduction in
 330 out-of-pocket expenses made by or on behalf of an insured for a prescription drug toward
 331 an insured's deductible, cost share responsibility, copayment responsibility, or
 332 out-of-pocket maximum associated with the insured's health plan.

333 ~~(e)(f)~~ This Code section shall not apply to:

334 ~~(1) A care management organization, as defined in Chapter 21A of this title;~~

335 ~~(2) The Department of Community Health, as defined in Chapter 2 of Title 31;~~

336 ~~(3) The State Health Benefit Plan under Article 1 of Chapter 18 of Title 45; or~~

337 ~~(4) Any any licensed group model health maintenance organization with an exclusive~~
 338 ~~medical group contract and which operates its own pharmacies which are licensed under~~
 339 ~~Code Section ~~26-4-110.1~~ 26-4-110."~~

340 SECTION 7.

341 Said chapter is further amended by revising Code Section 33-64-11, relating to prohibited
 342 activities of pharmacy benefits manager, as follows:

343 "33-64-11.

344 (a) A pharmacy benefits manager shall be proscribed from:

345 (1) Prohibiting a pharmacist, pharmacy, or other dispenser or dispenser practice from
 346 providing an insured individual information on the amount of the insured's cost share for
 347 such insured's prescription drug and the clinical efficacy of a more affordable alternative
 348 drug if one is available. No pharmacist, pharmacy, or other dispenser or dispenser
 349 practice shall be penalized by a pharmacy benefits manager for disclosing such

- 350 information to an insured or for selling to an insured a more affordable alternative if one
 351 is available;
- 352 (2) Prohibiting a pharmacist, pharmacy, or other dispenser or dispenser practice from
 353 offering and providing ~~store direct~~ delivery services to an insured as an ancillary service
 354 of the pharmacy or dispenser practice;
- 355 (3) Charging or collecting from an insured a copayment that exceeds the total submitted
 356 charges by the network pharmacy or other dispenser practice for which the pharmacy or
 357 dispenser practice is paid;
- 358 (4) Charging or holding a pharmacist or pharmacy or dispenser or dispenser practice
 359 responsible for a fee or penalty relating to the adjudication of a claim or an audit
 360 conducted pursuant to Code Section 26-4-118, provided that this shall not restrict
 361 recoupments made in accordance with Code Section 26-4-118 ~~or pay for performance~~
 362 ~~recoupments otherwise permitted by law~~;
- 363 (5) Recouping funds from a pharmacy in connection with claims for which the pharmacy
 364 has already been paid without first complying with the requirements set forth in Code
 365 Section 26-4-118, unless such recoupment is otherwise permitted or required by law;
- 366 (6) Penalizing or retaliating against a pharmacist or pharmacy for exercising rights under
 367 this chapter or Code Section 26-4-118;
- 368 (7) Steering. ~~Ordering an insured for the filling of a prescription or the provision of~~
 369 ~~pharmacy care services to an affiliated pharmacy; offering or implementing plan designs~~
 370 ~~that require patients to utilize an affiliated pharmacy; or advertising, marketing, or~~
 371 ~~promoting a pharmacy by an affiliate to patients or prospective patients. Subject to the~~
 372 ~~foregoing, a pharmacy benefits manager may include an affiliated pharmacy in~~
 373 ~~communications to patients, including patient and prospective patient specific~~
 374 ~~communications, regarding network pharmacies and prices, provided that the pharmacy~~
 375 ~~benefits manager includes information regarding eligible nonaffiliated pharmacies in such~~
 376 ~~communications and the information provided is accurate. This paragraph shall not be~~
 377 ~~construed to prohibit a pharmacy benefits manager from entering into an agreement with~~
 378 ~~an affiliated pharmacy or an affiliated pharmacy of another pharmacy benefits manager~~
 379 ~~licensed pursuant to this chapter to provide pharmacy care to patients. The restrictions~~
 380 ~~in this paragraph shall not apply to limited distribution prescription drugs requiring~~
 381 ~~special handling and not commonly carried at retail pharmacies or oncology clinics or~~
 382 ~~practices;~~
- 383 (8) Transferring or sharing records relative to prescription information containing
 384 patient-identifiable and prescriber-identifiable data to an affiliated pharmacy for any
 385 commercial purpose; provided, however, that nothing shall be construed to prohibit the
 386 exchange of prescription information between a pharmacy benefits manager and an

387 affiliated pharmacy for the limited purposes of pharmacy reimbursement, formulary
 388 compliance, pharmacy care, or utilization review;

389 (9) Knowingly making a misrepresentation to an insured, pharmacist, pharmacy,
 390 dispenser, or dispenser practice; ~~and~~

391 (10) Taking any action in violation of subparagraphs (a)(21)(D) and (a)(21)(E) of Code
 392 Section 26-4-28 or charging a pharmacy a fee in connection with network enrollment;

393 (11) Withholding coverage or requiring prior authorization for a lower cost
 394 therapeutically equivalent drug available to an insured or failing to reduce an insured's
 395 cost share when an insured selects a lower cost therapeutically equivalent drug; and

396 (12) Removing a drug from a formulary or denying coverage of a drug for the purpose
 397 of incentivizing an insured to seek coverage from a different health plan.

398 (b) To the extent that any provision of this Code section is inconsistent or conflicts with
 399 applicable federal law, rule, or regulation, such applicable federal law, rule, or regulation
 400 shall apply; provided, however, that a pharmacy benefits manager contracted or
 401 subcontracted with this state, including any agency or department thereof, shall agree as
 402 a condition to contract that it will not violate this Code section or any other provision of
 403 this chapter or of any rules or regulations implemented pursuant to this chapter in
 404 performing any services in this state.

405 (c) This Code section shall not apply to:

406 ~~(1) A care management organization, as defined in Chapter 21A of this title;~~
 407 ~~(2) The Department of Community Health, as defined in Chapter 2 of Title 31;~~
 408 ~~(3) The State Health Benefit Plan under Article 1 of Chapter 18 of Title 45; or~~
 409 ~~(4) Any any licensed group model health maintenance organization with an exclusive~~
 410 ~~medical group contract and which operates its own pharmacies which are licensed under~~
 411 ~~Code Section ~~26-4-110.1~~ 26-4-110."~~

412 SECTION 8.

413 Said chapter is further amended by adding new Code sections to read as follows:

414 "33-64-12.

415 (a) The General Assembly finds that:

- 416 (1) The practice of steering by a pharmacy benefits manager represents a conflict of
 417 interest;
- 418 (2) The practice of imposing point-of-sale fees or retroactive fees obscures the true cost
 419 of prescription drugs in this state;
- 420 (3) These practices have resulted in harm, including increasing drug prices, overcharging
 421 insureds and payors, restricting insureds' choice of pharmacies and other dispensers,
 422 underpaying community pharmacies and other dispensers, and fragmenting and creating

423 barriers to care, particularly in rural Georgia and for patients battling life-threatening
424 illnesses and chronic diseases; and

425 (4) Imposing a surcharge on pharmacy benefits managers that engage in these practices
426 in this state may encourage entities licensed under this title and other payors to use
427 pharmacy benefits managers that are committed to refraining from such practices.

428 (b)(1) A pharmacy benefits manager that engages in the practices of steering or imposing
429 point-of-sale fees or retroactive fees shall be subject to a surcharge payable to the state
430 of 10 percent on the aggregate dollar amount it reimbursed pharmacies in the previous
431 calendar year for prescription drugs for Georgia insureds.

432 (2) Any other person operating a health plan and licensed under this title whose
433 contracted pharmacy benefits manager engages in the practices of steering or imposing
434 point-of-sale fees or retroactive fees in connection with its health plans shall be subject
435 to a surcharge payable to the state of 10 percent on the aggregate dollar amount its
436 pharmacy benefits manager reimbursed pharmacies on its behalf in the previous calendar
437 year for prescription drugs for Georgia insureds.

438 (c)(1) By March 1 of each year, a pharmacy benefits manager shall provide a report to
439 the Department of Audits and Accounts and the Commissioner attesting as to whether or
440 not, in the previous calendar year, it engaged in the practices of steering or imposing
441 point-of-sale fees or retroactive fees and detailing all prescription drug claims it
442 administered for Georgia insureds on behalf of each health plan client in the previous
443 calendar year. The report shall be confidential and not subject to Article 4 of Chapter 18
444 of Title 50, relating to open records; provided, however, that the Department of Audits
445 and Accounts shall prepare an aggregate report reflecting the total number of
446 prescriptions administered by the reporting pharmacy benefits manager on behalf of all
447 health plans in the state along with the total sum due to the state.

448 (2) By March 1 of each year, any other person operating a health plan and licensed under
449 this title that utilizes a contracted pharmacy benefits manager shall provide a report to the
450 Department of Audits and Accounts and the Commissioner attesting as to whether or not,
451 in the previous calendar year, its contracted pharmacy benefits manager engaged in the
452 practices of steering or imposing point-of-sale fees or retroactive fees in connection with
453 its health plans and detailing all prescription drug claims its pharmacy benefits manager
454 administered for Georgia insureds on its behalf in the previous calendar year. The report
455 shall be confidential and not subject to Article 4 of Chapter 18 of Title 50, relating to
456 open records.

457 (d) By April 1 of each year, a pharmacy benefits manager or other person operating a
458 health plan and licensed under this title shall pay into the general fund of the state treasury

459 the surcharge owed, if any, as contained in the report submitted pursuant to subsection (c)
460 of this Code section.

461 (e) Nothing in this Code section shall be construed to authorize the practices of steering
462 or imposing point-of-sale fees or retroactive fees where otherwise prohibited by law.

463 33-64-13.

464 To the extent that any provision of this chapter is inconsistent or conflicts with applicable
465 federal law, rule, or regulation, such applicable federal law, rule, or regulation shall apply."

466 **SECTION 9.**

467 This Act shall become effective on January 1, 2021, and shall apply to all contracts issued,
468 delivered, or issued for delivery in this state on and after such date.

469 **SECTION 10.**

470 All laws and parts of laws in conflict with this Act are repealed.