

The Senate Committee on Insurance and Labor offered the following substitute to HB 946:

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 effective dates and applicability; to repeal conflicting laws; and for
11 other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 style="text-align:center">**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) Any physician employed by or contracted with a pharmacy benefits manager advising
 202 on or making determinations specific to a Georgia insured in connection with a prior
 203 authorization or step therapy appeal or determination review shall:

204 (1) Have actively seen patients within the past five years; and

205 (2) Have practiced in the same specialty area for which he or she is providing advisement
 206 within the past five years.

207 (c) For contracts and amendments entered into with a pharmacy benefits manager on and
 208 after the effective date of this Act, the department is encouraged to require the use of a
 209 licensed Georgia physician for prior authorization or step therapy appeal or determination
 210 reviews."

211 **SECTION 4.**

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

215 "33-64-7.

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

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

223 (1) Conduct financial examinations and compliance audits of pharmacy benefits
 224 managers to ensure compliance with the provisions of this chapter and rules and
 225 regulations implemented pursuant to this chapter; provided, however, that such authority
 226 shall not extend to financial examination and compliance audits of pharmacy benefits
 227 managers' conduct in performing services on behalf of the state health benefit plan
 228 pursuant to Article 1 of Chapter 18 of Title 45 or the medical assistance program pursuant
 229 to Article 7 of Chapter 4 of Title 49. The pharmacy benefits manager subject to a
 230 financial examination or compliance audit shall pay all the actual expenses incurred in
 231 conducting the examination or audit. When the examination or audit is made by an
 232 examiner or auditor who is not a regular employee of the department, the pharmacy
 233 benefits manager examined or audited shall pay the proper expenses for the services of
 234 the examiner or auditor and his or her assistants and the actual travel and lodging
 235 expenses incurred by such examiners, auditors, and assistants in an amount approved by
 236 the Commissioner. The examiner or auditor shall file a consolidated accounting of
 237 expenses for the examination or audit with the Commissioner. No pharmacy benefits
 238 manager shall pay, and no examiner or auditor shall accept, any additional emolument
 239 on account of any examination or audit. When the examination or audit is conducted in
 240 whole or in part by regular salaried employees of the department, payment for such
 241 services and proper expenses shall be made by the pharmacy benefits manager examined
 242 or audited to the Commissioner. The Commissioner shall be authorized to keep a portion

243 of examination or audit fees paid by the pharmacy benefits manager examined or audited
 244 to pay for any costs incurred as a result of the examination or audit, and any fees
 245 remaining shall be deposited in the state treasury; provided, however, that when a
 246 pharmacy benefits manager is examined or audited because of a complaint filed against
 247 such pharmacy benefits manager and it is determined by the Commissioner that the
 248 complaint was not justified, the expenses incurred as a result of the examination or audit
 249 shall not be assessed against the pharmacy benefits manager but shall be borne by the
 250 department;

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

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

255 (4) Order reimbursement to an insured, pharmacy, or dispenser who has incurred a
 256 monetary loss as a result of a violation of this chapter or rules and regulations
 257 implemented pursuant to this chapter as well as order payment of a fine not to exceed
 258 \$1,000.00 per violation to an insured, pharmacy, or dispenser who has been aggrieved as
 259 a result of a violation of this chapter or rules and regulations implemented pursuant to this
 260 chapter. Such fine shall be in addition to and shall not preclude any other fines imposed
 261 pursuant to this title. For purposes of this paragraph, a violation shall be considered to
 262 have occurred each time a prohibited act is committed.

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

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

271 **SECTION 5.**

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

273 "33-64-9.1.

274 (a)(1) Any methodologies utilized by a pharmacy benefits manager in connection with
 275 reimbursement pursuant to Code Section 33-64-9 shall be filed with the Commissioner
 276 for use in determining maximum allowable cost appeals; provided, however, that
 277 methodologies not otherwise subject to disclosure under Article 4 of Chapter 18 of
 278 Title 50 shall be treated as confidential and shall not be subject to disclosure.

279 (2) A pharmacy benefits manager shall utilize the national average drug acquisition cost
280 as a point of reference for the ingredient drug product component of a pharmacy's
281 reimbursement for drugs appearing on the national average drug acquisition cost list and
282 shall produce a report every four months, which shall be provided to the Commissioner
283 and published by the pharmacy benefits manager on a website available to the public for
284 no less than 24 months, of all drugs appearing on the national average drug acquisition
285 cost list reimbursed 10 percent and below the national average drug acquisition cost, as
286 well as all drugs reimbursed 10 percent and above the national average drug acquisition
287 cost. For each drug in the report, a pharmacy benefits manager shall include the month
288 the drug was dispensed, the quantity of the drug dispensed, the amount the pharmacy was
289 reimbursed per unit or dosage, whether the dispensing pharmacy was an affiliate, whether
290 the drug was dispensed pursuant to a state or local government health plan, and the
291 average national average drug acquisition cost for the month the drug was dispensed.
292 Such report shall exclude drugs dispensed pursuant to 42 U.S.C. Section 256b.

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

297 (4) This subsection shall take effect on January 1, 2021; provided, however, that prior
298 to July 1, 2021, upon written request, a pharmacy benefits manager shall be granted an
299 extension by the Commissioner of up to six months for its initial filing required pursuant
300 to paragraph (1) of this subsection if the pharmacy benefits manager certifies it is in need
301 of such extension.

302 (b) On and after July 1, 2021, a pharmacy benefits manager shall not:

303 (1) Discriminate in reimbursement, assess any fees or adjustments, or exclude a
304 pharmacy from the pharmacy benefit manager's network on the basis that the pharmacy
305 dispenses drugs subject to an agreement under 42 U.S.C. Section 256b; or

306 (2) Engage in any practice that:

307 (A) In any way bases pharmacy reimbursement for a drug on patient outcomes, scores,
308 or metrics; provided, however, that nothing shall prohibit pharmacy reimbursement for
309 pharmacy care, including dispensing fees from being based on patient outcomes, scores,
310 or metrics so long as the patient outcomes, scores, or metrics are disclosed to and
311 agreed to by the pharmacy in advance;

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

313 (C) Derives any revenue from a pharmacy or insured in connection with performing
314 pharmacy benefits management services; provided, however, that this shall not be

315 construed to prohibit pharmacy benefits managers from receiving deductibles or
 316 copayments.
 317 (c) This Code section shall also apply to pharmacy benefits managers' reimbursements to
 318 dispensers."

319 **SECTION 6.**

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

322 "33-64-10.

323 (a) A pharmacy benefits manager shall administer claims in compliance with Code Section
 324 33-30-4.3 and shall not require insureds to use a mail-order pharmaceutical distributor
 325 including a mail-order pharmacy.

326 (b) A pharmacy benefits manager shall offer a health plan the ability to receive 100
 327 percent of all rebates it receives from pharmaceutical manufacturers. In addition, a
 328 pharmacy benefits manager shall report annually to each client, including but not limited
 329 to, insurers and payors, health plan and the department the aggregate amount of all rebates
 330 and other payments that the pharmacy benefits manager received from pharmaceutical
 331 manufacturers in connection with claims if administered on behalf of the client and the
 332 aggregate amount of such rebates the pharmacy benefits manager received from
 333 pharmaceutical manufacturers that it did not pass through to the client health plan.

334 (c) A pharmacy benefits manager shall offer a health plan the option of charging such
 335 health plan the same price for a prescription drug as it pays a pharmacy for the prescription
 336 drug; provided, however, that a pharmacy benefits manager shall charge a health benefit
 337 plan administered by or on behalf of the state or a political subdivision of the state,
 338 including any county or municipality, the same price for a prescription drug as it pays a
 339 pharmacy for the prescription drug.

340 (d) A pharmacy benefits manager shall report in the aggregate to a health plan the
 341 difference between the amount the pharmacy benefits manager reimbursed a pharmacy and
 342 the amount the pharmacy benefits manager charged a health plan. Such information shall
 343 be confidential and shall not be subject to Article 4 of Chapter 18 of Title 50, relating to
 344 open records; provided, however, that such information as it relates to health plans
 345 administered by or through the Department of Community Health, including Medicaid care
 346 management organizations, or any other state agency shall not be confidential and shall be
 347 subject to disclosure under Article 4 of Chapter 18 of Title 50.

348 (e) When calculating an insured's contribution to any out-of-pocket maximum, deductible,
 349 or copayment responsibility, a pharmacy benefits manager shall include any amount paid
 350 by the insured or paid on his or her behalf through a third-party payment, financial

351 assistance, discount, or product voucher for a prescription drug that does not have a generic
 352 equivalent or that has a generic equivalent but was obtained through prior authorization,
 353 a step therapy protocol, or the insurer's exceptions and appeals process. Nothing in this
 354 subsection shall be construed to require that a pharmacy benefits manager accept a
 355 third-party payment, financial assistance, discount, or product voucher submitted on behalf
 356 of an insured.

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

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

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

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

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

364 (g) As used in this Code section, the term 'generic equivalent':

365 (1) Means a drug that has an identical amount of the same active chemical ingredients
 366 in the same dosage form, that meets applicable standards of strength, quality, and purity
 367 according to the United States Pharmacopeia or other nationally recognized compendium,
 368 and that, if administered in the same amounts, will provide comparable therapeutic
 369 effects; and

370 (2) Does not include a drug that is listed by the federal Food and Drug Administration
 371 as having unresolved bioequivalence concerns according to the administration's most
 372 recent publication of approved drug products with therapeutic equivalence evaluations."

373 **SECTION 7.**

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

376 "33-64-11.

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

378 (1) Prohibiting a pharmacist, pharmacy, or other dispenser or dispenser practice from
 379 providing an insured individual information on the amount of the insured's cost share for
 380 such insured's prescription drug and the clinical efficacy of a more affordable alternative
 381 drug if one is available. No pharmacist, pharmacy, or other dispenser or dispenser
 382 practice shall be penalized by a pharmacy benefits manager for disclosing such
 383 information to an insured or for selling to an insured a more affordable alternative if one
 384 is available;

- 385 (2) Prohibiting a pharmacist, pharmacy, or other dispenser or dispenser practice from
386 offering and providing ~~store-direct~~ delivery services to an insured as an ancillary service
387 of the pharmacy or dispenser practice;
- 388 (3) Charging or collecting from an insured a copayment that exceeds the total submitted
389 charges by the network pharmacy or other dispenser practice for which the pharmacy or
390 dispenser practice is paid;
- 391 (4) Charging or holding a pharmacist or pharmacy or dispenser or dispenser practice
392 responsible for a fee or penalty relating to the adjudication of a claim or an audit
393 conducted pursuant to Code Section 26-4-118, provided that this shall not restrict
394 recoupments made in accordance with Code Section 26-4-118 ~~or pay for performance~~
395 ~~recoupments otherwise permitted by law~~;
- 396 (5) Recouping funds from a pharmacy in connection with claims for which the pharmacy
397 has already been paid without first complying with the requirements set forth in Code
398 Section 26-4-118, unless such recoupment is otherwise permitted or required by law;
- 399 (6) Penalizing or retaliating against a pharmacist or pharmacy for exercising rights under
400 this chapter or Code Section 26-4-118;
- 401 (7) Steering. ~~Ordering an insured for the filling of a prescription or the provision of~~
402 ~~pharmacy care services to an affiliated pharmacy, offering or implementing plan designs~~
403 ~~that require patients to utilize an affiliated pharmacy; or advertising, marketing, or~~
404 ~~promoting a pharmacy by an affiliate to patients or prospective patients. Subject to the~~
405 ~~foregoing, a pharmacy benefits manager may include an affiliated pharmacy in~~
406 ~~communications to patients, including patient and prospective patient specific~~
407 ~~communications, regarding network pharmacies and prices, provided that the pharmacy~~
408 ~~benefits manager includes information regarding eligible nonaffiliated pharmacies in such~~
409 ~~communications and the information provided is accurate. This paragraph shall not be~~
410 ~~construed to prohibit a pharmacy benefits manager from entering into an agreement with~~
411 ~~an affiliated pharmacy or an affiliated pharmacy of another pharmacy benefits manager~~
412 ~~licensed pursuant to this chapter to provide pharmacy care to patients. The restrictions~~
413 ~~in this paragraph shall not apply to limited distribution prescription drugs requiring~~
414 ~~special handling and not commonly carried at retail pharmacies or oncology clinics or~~
415 ~~practices~~;
- 416 (8) Transferring or sharing records relative to prescription information containing
417 patient-identifiable and prescriber-identifiable data to an affiliated pharmacy for any
418 commercial purpose; provided, however, that nothing shall be construed to prohibit the
419 exchange of prescription information between a pharmacy benefits manager and an
420 affiliated pharmacy for the limited purposes of pharmacy reimbursement, formulary
421 compliance, pharmacy care, or utilization review;

- 422 (9) Knowingly making a misrepresentation to an insured, pharmacist, pharmacy,
 423 dispenser, or dispenser practice; and
- 424 (10) Taking any action in violation of subparagraphs (a)(21)(D) and (a)(21)(E) of Code
 425 Section 26-4-28 or charging a pharmacy a fee in connection with network enrollment;
- 426 (11) Withholding coverage or requiring prior authorization for a lower cost
 427 therapeutically equivalent drug available to an insured or failing to reduce an insured's
 428 cost share when an insured selects a lower cost therapeutically equivalent drug; and
- 429 (12) Removing a drug from a formulary or denying coverage of a drug for the purpose
 430 of incentivizing an insured to seek coverage from a different health plan.
- 431 (b) To the extent that any provision of this Code section is inconsistent or conflicts with
 432 applicable federal law, rule, or regulation, such applicable federal law, rule, or regulation
 433 shall apply.
- 434 (c) This Code section shall not apply to:
- 435 ~~(1) A care management organization, as defined in Chapter 21A of this title;~~
 436 ~~(2) The Department of Community Health, as defined in Chapter 2 of Title 31;~~
 437 ~~(3) The State Health Benefit Plan under Article 1 of Chapter 18 of Title 45; or~~
 438 ~~(4) Any any licensed group model health maintenance organization with an exclusive~~
 439 ~~medical group contract and which operates its own pharmacies which are licensed under~~
 440 ~~Code Section ~~26-4-110.~~ 26-4-110."~~

441 **SECTION 8.**

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

443 "33-64-12.

444 (a) The General Assembly finds that:

- 445 (1) The practice of steering by a pharmacy benefits manager represents a conflict of
 446 interest;
- 447 (2) The practice of imposing point-of-sale fees or retroactive fees obscures the true cost
 448 of prescription drugs in this state;
- 449 (3) These practices have resulted in harm, including increasing drug prices, overcharging
 450 insureds and payors, restricting insureds' choice of pharmacies and other dispensers,
 451 underpaying community pharmacies and other dispensers, and fragmenting and creating
 452 barriers to care, particularly in rural Georgia and for patients battling life-threatening
 453 illnesses and chronic diseases; and
- 454 (4) Imposing a surcharge on pharmacy benefits managers that engage in these practices
 455 in this state may encourage entities licensed under this title and other payors to use
 456 pharmacy benefits managers that are committed to refraining from such practices.

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

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

467 (c)(1) By March 1 of each year, a pharmacy benefits manager shall provide a letter to the
468 Commissioner attesting as to whether or not, in the previous calendar year, it engaged in
469 the practices of steering or imposing point-of-sale fees or retroactive fees. The pharmacy
470 benefits manager shall also submit to the Commissioner, in a form and manner and by a
471 date specified by the Commissioner, data detailing all prescription drug claims it
472 administered for Georgia insureds on behalf of each health plan client and any other data
473 the Commissioner deems necessary to evaluate whether a pharmacy benefits manager
474 may be engaged in the practice of steering or imposing point-of-sale fees or retroactive
475 fees. Such data shall be confidential and not subject to Article 4 of Chapter 18 of
476 Title 50, relating to open records; provided, however, that the Commissioner shall
477 prepare an aggregate report reflecting the total number of prescriptions administered by
478 the reporting pharmacy benefits manager on behalf of all health plans in the state along
479 with the total sum due to the state. The Department of Audits and Accounts shall have
480 access to all confidential data collected by the Commissioner for audit purposes.

481 (2) By March 1 of each year, any other person operating a health plan and licensed under
482 this title that utilizes a contracted pharmacy benefits manager shall provide a letter to the
483 Commissioner attesting as to whether or not, in the previous calendar year, its contracted
484 pharmacy benefits manager engaged in the practices of steering or imposing point-of-sale
485 fees or retroactive fees in connection with its health plans. The health plan shall also
486 submit to the Commissioner, in a form and manner and by a date specified by the
487 Commissioner, data detailing all prescription drug claims its contracted pharmacy
488 benefits manager administered for Georgia insureds and any other data the Commissioner
489 deems necessary to evaluate whether a health plan's pharmacy benefits manager may be
490 engaged in the practice of steering or imposing point-of-sale fees or retroactive fees. Such
491 data shall be confidential and not subject to Article 4 of Chapter 18 of Title 50, relating
492 to open records; provided, however, that the Commissioner shall prepare an aggregate
493 report reflecting the total number of prescriptions administered by the reporting health

494 plan along with the total sum due to the state. The Department of Audits and Accounts
495 shall have access to all confidential data collected by the Commissioner for audit
496 purposes.

497 (d) By April 1 of each year, a pharmacy benefits manager or other person operating a
498 health plan and licensed under this title shall pay into the general fund of the state treasury
499 the surcharge owed, if any, as contained in the report submitted pursuant to subsection (c)
500 of this Code section.

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

503 33-64-13.

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

506 **SECTION 9.**

507 (a) Except as otherwise provided in subsection (b) of this section, this Act shall become
508 effective on July 1, 2021, and shall apply to all contracts issued, delivered, or issued for
509 delivery in this state on and after such date.

510 (b) This section and Sections 1, 5, 7, and 10 of this Act shall become effective on
511 January 1, 2021, and shall apply to all contracts issued, delivered, or issued for delivery in
512 this state on and after such date.

513 **SECTION 10.**

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