

House Bill 823

By: Representatives Newton of the 123rd, Hatchett of the 150th, Douglas of the 78th, and Cooper of the 43rd

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 24 of Title 33 of the Official Code of Georgia Annotated, relating to
2 insurance generally, so as to require all health insurers to pass along no less than 80 percent
3 of all prescription drug rebates to enrollees that such insurer receives from third parties with
4 regard to such enrollee's prescription drugs; to provide for a short title; to provide for
5 legislative findings; to provide for definitions; to provide for related matters; to provide for
6 an effective date and applicability; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 This Act shall be known and may be cited as the "Prescription Drug Rebate Financial
10 Protection Act."

11 **SECTION 2.**

12 The General Assembly finds:

13 (1) The citizens of this state frequently rely on state-regulated commercial insurers to
14 secure access to the prescription medicines needed to protect their health;

- 15 (2) Commercial insurance plans increasingly require enrollees to bear significant
16 out-of-pocket costs for their prescription medicines;
- 17 (3) High out-of-pocket costs of prescription medicines impact the ability of enrollees to
18 start new and necessary medicines and to stay adherent to their prescriptions;
- 19 (4) High or unpredictable cost sharing requirements are a main driver of unaffordable
20 enrollee out-of-pocket costs;
- 21 (5) The burdens of high or unpredictable cost sharing requirements are borne
22 disproportionately by enrollees with chronic or debilitating conditions;
- 23 (6) Pharmaceutical manufacturers may offer sizeable rebates, discounts, and price
24 concessions in connection with the dispensing or administration of a therapy, but
25 enrollees do not necessarily financially benefit from these amounts at the point of sale,
26 and, instead, insurers or other intermediaries may retain the value of rebates, discounts,
27 and price concessions;
- 28 (7) Restrictions are needed on the ability of insurers and their intermediaries to retain
29 rebates, discounts, and price concessions that instead should be directly passed on to
30 enrollees as cost savings;
- 31 (8) Enrollees need equitable and accessible health coverage that does not impose unfair
32 cost sharing burdens upon them; and
- 33 (9) The legislature intends that enrollees receive the benefit of meaningful and durable
34 cost savings from rebates and other price concessions that would otherwise accrue to
35 insurers in connection with the dispensing or administration of a particular drug therapy.

36

SECTION 3.

37 Chapter 24 of Title 33 of the Official Code of Georgia Annotated, relating to insurance
38 generally, is amended by adding a new Code section to read as follows:

39 "33-24-59.30.

40 (a) As used in this Code section, the term:

41 (1) 'Cost sharing requirements' means copayments, coinsurance, deductibles, and any
42 other amounts imposed on an enrollee for a covered prescription drug under the enrollee's
43 health benefit plan.

44 (2) 'Health benefit plan' means any hospital or medical insurance policy or certificate,
45 healthcare plan contract or certificate, qualified higher deductible health plan, health
46 maintenance organization or other managed care subscriber contract, or similar plan.

47 (3) 'Insurer' means an accident and sickness insurer, fraternal benefit society, health care
48 corporation, health maintenance organization, provider sponsored health care corporation,
49 or any similar entity regulated by the Commissioner.

50 (4) 'Price protection rebate' means a negotiated price concession that accrues directly or
51 indirectly to the insurer, or other party on behalf of the insurer, in the event of an increase
52 in the wholesale acquisition cost of a drug above a specified threshold.

53 (5) 'Rebate' means:

54 (A) Negotiated price concessions, including but not limited to base price concessions
55 whether described as a rebate or otherwise and reasonable estimates of any price
56 protection rebates and performance based price concessions that may accrue directly
57 or indirectly to the insurer during the coverage year from a manufacturer, dispensing
58 pharmacy, or other party in connection with the dispensing or administration of a
59 prescription drug; and

60 (B) Reasonable estimates of any negotiated price concessions, fees, and other
61 administrative costs that are passed through, or are reasonably anticipated to be passed
62 through, to the insurer and serve to reduce the insurer's costs for acquiring a
63 prescription drug.

64 (b) An enrollee's cost sharing requirements for each prescription drug provided through
65 a health benefit plan shall be calculated by an insurer at the point of sale to the enrollee
66 based on a price that is reduced by an amount equal to at least 80 percent of all rebates
67 received or to be received by such insurer, in connection with the dispensing or

68 administration of the prescription drug and such calculation shall be described in such
69 plans.

70 (c) Noncompliance with this Code section by an insurer may result in the imposition of
71 penalties set forth in Code Section 33-2-24 or other state laws, including the imposition of
72 civil penalties and the suspension or revocation of an insurer's license.

73 (d) Nothing in this Code section shall preclude an insurer from decreasing an enrollee's
74 cost sharing requirements.

75 (e) In implementing the requirements of this Code section, this state shall only regulate an
76 insurer to the extent permissible under applicable law.

77 (f) Except as described in subsection (g) of this Code section, neither an insurer nor its
78 agents shall publish or otherwise disclose information regarding the actual amount of
79 rebates that an insurer receives on a product, manufacturer, or pharmacy-specific basis.
80 Such information is protectable as a trade secret pursuant to Code Section 10-1-761 and is
81 not a public record under Code Section 50-18-70, et seq. and shall not be disclosed directly
82 or indirectly to any nongovernmental party.

83 (g) Notwithstanding subsection (f) of this Code section, an insurer may disclose the
84 information described therein in accord with a department request, an appropriate court
85 order, or to a third party that needs such information to perform healthcare or
86 administrative services for such insurer. Any nongovernmental party receiving such
87 information shall maintain the confidentiality of such information in accord with this Code
88 section and other applicable law."

89 **SECTION 4.**

90 This Act shall become effective on January 1, 2022, and shall apply to all policies issued,
91 delivered, issued for delivery, or renewed in this state on or after such date.

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SECTION 5.

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