

The House Committee on Health offers the following substitute to HB 343:

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 for definitions; to
3 require pharmacy benefits managers to calculate defined cost sharing for insureds at the point
4 of sale; to provide for statutory construction; to provide for violations; to provide for
5 limitations; to provide for annual reporting; to provide for confidentiality; to provide for
6 related matters; to provide for a short title; to provide for an effective date and applicability;
7 to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 This Act shall be known and may be cited as the "Lowering Prescription Drug Costs for
11 Patients Act."

12 **SECTION 2.**

13 Chapter 64 of Title 33 of the Official Code of Georgia Annotated, relating to regulation and
14 licensure of pharmacy benefits managers, is amended in Code Section 33-64-1, relating to
15 definitions, by revising paragraph (13) and by adding new paragraphs to read as follows:

H. B. 343 (SUB)

16 "(0.1) 'Administrative fees' means fees or payments from pharmaceutical manufacturers
17 to, or otherwise retained by, a pharmacy benefits manager or its designee pursuant to a
18 contract between a pharmacy benefits manager or affiliate, and the manufacturer in
19 connection with the pharmacy benefit manager's administering, invoicing, allocating and
20 collecting of the rebates."

21 "(1.1) 'Aggregate retained rebate percentage' means the percentage of all rebates received
22 by a pharmacy benefits manager from all pharmaceutical manufacturers that is not passed
23 on to the pharmacy benefits manager's insurer or health plan clients."

24 "(2.1) 'Defined cost sharing' means any coinsurance or deductible amounts imposed on
25 an insured for a covered prescription drug under the insured's health plan."

26 "(6.1) 'Insurer' means any health insurance issuer that is subject to state law regulating
27 insurance and that offers health insurance coverage, as defined in 42 U.S.C.
28 Section 300gg-91.

29 (6.2) 'Insurer administrative service fees' means fees or payments from an insurer or a
30 designee of the insurer to, or otherwise retained by, a pharmacy benefits manager or its
31 designee pursuant to a contract between a pharmacy benefits manager or affiliate, and the
32 insurer or designee of the insurer in connection with the pharmacy benefits manager's
33 managing or administering the pharmacy benefits and administering, invoicing, allocating
34 and collecting rebates."

35 "(12.1) 'Price protection rebate' means a negotiated price concession that accrues directly
36 or indirectly to the pharmacy benefits manager or its insurer or health plan client, or other
37 party on behalf of the pharmacy benefits manager, in the event of an increase in the
38 wholesale acquisition cost of a drug above a specified threshold."

39 "(13) 'Rebate' means: ~~any and all payments~~

40 (A) Negotiated price concessions, including, but not limited to, base price concessions,
41 whether described as a rebate or otherwise, and reasonable estimates of any price
42 protection rebates and performance based price concessions that may accrue to a

43 pharmacy benefits manager or its insurer or health plan client, directly or indirectly,
44 including through an affiliate, subsidiary, third party, or intermediary, from a
45 pharmaceutical manufacturer, dispensing pharmacy, or other party in connection with
46 the dispensing or administration of a prescription drug, including, but not limited to,
47 discounts, administration fees, credits, incentives, or penalties associated directly or
48 indirectly in any way with claims administered on behalf of a an insurer or health plan
49 client; and

50 (B) Reasonable estimates of any negotiated price concessions, fees, and other
51 administrative costs that are passed through, or are reasonably anticipated to be passed
52 through, to the pharmacy benefits manager or its insurer or health plan client and serve
53 to reduce the pharmacy benefits manager's or its insurer or health plan client's costs for
54 acquiring a prescription drug."

55 **SECTION 3.**

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

57 "33-64-10.1.

58 (a) As used in this Code section, the term 'health plan' means an individual or group plan
59 or program that is subject to the provisions of this title and offers health insurance
60 coverage, as defined in 42 U.S.C. Sec. 300gg-91, including any of the costs of healthcare,
61 medical care, or pharmacy services, drugs, or devices, except that such term shall not
62 include any healthcare coverage provided under the state health benefit plan pursuant to
63 Article 1 of Chapter 18 of Title 45, the medical assistance program pursuant to Article 7
64 of Chapter 4 of Title 49, the PeachCare for Kids Program pursuant to Article 13 of Chapter
65 5 of Title 49, or any other health benefit plan or policy administered by or on behalf of this
66 state.

67 (b) An insured's defined cost sharing for each prescription drug shall be calculated at the
68 point of sale based on a price that is reduced by an amount equal to at least 50 percent of

69 all rebates received, or to be received, in connection with the dispensing or administration
70 of the prescription drug.

71 (c) Nothing in subsection (a) or (b) of this Code section shall preclude a pharmacy benefits
72 manager or its insurer or health plan client from decreasing an insured's defined cost
73 sharing by an amount greater than that required under subsection (b) of this Code section.

74 (d) In addition to any other remedy provided by law, any violation of this Code section by
75 a pharmacy benefits manager shall constitute an unfair or deceptive trade practice pursuant
76 to Part 2 of Article 15 of Chapter 1 of Title 10, the 'Fair Business Practices Act of 1975.'

77 (e) In implementing the requirements of this Code section, the Commissioner shall only
78 regulate a pharmacy benefits manager or its insurer or health plan client to the extent
79 permissible under applicable law.

80 (f) Beginning on January 2, 2024, each pharmacy benefits manager shall annually provide
81 the department, in a form to be established by the department, a report containing the
82 following information from the prior calendar year as it pertains to pharmacy benefits
83 provided to insureds in this state:

84 (1) The aggregate dollar amount of all rebates the pharmacy benefits manager received
85 from all pharmaceutical manufacturers;

86 (2) The aggregate dollar amount of all administrative fees the pharmacy benefits
87 manager received;

88 (3) The aggregate dollar amount of all insurer administrative service fees the pharmacy
89 benefits manager received;

90 (4) The aggregate dollar amount of all rebates the pharmacy benefits manager received
91 from all pharmaceutical manufacturers and that did not pass through to health plans or
92 insurers;

93 (5) The aggregate dollar amount of all administrative fees the pharmacy benefits
94 manager received from all pharmaceutical manufacturers and that did not pass through
95 to health plans or insurers;

- 96 (6) The aggregate retained rebate percentage;
97 (7) Across all of the pharmacy benefits manger's contractual or other relationships with
98 all health plans and insurers, the highest aggregate retained rebate percentage, the lowest
99 aggregate retained rebate percentage, and the mean aggregate retained rebate percentage;
100 (8) The aggregate amount of rebates and administrative fees the pharmacy benefits
101 manager or its insurer or health plan clients used to decrease premiums for insureds; and
102 (9) Expected and actual premium impact as a result of implementing subsection (b) of
103 this Code section.
- 104 (g) The Commissioner shall deem information or data obtained pursuant to this Code
105 section to be trade secret, confidential, and not subject to direct or indirect disclosure,
106 pursuant to Article 4 of Chapter 18 of Title 50, relating to open records, if such information
107 or data would allow for the identification of an individual drug, therapeutic class of drugs,
108 or manufacturer and would tend, directly or indirectly, to reveal the price or prices charged
109 or paid or rebates provided for such drug or therapeutic class of drugs, or would have the
110 potential to compromise the financial, competitive, or proprietary nature of the information
111 or data.
- 112 (h) The report required under subsection (f) of this Code section shall be submitted in
113 conjunction with the report required to be submitted to the department pursuant to
114 subsection (b) of Code Section 33-64-10.
- 115 (i) Beginning January 31, 2024, and annually thereafter, subject to the confidentiality
116 requirements contained in subsection (g) of this Code section, the department shall submit
117 a report summarizing, at an aggregate level, the information submitted by pharmacy
118 benefits managers pursuant to subsection (f) of this Code section to the House Committee
119 on Health and the Senate Health and Human Services Committee.
- 120 (j) In complying with the provisions of this Code section, a pharmacy benefits manager
121 or its agents shall not publish or otherwise reveal information regarding the actual amount
122 of rebates the pharmacy benefits manager or its insurer or health plan client receives on a

123 product or therapeutic class of products, manufacturer, or pharmacy-specific basis. Such
124 information shall be deemed a protected trade secret pursuant to Code Section 10-1-761;
125 shall not be subject to Article 4 of Chapter 18 of Title 50, relating to open records; and
126 shall not be disclosed directly or indirectly or in a manner that would allow for the
127 identification of an individual product, therapeutic class of products, or manufacturer, or
128 in a manner that would have the potential to compromise the financial, competitive, or
129 proprietary nature of the information. A pharmacy benefits manager shall impose the
130 confidentiality protections of this subsection on any vendor or downstream third party that
131 performs health care or administrative services on behalf of the pharmacy benefits manager
132 and that may receive or have access to rebate information.
133 (k) This Code section shall not apply to self-funded, employer sponsored health insurance
134 plans regulated under the Employee Retirement Income Security Act of 1974, as codified
135 and amended at 29 U.S.C. Section 1001, et seq.
136 (l) In implementing the requirements of this Code section, the state shall only regulate a
137 pharmacy benefits manager, insurer, or health plan to the extent permissible under
138 applicable law."

139 **SECTION 4.**

140 This Act shall become effective on January 1, 2024, and shall apply to all policies issued,
141 delivered, issued for delivery, or renewed in this state on or after such date.

142 **SECTION 5.**

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