

House Bill 343 (COMMITTEE SUBSTITUTE)

By: Representatives Newton of the 127<sup>th</sup>, Cooper of the 45<sup>th</sup>, Stephens of the 164<sup>th</sup>, Buckner of the 137<sup>th</sup>, Petrea of the 166<sup>th</sup>, and others

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:

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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.