

The House Committee on Insurance offers the following substitute to HB 323:

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 add a definition; to revise
3 provisions relating to administration of claims by pharmacy benefit managers; to revise
4 provisions relating to prohibited activities of pharmacy benefits managers; to provide for an
5 effective date and applicability; to provide for related matters; to repeal conflicting laws; and
6 for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Chapter 64 of Title 33 of the Official Code of Georgia Annotated, relating to regulation and
10 licensure of pharmacy benefits managers, is amended by revising Code Section 33-64-1,
11 relating to definitions, by adding a new paragraph to read as follows:

12 "(4.1) 'Dispenser' shall have the same meaning as in paragraph (10) of Code Section
13 16-13-21."

14 **SECTION 2.**

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

17 "33-64-10.

18 (a) ~~When administering claims on behalf of group or blanket accident and sickness~~
19 ~~insurers subject to Chapter 30 of this title, a~~ A pharmacy benefits manager shall administer
20 claims in compliance with Code Section 33-30-4.3 and shall not require insureds to use a
21 mail-order pharmaceutical distributor including a mail-order pharmacy.

22 (b) ~~Code Section 33-30-4.3 shall apply to individual accident and sickness policies issued~~
23 ~~pursuant to Chapter 29 of this title and, when administering claims on behalf of individual~~
24 ~~accident and sickness insurers subject to Chapter 29 of this title, a~~ pharmacy benefits
25 ~~manager shall administer claims in compliance with Code Section 33-30-4.3 and shall not~~

26 ~~require insureds to use a mail-order pharmaceutical distributor including a mail-order~~
 27 ~~pharmacy. A pharmacy benefits manager shall report annually to the Commissioner the~~
 28 ~~aggregate amount of all rebates that the pharmacy benefits manager received from~~
 29 ~~pharmaceutical manufacturers and the aggregate amount of rebates the pharmacy benefits~~
 30 ~~manager received from pharmaceutical manufacturers that it did not pass through insurers~~
 31 ~~or payors.~~

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

- 33 (1) A care management organization, as defined in Chapter 21A of this title;
- 34 (2) The Department of Community Health, as defined in Chapter 2 of Title 31;
- 35 (3) The State Health Benefit Plan under Article 1 of Chapter 18 of Title 45; or
- 36 (4) Any licensed group model health maintenance organization with an exclusive
 37 medical group contract and which operates its own pharmacies licensed under Code
 38 Section 26-4-110.1."

39 SECTION 3.

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

42 "33-64-11.

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

- 44 (1) Prohibiting a pharmacist, ~~or pharmacy, or other dispenser or dispenser practice~~ from
 45 providing an insured individual information on the amount of the insured's cost share for
 46 such insured's prescription drug and the clinical efficacy of a more affordable alternative
 47 drug if one is available. ~~Neither a pharmacy nor a pharmacist~~ No pharmacist, pharmacy,
 48 or other dispenser or dispenser practice shall be penalized by a pharmacy benefits
 49 manager for disclosing such information to an insured or for selling to an insured a more
 50 affordable alternative if one is available;
- 51 (2) Prohibiting a pharmacist, ~~or pharmacy, or other dispenser or dispenser practice~~ from
 52 offering and providing store direct delivery services to an insured as an ancillary service
 53 of the pharmacy or dispenser practice;
- 54 (3) Charging or collecting from an insured a copayment that exceeds the total submitted
 55 charges by the network pharmacy or other dispenser practice for which the pharmacy or
 56 dispenser practice is paid;
- 57 (4) Charging or holding a pharmacist or pharmacy or dispenser or dispenser practice
 58 responsible for a fee or penalty relating to the adjudication of a claim or an audit
 59 conducted pursuant to Code Section 26-4-118, provided that this shall not restrict
 60 recoupments made in accordance with Code Section 26-4-118;

- 61 (5) Recouping funds from a pharmacy in connection with claims for which the pharmacy
 62 has already been paid without first complying with the requirements set forth in Code
 63 Section 26-4-118, unless such recoupment is otherwise permitted or required by law; and
 64 (6) Penalizing or retaliating against a pharmacist or pharmacy for exercising rights under
 65 this chapter or Code Section 26-4-118.;
- 66 (7) Ordering or directing an insured for the filling of a prescription or the provision of
 67 pharmacy care services to an affiliated pharmacy;
- 68 (8) Transferring or sharing records relative to prescription information containing
 69 patient-identifiable and prescriber-identifiable data to an affiliated pharmacy for any
 70 commercial purpose; provided, however, that nothing shall be construed to prohibit the
 71 exchange of prescription information between a pharmacy benefits manager and an
 72 affiliated pharmacy for the limited purposes of pharmacy reimbursement, formulary
 73 compliance, pharmacy care, or utilization review;
- 74 (9) Knowingly making a misrepresentation to an insured, pharmacist, pharmacy,
 75 dispenser, or dispenser practice;
- 76 (10) Taking any action in violation of subparagraphs (a)(21)(D) and (a)(21)(E) of Code
 77 Section 26-4-28; and
- 78 (11) Restricting an insured from utilizing any in-network pharmacy or dispenser practice
 79 for any patient covered prescription medication, including, but not limited to, specialty
 80 medications and maintenance medications, provided the covered prescription medication
 81 is not a limited distribution drug, is not commonly carried at retail pharmacies, and
 82 requires special handling.
- 83 (b) To the extent that any provision of this Code section is inconsistent or conflicts with
 84 applicable federal law, rule, or regulation, such applicable federal law, rule, or regulation
 85 shall apply.
- 86 (c) This Code section shall not apply to:
- 87 (1) A care management organization, as defined in Chapter 21A of this title;
 88 (2) The Department of Community Health, as defined in Chapter 2 of Title 31;
 89 (3) The State Health Benefit Plan under Article 1 of Chapter 18 of Title 45; or
 90 (4) Any licensed group model health maintenance organization with an exclusive
 91 medical group contract and which operates its own pharmacies licensed under Code
 92 Section 26-4-110.1."

93 SECTION 4.

94 This Act shall become effective on July 1, 2019, and shall apply to all contracts issued,
 95 delivered, or issued for delivery in this state on and after such date.

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SECTION 5.

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