

House Bill 323

By: Representatives Knight of the 130th, Cooper of the 43rd, Hawkins of the 27th, Powell of the 32nd, Hatchett of the 150th, 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 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. Any rebate obtained by the pharmacy benefits manager shall be applied against~~
 28 ~~the patient's cost of medication and shall not increase the dispensing pharmacy or other~~
 29 ~~dispenser practice's cost of participation.~~

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

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

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

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

34 ~~(4) Any any licensed group model health maintenance organization with an exclusive~~
 35 ~~medical group contract and which operates its own pharmacies licensed under Code~~
 36 ~~Section 26-4-110.1."~~

37 SECTION 3.

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

40 "33-64-11.

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

42 (1) Prohibiting a pharmacist, ~~or pharmacy, or other dispenser or dispenser practice~~ from
 43 providing an insured individual information on the amount of the insured's cost share for
 44 such insured's prescription drug and the clinical efficacy of a more affordable alternative
 45 drug if one is available. ~~Neither a pharmacy nor a pharmacist~~ No pharmacist, pharmacy,
 46 or other dispenser or dispenser practice shall be penalized by a pharmacy benefits
 47 manager for disclosing such information to an insured or for selling to an insured a more
 48 affordable alternative if one is available;

49 (2) Prohibiting a pharmacist, ~~or pharmacy, or other dispenser or dispenser practice~~ from
 50 offering and providing store direct delivery services to an insured as an ancillary service
 51 of the pharmacy or dispenser practice;

52 (3) Charging or collecting from an insured a copayment that exceeds the total submitted
 53 charges by the network pharmacy or other dispenser practice for which the pharmacy or
 54 dispenser practice is paid;

55 ~~Charging or holding a pharmacist or pharmacy~~ Entering into a contract in which a
 56 pharmacy or dispenser practice can be held responsible for a fee, penalty, offset, or
 57 recoupment, assessed at point of sale or retroactively, relating to the adjudication of a
 58 claim or performance standards;

59 (5) Recouping funds from a pharmacy in connection with claims for which the pharmacy
 60 has already been paid without first complying with the requirements set forth in Code
 61 Section 26-4-118, unless such recoupment is otherwise permitted or required by law; ~~and~~

- 62 (6) Penalizing or retaliating against a pharmacist or pharmacy for exercising rights under
63 this chapter or Code Section 26-4-118;
- 64 (7) Referring an insured for the provision of pharmacy care services to an affiliated
65 pharmacy;
- 66 (8) Transferring or sharing records relative to prescription information containing
67 patient-identifiable and prescriber-identifiable data to an affiliated pharmacy for any
68 commercial purpose, including, but not limited to, advertising, marketing, promotion, or
69 any activity that could be used to influence sales or market share; provided, however, that
70 nothing shall be construed to prohibit the exchange of prescription information between
71 a pharmacy benefits manager and an affiliated pharmacy for the limited purposes of
72 pharmacy reimbursement, formulary compliance, pharmacy care, or utilization review;
- 73 (9) Making any statement or representation to an insured, pharmacist, pharmacy,
74 dispenser, or dispenser practice which is, at the time it is made, false or misleading;
- 75 (10) Conditioning payment, reimbursement, or network access on, or requiring via
76 contract, any type of accreditation, certification, credentialing standard, or insurance or
77 surety bond requirements on a pharmacist, pharmacy, or dispenser or dispenser practice,
78 beyond those required by the State of Board of Pharmacy, or applicable state or federal
79 law;
- 80 (11) Restricting an insured from utilizing any in-network pharmacy or dispenser practice
81 for any patient covered prescription medication or limiting, via contract or otherwise, a
82 network pharmacy or dispenser practice from dispensing any patient covered prescription
83 drug to an insured, including, but not limited to, specialty medications and maintenance
84 medications; and
- 85 (12) Implementing any medication management, prior approval, or repeat approval
86 program that alters or denies access to ongoing therapy. It shall be the responsibility of
87 the pharmacy benefits manager to obtain all information necessary to make a coverage
88 decision regarding therapy, and no ongoing treatment may be denied or delayed due to
89 a lack of such information.
- 90 (b) To the extent that any provision of this Code section is inconsistent or conflicts with
91 applicable federal law, rule, or regulation, such applicable federal law, rule, or regulation
92 shall apply.
- 93 (c) This Code section shall not apply to:
- 94 ~~(1) A care management organization, as defined in Chapter 21A of this title;~~
95 ~~(2) The Department of Community Health, as defined in Chapter 2 of Title 31;~~
96 ~~(3) The State Health Benefit Plan under Article 1 of Chapter 18 of Title 45; or~~

