House Bill 991 (AS PASSED HOUSE AND SENATE)
By: Representatives Hatchett of the 150th, Knight of the 130th, England of the 116th, Stephens of the 164th, Parrish of the 158th, and others

A BILL TO BE ENTITLED
AN ACT

To amend Title 31 of the Official Code of Georgia Annotated, relating to health, so as to provide for transparency relating to state healthcare plans and its contractors; to provide for a short title; to provide for definitions; to provide for an oversight committee; to provide for its members and powers; to provide for information from state contractors and others to the oversight committee regarding state healthcare plans; to provide for confidentiality of certain records; to provide for penalties; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 31 of the Official Code of Georgia Annotated, relating to health, is amended in Chapter 2, relating to the Department of Community Health, by adding a new Code section to read as follows:

"31-2-17.
(a) This Code section shall be known and may be cited as the 'Healthcare Transparency and Accountability Act.'
(b) As used in this Code section, the term:
(1) 'Affiliate' means a person which, either directly or indirectly through one or more intermediaries:
   (A) Has an investment or ownership interest in a person licensed under Title 33;
   (B) Shares common ownership with a person licensed under Title 33; or
   (C) Has as an investor or ownership interest holder a person licensed under Title 33.
(2) 'Contractor' means a person licensed under Title 33 who contracts directly with the department or another state agency to provide services pursuant to a state healthcare plan.
(3) 'Oversight committee' means the Healthcare Transparency and Accountability Oversight Committee created pursuant to this Code section.
(4) ‘State healthcare plan' means any healthcare plan or benefits administered by or through the department or another state agency, including, but not limited to, the state health benefit plan under Article 1 of Chapter 18 of Title 45, the plan for public employees under Part 6 of Article 17 of Chapter 2 of Title 20, the medical assistance program under Article 7 of Chapter 4 of Title 49, the PeachCare for Kids Program under Article 13 of Chapter 5 of Title 49, and any other health services or benefits administered by or on behalf of the state.

(5) ‘Subcontractor' means an affiliate or nonaffiliate entity that enters into an agreement with a contractor to administer, provide, deliver, arrange for, pay for, or reimburse any of the costs of healthcare services provided pursuant to a state healthcare plan, including but not limited to pharmacy benefits managers and dental care management organizations. The term shall not include the practice of any profession licensed under Title 26 or 43 unless it is a licensed affiliate of the contractor.

(c)(1) There is created the Healthcare Transparency and Accountability Oversight Committee which shall have authority to review the performance and conduct of all state healthcare plan contractors and their subcontractors.

(2) The oversight committee shall be composed of nine members as follows:

(A) One physician, one pharmacist, and one consumer member who receives benefits from a state healthcare plan, appointed by the Governor; and

(B) Six members of the General Assembly appointed as follows:

(i) Two members appointed by the Governor;

(ii) Two members appointed by the Lieutenant Governor; and

(iii) Two members appointed by the Speaker of the House of Representatives.

(3) Members shall serve two-year terms. The Governor shall designate one of his or her appointees from the General Assembly as the chairperson.

(4) The oversight committee shall have the power to:

(A) Request and review records relating to state healthcare plan contractors and their subcontractors, in performance of their contractual obligations, including contracts, subcontracts, reports, statements, and deidentified healthcare records;

(B) Utilize legislative counsel when, in the oversight committee's determination, it is needed;

(C) Prepare reports using aggregated data which shall not be considered confidential or a trade secret and which shall be made available to the General Assembly and the public;

(D) Submit written questions to applicable departments, agencies, boards, and state healthcare plan contractors and their subcontractors which shall be answered no later than 30 days following receipt of such questions:
(E) Prepare recommendations regarding contracting, transparency, and oversight to applicable state departments, agencies, and boards;

(F) Prepare recommendations on legislative initiatives to the General Assembly as well as regulatory recommendations to the Commissioner of Insurance;

(G) Retain third-party consultants, including attorneys, actuaries, accountants, and healthcare providers such as physicians, pharmacists, nurses, and dentists, and other experts as may be reasonably necessary to assist the oversight committee in its functions. Any third party retained shall be under the direction and control of the oversight committee, shall act only in an advisory capacity, and shall be subject to maintaining confidentiality; and

(H) Request an audit of a state healthcare plan contractor or its subcontractors from the Department of Audits and Accounts.

(5) Nothing in this Code section shall be construed to enable the oversight committee to act on its own to, or otherwise prevent the department or any other state agency from, entering into, renewing, or terminating a contract with a contractor for a state healthcare plan.

(d)(1) A contractor and its subcontractors shall, upon request of the oversight committee or the Department of Audits and Accounts, make all books, documents, papers, provider records, healthcare records, financial records, data, surveys, and computer databases related to its services to the state within its care, custody, and control available for examination. All requested records shall be provided within 30 days following a written request in a format determined by the oversight committee or the Department of Audits and Accounts. All records shall be provided at the sole cost and expense of the contractor or subcontractor.

(2) A contractor shall annually provide to the oversight committee, no later than November 1 of each year, all reports and statements prepared pursuant to its contract with the state; financial reports filed with the Commissioner of Insurance; and an Annual Transparency Report which shall be made available to the public detailing the following as it relates to a state healthcare plan:

(A) The amount it was paid by the state, including, where applicable, capitated per member per month rates;

(B) Medical Loss Ratio and loss ratios associated with the administration of dental benefits;

(C) All contractual obligations with the state, including performance benchmarks, it failed to meet;

(D) All reports prepared pursuant to its contract with the state;

(E) All dividends paid to shareholders or affiliates;
(F) Financial reports reflecting expenses, net underwriting gain, and net profit
attributable to services performed for the state;

(G) Most recent legal chart of corporate structure;

(H) All affiliate subcontractors and the amount each affiliate subcontractor was paid;

and

(I) A report delineating whether it participates in the health care exchange operating
in this state pursuant to Section 1311 of the federal Patient Protection and Affordable
Care Act (P.L. 111-148), and if so, the counties in which its health plan or plans are
made available through such exchange.

(3) A contractor or its subcontractor pharmacy benefits manager shall annually provide
to the oversight committee, no later than November 1 of each year, an Annual
Prescription Drug Transparency Report which shall be made available to the public
detailing the following as it relates to a state healthcare plan:

(A) The aggregated rebates, fees, and any other payments collected from
pharmaceutical manufacturers by the contractor or its subcontractor pharmacy benefits
manager and the amount retained as revenue by the contractor, the amount retained as
revenue by its subcontractor pharmacy benefits manager, the amount passed back to the
state healthcare plan, and the amount passed to insureds at the point of sale;

(B) The aggregate total number of pharmacy claims, the aggregate amount paid to
pharmacies for cost of drug reimbursement, the aggregate amount paid to pharmacies
for dispensing fees, the aggregate amount paid to pharmacies by the state healthcare
plan, and the aggregate amount paid to pharmacies by insureds via copayments;

(C) Any difference between the aggregate amount a state healthcare plan paid a
contractor for pharmacy claims and what the pharmacies were paid and any difference
between what a contractor paid for pharmacy claims and what the pharmacies were
paid;

(D) The aggregate amount paid to affiliate pharmacies of a contractor or affiliate
pharmacies of its subcontractor pharmacy benefits manager;

(E) The aggregate number of prior authorizations required, the aggregate costs
associated with processing the prior authorizations, the aggregate number of days it
took the pharmacy benefits manager to render a decision on prior authorizations once
the completed prior authorization has been submitted, and the aggregate number of
prior authorizations that were approved and that were denied;

(F) The names of the 25 prescription drugs which were subject to the most prior
authorizations; and

(G) The names of the 50 most frequently prescribed prescription drugs.
(e)(1) The amount that a contractor is paid by the state, including capitated per member, per month rates, and the amount that a subcontractor is paid by a contractor shall be subject to disclosure under Chapter 18 of Title 50, relating to open records, and shall not be confidential or constitute a trade secret.

(2) Records, reports, documents, and data submitted to the oversight committee not otherwise subject to disclosure under Chapter 18 of Title 50 shall be treated as confidential and shall not be subject to disclosure by the oversight committee or its members; provided, however, that the annual transparency report, annual prescription drug transparency report, and any reports prepared by the oversight committee shall be subject to disclosure under Chapter 18 of Title 50 and shall not be confidential or constitute a trade secret.

(f) The Insurance Commissioner shall have the authority to subject any contractor or its subcontracted pharmacy benefits manager to a monetary penalty of up to $2,000.00 for each and every act in violation of this Code section, unless the contractor or subcontractor knew or reasonably should have known that it was in violation of this Code section, in which case the monetary penalty provided for in this subsection may be increased to an amount of up to $5,000.00 for each and every act in violation of this Code section."

SECTION 2.

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