

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

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

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 style="text-align:center">**SECTION 1.**

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

13 "31-2-17.

14 (a) This Code section shall be known and may be cited as the 'Healthcare Transparency
15 and Accountability Act.'

16 (b) As used in this Code section, the term:

17 (1) 'Affiliate' means a person which, either directly or indirectly through one or more
18 intermediaries:

19 (A) Has an investment or ownership interest in a person licensed under Title 33;

20 (B) Shares common ownership with a person licensed under Title 33; or

21 (C) Has as an investor or ownership interest holder a person licensed under Title 33.

22 (2) 'Contractor' means a person licensed under Title 33 who contracts directly with the
23 department or another state agency to provide services pursuant to a state healthcare plan.

24 (3) 'Oversight committee' means the Healthcare Transparency and Accountability
25 Oversight Committee created pursuant to this Code section.

26 (4) 'State healthcare plan' means any healthcare plan or benefits administered by or
 27 through the department or another state agency, including, but not limited to, the state
 28 health benefit plan under Article 1 of Chapter 18 of Title 45, the plan for public
 29 employees under Part 6 of Article 17 of Chapter 2 of Title 20, the medical assistance
 30 program under Article 7 of Chapter 4 of Title 49, the PeachCare for Kids Program under
 31 Article 13 of Chapter 5 of Title 49, and any other health services or benefits administered
 32 by or on behalf of the state.

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

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

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

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

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

46 (i) Two members appointed by the Governor;

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

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

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

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

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

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

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

60 (D) Submit written questions to applicable departments, agencies, boards, and state
 61 healthcare plan contractors and their subcontractors which shall be answered no later
 62 than 30 days following receipt of such questions;

63 (E) Prepare recommendations regarding contracting, transparency, and oversight to
 64 applicable state departments, agencies, and boards;

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

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

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

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

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

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

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

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

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

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

99 (E) All dividends paid to shareholders or affiliates;

- 100 (F) Financial reports reflecting expenses, net underwriting gain, and net profit
101 attributable to services performed for the state;
- 102 (G) Most recent legal chart of corporate structure;
- 103 (H) All affiliate subcontractors and the amount each affiliate subcontractor was paid;
104 and
- 105 (I) A report delineating whether it participates in the health care exchange operating
106 in this state pursuant to Section 1311 of the federal Patient Protection and Affordable
107 Care Act (P.L. 111-148), and if so, the counties in which its health plan or plans are
108 made available through such exchange.
- 109 (3) A contractor or its subcontractor pharmacy benefits manager shall annually provide
110 to the oversight committee, no later than November 1 of each year, an Annual
111 Prescription Drug Transparency Report which shall be made available to the public
112 detailing the following as it relates to a state healthcare plan:
- 113 (A) The aggregated rebates, fees, and any other payments collected from
114 pharmaceutical manufacturers by the contractor or its subcontractor pharmacy benefits
115 manager and the amount retained as revenue by the contractor, the amount retained as
116 revenue by its subcontractor pharmacy benefits manager, the amount passed back to the
117 state healthcare plan, and the amount passed to insureds at the point of sale;
- 118 (B) The aggregate total number of pharmacy claims, the aggregate amount paid to
119 pharmacies for cost of drug reimbursement, the aggregate amount paid to pharmacies
120 for dispensing fees, the aggregate amount paid to pharmacies by the state healthcare
121 plan, and the aggregate amount paid to pharmacies by insureds via copayments;
- 122 (C) Any difference between the aggregate amount a state healthcare plan paid a
123 contractor for pharmacy claims and what the pharmacies were paid and any difference
124 between what a contractor paid for pharmacy claims and what the pharmacies were
125 paid;
- 126 (D) The aggregate amount paid to affiliate pharmacies of a contractor or affiliate
127 pharmacies of its subcontractor pharmacy benefits manager;
- 128 (E) The aggregate number of prior authorizations required, the aggregate costs
129 associated with processing the prior authorizations, the aggregate number of days it
130 took the pharmacy benefits manager to render a decision on prior authorizations once
131 the completed prior authorization has been submitted, and the aggregate number of
132 prior authorizations that were approved and that were denied;
- 133 (F) The names of the 25 prescription drugs which were subject to the most prior
134 authorizations; and
- 135 (G) The names of the 50 most frequently prescribed prescription drugs.

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

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

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

153 **SECTION 2.**

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