

House Bill 164

By: Representatives Douglas of the 78th, Cooper of the 43rd, Frye of the 118th, Stephens of the 164th, and Evans of the 57th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 24 of Title 33 of the Official Code of Georgia Annotated, relating to
2 insurance generally, so as to require all health insurers to pass along no less than 80 percent
3 of all prescription drug rebates to enrollees that such insurer receives from third parties with
4 regard to such enrollee's prescription drugs; to provide for a short title; to provide for
5 legislative findings; to provide for definitions; to provide for related matters; to provide for
6 an effective date and applicability; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 This Act shall be known and may be cited as the "Prescription Drug Consumer Financial
10 Protection Act."

11 **SECTION 2.**

12 The General Assembly finds:

13 (1) The citizens of this state frequently rely on state-regulated commercial insurers to
14 secure access to the prescription medicines needed to protect their health;

- 15 (2) Commercial insurance plans increasingly require enrollees to bear significant
16 out-of-pocket costs for their prescription medicines;
- 17 (3) High out-of-pocket costs of prescription medicines impact the ability of enrollees to
18 start new and necessary medicines and to stay adherent to their prescriptions;
- 19 (4) High or unpredictable cost sharing requirements are a main driver of unaffordable
20 enrollee out-of-pocket costs;
- 21 (5) The burdens of high or unpredictable cost sharing requirements are borne
22 disproportionately by enrollees with chronic or debilitating conditions;
- 23 (6) Pharmaceutical manufacturers may offer sizeable rebates, discounts, and price
24 concessions in connection with the dispensing or administration of a therapy, but
25 enrollees do not necessarily financially benefit from these amounts at the point of sale,
26 and, instead, insurers or other intermediaries may retain the value of rebates, discounts,
27 and price concessions;
- 28 (7) Restrictions are needed on the ability of insurers and their intermediaries to retain
29 rebates, discounts, and price concessions that instead should be directly passed on to
30 enrollees as cost savings;
- 31 (8) Enrollees need equitable and accessible health coverage that does not impose unfair
32 cost sharing burdens upon them; and
- 33 (9) The legislature intends that enrollees receive the benefit of meaningful and durable
34 cost savings from rebates and other price concessions that would otherwise accrue to
35 insurers in connection with the dispensing or administration of a particular drug therapy.

36

SECTION 3.

37 Chapter 24 of Title 33 of the Official Code of Georgia Annotated, relating to insurance
38 generally, is amended by adding a new Code section to read as follows:

39 "33-24-59.30.

40 (a) As used in this Code section, the term:

41 (1) 'Cost sharing requirements' means copayments, coinsurance, deductibles, and any
42 other amounts imposed on an enrollee for a covered prescription drug under the enrollee's
43 health benefit plan.

44 (2) 'Health benefit plan' means any hospital or medical insurance policy or certificate,
45 state healthcare or other healthcare plan contract or certificate, qualified higher deductible
46 health plan, health maintenance organization or other managed care subscriber contract,
47 or similar plan.

48 (3) 'Insurer' means an accident and sickness insurer, fraternal benefit society, health care
49 corporation, health maintenance organization, provider sponsored health care corporation,
50 or any similar entity regulated by the Commissioner.

51 (4) 'Price protection rebate' means a negotiated price concession that accrues directly or
52 indirectly to the insurer, or other party on behalf of the insurer, in the event of an increase
53 in the wholesale acquisition cost of a drug above a specified threshold.

54 (5) 'Rebate' means:

55 (A) Negotiated price concessions, including but not limited to base price concessions
56 whether described as a rebate or otherwise and reasonable estimates of any price
57 protection rebates and performance based price concessions that may accrue directly
58 or indirectly to the insurer during the coverage year from a manufacturer, dispensing
59 pharmacy, or other party in connection with the dispensing or administration of a
60 prescription drug; and

61 (B) Reasonable estimates of any negotiated price concessions, fees, and other
62 administrative costs that are passed through, or are reasonably anticipated to be passed
63 through, to the insurer and serve to reduce the insurer's costs for acquiring a
64 prescription drug.

65 (6) 'State healthcare plan' means:

66 (A) The state employees' health insurance plan established pursuant to Article 1 of
67 Chapter 18 of Title 45;

- 68 (B) The health insurance plan for public school teachers established pursuant to
69 Subpart 2 of Part 6 of Article 17 of Chapter 2 of Title 20;
70 (C) The health insurance plan for public school employees established pursuant to
71 Subpart 3 of Part 6 of Article 17 of Chapter 2 of Title 20; and
72 (D) The Regents Health Plan established pursuant to authority granted to the board
73 pursuant to Code Sections 20-3-31, 20-3-51, and 31-2-4.
- 74 (b) An enrollee's cost sharing requirements for each prescription drug provided through
75 a health benefit plan shall be calculated by an insurer at the point of sale to the enrollee
76 based on a price that is reduced by an amount equal to at least 80 percent of all rebates
77 received or to be received by such insurer, in connection with the dispensing or
78 administration of the prescription drug and such calculation shall be described in such
79 plans.
- 80 (c) Noncompliance with this Code section by an insurer may result in the imposition of
81 penalties set forth in Code Section 33-2-24 or other state laws, including the imposition of
82 civil penalties and the suspension or revocation of an insurer's license.
- 83 (d) Nothing in this Code section shall preclude an insurer from decreasing an enrollee's
84 cost sharing requirements.
- 85 (e) Nothing in this Code section shall be applicable to health benefit plans which are
86 subject to the exclusive jurisdiction of the Employee Retirement Income Security Act
87 of 1974, 29 U.S.C. Section 1001, et seq.
- 88 (f) Except as described in subsection (g) of this Code section, neither an insurer nor its
89 agents shall publish or otherwise disclose information regarding the actual amount of
90 rebates that an insurer receives on a product, manufacturer, or pharmacy-specific basis.
91 Such information is protectable as a trade secret pursuant to Code Section 10-1-761 and is
92 not a public record under Code Section 50-18-70, et seq. and shall not be disclosed directly
93 or indirectly to any nongovernmental party.

94 (g) Notwithstanding subsection (f) of this Code section, an insurer may disclose the
95 information described therein in accord with a department request, an appropriate court
96 order, or to a third party that needs such information to perform healthcare or
97 administrative services for such insurer. Any nongovernmental party receiving such
98 information shall maintain the confidentiality of such information in accord with this Code
99 section and other applicable law."

100 **SECTION 4.**

101 This Act shall become effective on January 1, 2022, and shall apply to all policies issued,
102 delivered, issued for delivery, or renewed in this state on or after such date.

103 **SECTION 5.**

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