

Senate Bill 427

By: Senator Mullis of the 53rd

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 7 of Chapter 4 of Title 49 of the Official Code of Georgia Annotated,
2 relating to Medicaid generally, so as to require the Department of Community Health to
3 engage an actuary to conduct an actuarial study of the fiscal impact of carving out pharmacy
4 benefits from the state's current Medicaid care management organizations; to provide for
5 actions based on the results of the actuarial study; to provide for submission of a waiver if
6 necessary; to provide for related matters; to provide for legislative findings; to repeal
7 conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 The General Assembly finds that:

11 (1) The Department of Community Health administers Medicaid benefits to Georgia's
12 aged, blind, and disabled directly through its fee-for-service program and offers Medicaid
13 benefits for low income beneficiaries and its children's health insurance program through
14 four Medicaid care management organizations (CMOs), along with benefits for children
15 in foster care receiving adoption assistance and select youth in the juvenile justice system,
16 through a single CMO;

17 (2) The State of Georgia should conduct an actuarial study to assess the potential savings
18 associated with carving out prescription drug benefits from its Medicaid managed care
19 delivery system and providing those benefits through its Medicaid fee-for-service
20 program;

21 (3) West Virginia carved out prescription drug benefits from its Medicaid managed care
22 delivery system and undertook providing prescription drug benefits through its
23 fee-for-service program. West Virginia's Medicaid actuary conducted an actuarial
24 assessment and found that the West Virginia carve out saved over \$50 million in 2018;

25 (4) On November 5, 2019, three members of the Georgia General Assembly requested
26 that the Department of Community Health engage an actuary to conduct an actuarial
27 assessment and prepare a public report on the impact of a Medicaid managed care carve

28 out of prescription drug benefits, with a goal of having the public report completed by the
29 second week of Georgia's 2020 legislative session;

30 (5) On November 26, 2019, the Department of Community Health declined the request
31 for the actuarial assessment and public report, indicating that it was unable to identify
32 appropriations or financial resources to conduct the assessment, which cost
33 approximately \$150,000.00;

34 (6) In 2018, according to annual reports submitted to Georgia's insurance department by
35 Georgia's four CMOs:

36 (A) Their general administrative expenses were over \$499.8 million;

37 (B) Their combined claim adjustment expenses were over \$118 million;

38 (C) All four organizations contracted with affiliated entities for the provision of
39 administrative services;

40 (D) The combined underwriting gain for three of the CMOs was over \$141 million,
41 with the fourth company showing an underwriting loss; and

42 (E) Dividends issued to parent companies of three of the four CMOs totaled \$146
43 million. These CMOs also provide managed care services in Georgia under
44 non-Medicaid programs, and so it is not clear to the General Assembly exactly how
45 much of these dividends were derived from Georgia's Medicaid managed care program.
46 As a reference point, in 2018, approximately \$3.6 billion of the \$4.4 billion of net
47 income received by the three dividend-paying CMOs came from Georgia's Medicaid
48 managed care program;

49 (7) The Line 920 Report prepared for the chairmen of the House Appropriations
50 Committee and the Senate Appropriations Committee of the Georgia General Assembly
51 for state fiscal year 2018 found that:

52 (A) The practice of spread pricing resulted in a price differential between payments by
53 Medicaid CMOs to their pharmacy benefit managers (PBMs) and payments to
54 pharmacies of more than \$50 million; and

55 (B) One CMO had a spread in excess of \$29.8 million;

56 (8) Self-dealing between CMOs and their affiliated pharmacies or their contracted PBM
57 affiliated pharmacies raise concerns regarding conflict of interest. For example, based
58 on 2018 Medicaid claims data provided by the Department of Community Health:

59 (A) One CMO paid \$24,772,230 on claims filled by its affiliated pharmacy out of a
60 total of \$109,514,298 paid for claims. The CMO paid approximately 22 percent of its
61 total drug expenditure on claims filled by its affiliated pharmacy, despite the pharmacy
62 having just one in-state location and several out-of-state locations;

63 (B) Another CMO paid \$12,402,679 on claims filled by its PBM affiliated pharmacy
64 out of a total of \$91,822,324 paid for claims. The CMO paid approximately 13 percent

65 of its total drug expenditure on claims filled by its PBM affiliated pharmacy, despite
66 the pharmacy having just one in-state location and several out-of-state locations; and
67 (C) One CMO's affiliated pharmacy filled all 300 units of imatinib, a drug used to treat
68 leukemia, which were paid for by the CMO for the year. That same CMO's affiliated
69 pharmacy also filled all 5,250 units of capecitabine, a drug used to treat cancer, which
70 were paid for by the CMO for the year. For another CMO, its contracted PBM
71 affiliated pharmacy filled all 480 units of imatinib, which were paid for by the CMO
72 for the year. That same CMO's contracted PBM affiliated pharmacy also filled all
73 4,858 units of capecitabine, which were paid for by the CMO for the year.

74 (9) In 2018, Georgia's Medicaid managed care program ranked in the bottom twenty-fifth
75 percentile in the nation for:

- 76 (A) Antidepressant medication management;
- 77 (B) Antipsychotic medication management for patients with schizophrenia;
- 78 (C) Medication management for patients with asthma;
- 79 (D) Statin adherence for patients with cardiovascular conditions;
- 80 (E) Statin adherence for patients with diabetes; and
- 81 (F) Controlling high blood pressure for cardiovascular conditions;

82 (10) Across all Healthcare Effectiveness Data and Information Set (HEDIS) performance
83 rankings in 2018:

- 84 (A) One CMO had 27 percent of its performance measure rates ranked below the
85 national Medicaid twenty-fifth percentile and 61.4 percent ranked below the national
86 Medicaid fiftieth percentile; and
- 87 (B) One CMO had 19.8 percent of its performance measure rates ranked below the
88 national Medicaid twenty-fifth percentile and 51.7 percent ranked below the national
89 Medicaid fiftieth percentile;

90 (11) The Department of Community Health administers prescription drug benefits in its
91 fee-for-service program in a transparent way, including its use of the publicly available
92 National Average Drug Acquisition Cost (NADAC) data published by the federal Centers
93 for Medicare and Medicaid Services and its use of a publicly available Select Specialty
94 Pharmacy Rate (SSPR); and

95 (12) Due to high administrative costs, self-dealing, a lack of transparency, and poor
96 performance, CMOs no longer have the trust of the General Assembly in connection with
97 the administration of prescription drug benefits, and the General Assembly believes that
98 the Department of Community Health's fee-for-service program being more transparent
99 and efficient will make it better equipped to administer prescription drug benefits for all
100 Georgia beneficiaries moving forward.

SECTION 2.

Article 7 of Chapter 4 of Title 49 of the Official Code of Georgia Annotated, relating to Medicaid generally, is amended by adding a new Code section to read as follows:

"49-4-159.

(a) The department shall engage an actuary to conduct an actuarial study, to be completed no later than December 1, 2020, of the fiscal impact of carving out the pharmacy benefits from the state's current Medicaid care management organizations and providing pharmacy benefits to care management organization members exclusively through the department's Medicaid fee-for-service program. The department shall cooperate fully with such actuarial study, including making its records and the records of any contractors and subcontractors available to the actuary.

(b) If the results of the actuarial study project a potential annual savings to the state and federal government combined of \$20 million or more, then on and after July 1, 2021:

(1) The department shall provide the pharmacy benefits for a care management organization's members, and care management organizations shall not provide pharmacy benefits for their enrolled members; provided, however, that a care management organization shall have access to the department's pharmacy data for its enrolled members; and

(2) The department shall calculate an amount equal to 7.5 percent of a care management organization's net underwriting gain for the July 1, 2020, to June 30, 2021, contract year, as determined by the department's Medicaid actuary, and shall reduce the care management organization's subsequent contract term payment by such amount, for use by the department in providing pharmacy benefits for care management organization members, including any cost incurred in program implementation.

(c) If the results of the actuarial study project a potential annual savings to the state and federal government combined of at least \$10 million but less than \$20 million, the department shall have the authority but not the obligation to proceed with a carve out as set forth in subsection (b) of this Code section. In making its decision, the department may consider other factors, including transparency, economic benefits to the state of proceeding with a carve out, and the costs associated with providing increased oversight should the CMOs continue to administer pharmacy benefits for their enrolled members.

(d) The department shall submit any necessary modifications, if applicable, to the state plan for medical assistance filed pursuant to Code Section 49-4-12 in order to fulfill the requirements of this Code section."

SECTION 3.

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