

Senate Bill 433

By: Senators Jones of the 25th, Anderson of the 24th, Burke of the 11th, Martin of the 9th and Brass of the 28th

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 33 of the Official Code of Georgia Annotated, relating to insurance, so as to  
2 require disclosure of diabetes prescription drug pricing; to provide for a short title; to provide  
3 for legislative findings; to provide for definitions; to provide for a listing of diabetes  
4 prescription drugs; to provide for drug manufacturer and pharmacy benefits manager report  
5 forms and insurer pricing reports; to provide for certain other reports; to provide for  
6 penalties; to amend Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating  
7 to selling and other trade practices, so as to provide for penalties regarding unfair or  
8 deceptive practices in consumer transactions; to provide for related matters; to provide for  
9 an effective date and applicability; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Title 33 of the Official Code of Georgia Annotated, relating to insurance, is amended by  
13 adding a new chapter to read as follows:

14 "CHAPTER 20E

15 33-20E-1.

16 This chapter shall be known and may be cited as the 'Diabetes Drug Pricing Transparency  
17 Act of 2020.'

18 33-20E-2.

19 The General Assembly finds that:

20 (1) More than one in ten Georgia adults have diabetes;

21 (2) More than one million Georgians have diabetes;

22 (3) Every Georgian with Type 1 diabetes and many with Type 2 diabetes rely on daily  
23 doses of insulin to survive; and

24 (4) Insulin prices have risen significantly in recent years.

25 33-20E-3.

26 As used in this chapter, the term:

27 (1) 'Cost-sharing amount' is the share of costs a covered person is required to pay under  
 28 a health benefit plan for certain covered healthcare services which may include  
 29 deductibles, coinsurance, copayments, or other similar charges but does not include  
 30 premium payments.

31 (2) 'Covered person' means a natural person who is covered under a health benefit plan.

32 (3) 'Drug manufacturer' means a manufacturer of prescription insulin drugs that are made  
 33 available in Georgia and that are used for the treatment of diabetes.

34 (4) 'Health benefit plan' has the same meaning as in Code Section 33-24-59.5.

35 (5) 'Insurer' has the same meaning as in Code Section 33-24-59.14.

36 (6) 'Pharmacy benefits manager' has the same meaning as in Code Section 33-64-1.

37 (7) 'Wholesale acquisition cost' means a drug manufacturer's list price for a prescription  
 38 drug offered for sale to wholesalers or direct purchasers in the United States, not  
 39 including any discounts, rebates, or reductions in price, as reported in wholesale price  
 40 guides or other publications of drug pricing data.

41 33-20E-4.

42 (a) On or before February 1, 2021, and by February 1 each year thereafter, the department  
 43 in consultation with the Department of Community Health shall compile:

44 (1) A list of prescription insulin drugs that the department determines to be essential for  
 45 treating diabetes in this state and that are made available in Georgia, together with the  
 46 wholesale acquisition cost of each drug on the list; and

47 (2) A list of prescription insulin drugs described in paragraph (1) of this subsection that  
 48 were subject to an increase in the wholesale acquisition cost by a percentage greater than:

49 (A) The percentage increase in the medical care components of the consumer price  
 50 index for Atlanta, Georgia, for the immediately preceding calendar year; or

51 (B) Twice the sum of the percentage increase in the medical care components of the  
 52 consumer price index for the two immediately preceding calendar years. For purposes  
 53 of this calculation, for years prior to 2020, the medical care components of the  
 54 consumer price index for Atlanta, Georgia, shall apply to this subparagraph and for  
 55 2020 and succeeding years.

56 (b) The department shall, by February 1, 2021, and by February 1 each year thereafter,  
 57 post the lists required to be compiled pursuant to subsection (a) of this Code section on  
 58 the department's website.

59 33-20E-5.

60 (a) The department shall prepare a report form to be completed by drug manufacturers of  
61 prescription insulin drugs on the list compiled by the department in accordance with  
62 paragraph (1) of subsection (a) of Code Section 33-20E-4.

63 (b) The report form shall specify the applicable time periods for the information required  
64 to be reported.

65 (c) On or before May 1, 2021, and by May 1 each year thereafter, each drug manufacturer  
66 of a prescription insulin drug on the most current list compiled by the department in  
67 accordance with paragraph (1) of subsection (a) of Code Section 33-20E-4 shall prepare  
68 and submit to the department a completed report form for each listed drug, which form  
69 includes:

70 (1) The total cost to produce the drug;

71 (2) The total administrative expenditures directly related to the drug, including  
72 expenditures to market or advertise the drug to Georgia residents;

73 (3) The total annual profit the drug manufacturer earned from the drug, identified by the  
74 year;

75 (4) The percentage of the drug manufacturer's total profit attributable to the profit made  
76 from the drug, identified by the year;

77 (5) The total amount of financial assistance that the drug manufacturer provided through  
78 any patient prescription assistance program for the drug;

79 (6) The total cost associated with coupons or rebates provided directly to consumers and  
80 the total cost of programs assisting consumers in paying copayments attributable to the  
81 drug;

82 (7) The wholesale acquisition cost of the drug;

83 (8) A record of each increase in the wholesale acquisition cost of the drug over the five  
84 years immediately preceding the date on which the report is submitted, including:

85 (A) The amount of each increase, expressed as a percentage of the total wholesale  
86 acquisition cost of the drug;

87 (B) The month and year in which each increase became effective; and

88 (C) A specific explanation for the increase, listing each factor that contributed to the  
89 increase, the percentage of the total increase that is attributable to each factor, and an  
90 explanation of how each factor affected the increase;

91 (9) The aggregate amount of all rebates and, separately, the aggregate amount of all  
92 administrative fees that the drug manufacturer provided to pharmacy benefits managers  
93 for sales of the drug within the state, identified by the year;

94 (10) The aggregate amount of all research and development costs attributable to  
95 prescription insulin drugs, identified by the year; and

96 (11) Any additional information required by the department to analyze the cost of  
97 prescription insulin drugs on the list compiled in accordance paragraph (1) of subsection  
98 (a) of Code Section 33-20E-4.

99 33-20E-6.

100 (a) The department shall prepare a report form to be completed by pharmacy benefits  
101 managers. The report form shall specify the applicable time periods for the information  
102 required to be reported.

103 (b) On or before May 1, 2021, and by May 1 each year thereafter, a pharmacy benefits  
104 manager shall submit to the department a report that includes:

105 (1) The total amount of all rebates the pharmacy benefits manager received from drug  
106 manufacturers during the immediately preceding calendar year for prescription insulin  
107 drugs on the list compiled by the department in accordance with paragraph (1) of  
108 subsection (a) of Code Section 33-20E-4;

109 (2) The total amount of all rebates described in paragraph (1) of this subsection retained  
110 by the pharmacy benefits manager;

111 (3) The total amount of administrative fees received from drug manufacturers and  
112 insurers for prescription insulin drugs on the list compiled by the department in  
113 accordance with paragraph (1) of subsection (a) of Code Section 33-20E-4, including all  
114 fees received to process utilization management requests; and

115 (4) The total amount of all rebates described in paragraph (1) of this subsection  
116 negotiated for purchases of drugs for use by:

117 (A) Georgia Medicare recipients in accordance with 42 U.S.C. Section 1395 et seq.;

118 (B) Georgia Medicaid recipients in accordance with 42 U.S.C. Section 1396 et seq.;

119 (C) Persons enrolled in private health insurance plans, the premiums for which are paid  
120 at least in part by a government entity;

121 (D) Georgia residents enrolled in private health insurance plans other than plans  
122 included in this Code section;

123 (E) The total annual payments, including reimbursements and fees, paid to Georgia  
124 pharmacies for dispensing prescription insulin drugs on the list compiled in accordance  
125 with paragraph (1) of subsection (a) of Code Section 33-20E-4. This information must  
126 separately identify:

127 (i) The amount attributable to dispensing fees; and

128 (ii) The amount attributable to service or administrative fees;

129 (F) The total annual payments received from Georgia pharmacies for prescription  
130 insulin drugs on the list compiled in accordance with paragraph (1) of subsection (a) of  
131 Code Section 33-20E-4; and

132 (G) The total annual payments received from Georgia insurers and employers for  
133 prescription insulin drugs on the list compiled in accordance with paragraph (1) of  
134 subsection (a) of Code Section 33-20E-4.

135 33-20E-7.

136 Insurers issuing health benefit plans to Georgia residents shall annually report to the  
137 department the following:

138 (1) The percentage of total premiums charged to Georgia residents in the prior calendar  
139 year that are directly attributable to the cost of covered prescription insulin drugs on the  
140 list compiled in accordance with paragraph (1) of subsection (a) of Code Section  
141 33-20E-4;

142 (2) The estimated percentage of total premiums to be charged to Georgia residents for  
143 the next calendar year directly attributable to the cost of covered prescription insulin  
144 drugs on the list compiled in accordance with paragraph (1) of subsection (a) of Code  
145 Section 33-20E-4;

146 (3) The annual percentage increase or decrease in total costs from the prior calendar year  
147 paid by the insurer for prescription insulin drugs on the list compiled in accordance with  
148 paragraph (1) of subsection (a) of Code Section 33-20E-4;

149 (4) The average monthly cost per enrollee for the prior calendar year incurred by the  
150 insurer for prescription insulin drugs on the list compiled in accordance with  
151 paragraph (1) of subsection (a) of Code Section 33-20E-4 divided by the number of  
152 persons enrolled in the health benefit plan;

153 (5) The average annual cost for the prior calendar year to an enrollee in a health benefit  
154 plan for prescription insulin drugs on the list compiled in accordance with paragraph (1)  
155 of subsection (a) of Code Section 33-20E-4;

156 (6) A statement describing the insurer's use of pharmacy benefits managers in managing  
157 costs under health benefit plans;

158 (7) The amount of rebates and discounts received from pharmacy benefits managers in  
159 the prior calendar year attributable to prescription insulin drugs on the list compiled in  
160 accordance with paragraph (1) of subsection (a) of Code Section 33-20E-4;

161 (8) A statement describing how the insurer adjusts the enrollee cost-sharing amount in  
162 health benefit plans as a result of pharmacy benefits manager rebates and discounts;

163 (9) The administrative fees paid in the prior calendar year to pharmacy benefits managers  
164 and the percentage of those administrative fees attributable to prescription insulin drugs  
165 on the list compiled in accordance with paragraph (1) of subsection (a) of Code Section  
166 33-20E-4; and

167 (10) The average amount each enrollee pays for prescription insulin drugs on the list  
168 compiled in accordance with paragraph (1) of subsection (a) of Code Section 33-20E-4.

169 33-20E-8.

170 (a) Persons engaged in the practice of pharmacy as that term is defined in Code  
171 Section 26-4-4 shall annually report to the department the following information from the  
172 prior calendar year:

173 (1) The total payments received from pharmacy benefits managers for prescription  
174 insulin drugs on the list compiled in accordance with paragraph (1) of subsection (a) of  
175 Code Section 33-20E-4;

176 (2) The total payments received from insurers for the prescription insulin drugs on the  
177 list compiled in accordance with paragraph (1) of subsection (a) of Code Section  
178 33-20E-4;

179 (3) The total payments to prescription drug wholesalers, distributors, and manufacturers  
180 for prescription insulin drugs on the list compiled in accordance with paragraph (1) of  
181 subsection (a) of Code Section 33-20E-4; and

182 (4) The total fees, including administrative fees paid to pharmacy benefits managers, for  
183 dispensing prescription insulin drugs on the list compiled in accordance with  
184 paragraph (1) of subsection (a) of Code Section 33-20E-4.

185 (b) The Commissioner shall notify the State Board of Pharmacy of any person who fails  
186 to comply with this Code section.

187 33-20E-9.

188 (a) On or before August 1, 2021, and by August 1 each year thereafter, the department  
189 shall analyze data in the reports submitted by drug manufacturers and pharmacy benefits  
190 managers pursuant to Code Sections 33-20E-5 and 33-20E-6 and produce a report on  
191 prescription drug prices for drugs included in the drug manufacturer and pharmacy benefits  
192 manager reports. Based on the department's analysis, the department report shall include  
193 such department's conclusions regarding the specific reasons for an increase in the price  
194 of each listed drug. By August 1, 2021, and by August 1 each year thereafter, the  
195 department shall post a copy of its report on the department's website.

196 (b) By August 1, 2021, and by August 1 each year thereafter, the department shall submit  
197 the report required by this Code section to the House Committee on Insurance and the  
198 Senate Insurance and Labor Committee or any successor committees.

199 33-20E-10.

200 (a) The department may impose a penalty on a pharmacy benefits manager for a failure to  
201 submit information required by this chapter. The penalty shall not exceed \$10,000.00 per  
202 day for each day the pharmacy benefits manager fails to submit the information required  
203 by this chapter. In any administrative action by the department to impose a penalty  
204 pursuant to this subsection, the process must be consistent with Code Section 33-2-24,  
205 except that the monetary penalty imposed may be greater than provided for in such Code  
206 section.

207 (b) Nothing contained in this chapter shall apply to the coverage of prescription insulin  
208 drugs under a health benefit plan that is subject to the federal Employee Retirement Income  
209 Security Act of 1974.

210 33-20E-11.

211 (a) On or before May 1, 2021, and by May 1 each year thereafter, a nonprofit organization  
212 that advocates on behalf of patients with diabetes or funds diabetes medical research in  
213 Georgia and that has received a payment, donation, subsidy, or thing of value from a drug  
214 manufacturer of a prescription insulin drug on the list compiled by the department in  
215 accordance with paragraph (1) of subsection (a) of Code Section 33-20E-4 during the  
216 immediately preceding calendar year shall compile a report that includes:

217 (1) The amount of each payment, donation, subsidy, or thing of value received from each  
218 drug manufacturer; and

219 (2) The percentage of the nonprofit organization's total gross income attributable to  
220 payments, donations, subsidies, or other things of value received from each drug  
221 manufacturer in the previous calendar year.

222 (b) By May 1, 2021, and by May 1 each year thereafter, each nonprofit organization  
223 required to compile a report under this Code section must post the report on a website that  
224 is accessible to the public and maintained by the nonprofit organization. If the nonprofit  
225 organization does not maintain a website that is accessible to the public, the nonprofit  
226 organization shall submit the report to the department each year by May 1. The department  
227 shall post a copy of each report submitted on the department's website.

228 33-20E-12.

229 An insurer that provides coverage for prescription insulin drugs pursuant to the terms of  
230 a health benefit plan shall limit the total cost-sharing amount that a covered person is  
231 required to pay for a covered prescription insulin drug to an amount not to exceed \$150.00  
232 per 30 day supply of such drugs, regardless of the amount or type needed to fill the covered  
233 person's prescription.

234 33-20E-13.

235 The Commissioner shall refer any case in which a drug manufacturer, pharmacist, or  
236 nonprofit organization fails to comply with any part of this chapter to the Attorney General.

237 33-20E-14.

238 Information required to be submitted to the department pursuant to this chapter shall not  
239 be exempt from disclosure under Article 4 of Chapter 18 of Title 50."

240 **SECTION 2.**

241 Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to selling and other  
242 trade practices, is amended by adding a new paragraph to subsection (b) of Code Section  
243 10-1-393, relating to unfair or deceptive practices in consumer transactions unlawful and  
244 examples, to read as follows:

245 "(14.1) Failure of a drug manufacturer, pharmacist, or nonprofit organization to comply  
246 with Chapter 20E of Title 33, the 'Diabetes Drug Pricing Transparency Act of 2020';"

247 **SECTION 3.**

248 This Act shall become effective on January 1, 2021, and shall apply to all policies issued,  
249 delivered, issued for delivery, or renewed in this state on or after such date.

250 **SECTION 4.**

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