

House Bill 716

By: Representatives Harbin of the 113th, Graves of the 125th, Watson of the 70th and Parrish of the 144th

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 enact the "Fair Insurance Business Practices Act of 2001"; to provide for a short title; to
3 provide for legislative findings; to provide for the regulation of health insurance carriers who
4 secure for their enrollees the professional services of physicians through physician contracts;
5 to preclude such carriers from engaging in unfair insurance business practices; to provide
6 remedies for physicians harmed by a carrier's failure to engage in fair insurance business
7 practices; to amend Code Section 10-1-393 of the Official Code of Georgia Annotated,
8 relating to unfair or deceptive practices in consumer transactions, so as to further define
9 unfair and deceptive practices; to provide for related matters; to repeal conflicting laws; and
10 for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

13 Title 33 of the Official Code of Georgia Annotated, relating to insurance, is amended in
14 Chapter 20A, relating to managed care plans, by adding a new Article 3 to read as follows:

15 style="text-align:center">"ARTICLE 3

16 33-20A-60.

17 This article shall be known and may be cited as the 'Fair Insurance Business Practices Act
18 of 2001.'

19 33-20A-61.

20 The General Assembly finds and declares that the consolidation of the health insurance
21 industry in Georgia has given health insurance carriers superior bargaining power over the
22 physicians who provide medical care to patients covered under such carriers' insurance
23 plans. This superior bargaining power has resulted in the imposition of unfair contract

1 terms and insurance practices on the physicians who provide the health care services
 2 required by the carriers' enrollees. The imposition of these unfair terms and practices in
 3 a consolidated health insurance market can significantly harm physicians' practices. These
 4 physicians' practices are businesses that should be dealt with fairly and equitably by the
 5 health insurers licensed to do business in Georgia. The General Assembly further finds
 6 that the widespread utilization of these contract terms and insurance practices poses a
 7 significant threat to patients' access to quality medical care in Georgia. The General
 8 Assembly therefore finds that, in order to avoid the onset of further ill effects of unfair
 9 insurance business practices and to alleviate the problems currently presented by the use
 10 of such practices, health insurance carriers must be required to engage in insurance
 11 business practices that are fair to the patients that they cover and to the physicians with
 12 whom they contract.

13 33-20A-62.

14 As used in this article, the term:

15 (1) 'Carrier' shall mean an accident and sickness insurer, fraternal benefit society,
 16 hospital service corporation, medical service corporation, health care corporation, health
 17 maintenance organization, provider sponsored health care corporation, or any similar
 18 entity and any self-insured health benefit plan not subject to the exclusive jurisdiction of
 19 the federal Employee Retirement Income Security Act of 1974, 29 U.S.C. Section 1001,
 20 et seq., which entity provides for the financing or delivery of health care services through
 21 a health benefit plan, or the plan administrator of any health benefit plan established
 22 pursuant to Article 1 of Chapter 18 of Title 45.

23 (2) 'Commissioner' shall mean the Commissioner of Insurance.

24 (3) 'Enrollee' shall mean any individual who has elected to contract for health insurance
 25 coverage for that individual or for that individual and that individual's eligible
 26 dependents and shall include such individual's eligible dependents.

27 (4) 'Health benefit plan' shall mean any hospital or medical insurance policy or
 28 certificate, health care plan contract or certificate, qualified higher deductible health plan,
 29 health maintenance organization subscriber contract, any health benefit plan established
 30 pursuant to Article 1 of Chapter 18 of Title 45, any dental or vision care plan or policy,
 31 or any managed care plan.

32 (5) 'Physician contract' shall mean any contract between a physician and a carrier or a
 33 carrier's network, physician panel, intermediary, or representative relating to the
 34 provision of health care services.

35 (6) 'Retroactive denial of a previously paid claim' or 'retroactive denial of payment' shall
 36 mean any attempt by a carrier retroactively to collect payments already made to a

1 physician with respect to a claim by requiring repayment of such payments, by reducing
2 other payments currently owed to the physician, by withholding or setting off against
3 future payments, or in any other manner reducing or affecting the future claim payments
4 to the physician.

5 33-20A-63.

6 (a) Every physician contract entered into, amended, extended, or renewed after July 1,
7 2001, by a carrier shall contain a specific provision which shall provide that any physician
8 who is terminated from the physician contract while treating an enrollee or enrollees of
9 such carrier for pregnancy or for a degenerative, disabling, or terminal condition shall
10 continue to be allowed to treat such patient under the terms of the physician contract and
11 shall continue to be compensated under the terms of the physician contract for a period of
12 at least 90 days following such termination.

13 (b) In the event that a patient's insurance carrier or health benefit plan terminates that
14 patient's physician from the patient's health care benefit plan while the patient is being
15 treated for pregnancy or for a degenerative, debilitating, or terminal condition, the patient
16 shall within a period of 30 days following such termination have the option to change his
17 or her health insurance coverage to include the consumer choice option described in Code
18 Section 33-20A-9.1 without the necessity of waiting for an open enrollment period or other
19 such limitation on changes in insurance coverage during the plan year.

20 33-20A-64.

21 No carrier or its network, physician panel, or intermediary may terminate or fail to renew
22 any physician contract or the employment or other contractual relationship with a physician
23 or otherwise penalize any physician without first providing to the physician a detailed
24 explanation in writing of each and every cause for such action.

25 33-20A-65.

26 No carrier may require as a condition precedent of a physician contract that a physician
27 participate in all or substantially all of the physician panels operated by the carrier or by
28 any other entity in order for the physician to participate in any of such carrier's physician
29 panels. Every physician contract entered into, amended, extended, or renewed on or after
30 July 1, 2001, by a carrier shall contain a specific provision which shall provide that a
31 physician shall be free to accept or decline participation in a physician panel and that such
32 choice by a physician shall not be a ground for denying participation in any other physician
33 panel.

1 33-20A-66.

2 Every physician contract entered into, amended, extended, or renewed on or after July 1,
3 2001, by a carrier shall contain specific provisions which shall require the carrier to adhere
4 to and comply with the following minimum fair insurance business standards in the
5 processing and payment of claims for health care services:

6 (1) Every carrier shall establish and implement reasonable policies to permit any
7 physician with whom there is a physician contract:

8 (A) To confirm in advance during normal business hours by either free telephone or
9 electronic means whether the health care services to be provided are a covered benefit;
10 and

11 (B) To determine the carrier's requirements applicable to the physician or to the type
12 of health care services which the physician has contracted to deliver under the physician
13 contract for:

14 (i) Precertification or authorization of coverage decisions;

15 (ii) Retroactive reconsideration of a certification or authorization of a coverage
16 decision or retroactive denial of a previously paid claim;

17 (iii) Physician-specific payment and reimbursement methodology, coding levels and
18 methodology, downcoding, and bundling of claims; and

19 (iv) Other applicable physician-specific claims processing and payment matters
20 necessary to meet the terms and conditions of the physician contract;

21 (2) Every physician contract must include or attach at the time it is presented to the
22 physician for execution all material addenda and exhibits thereto and any policies,
23 including those referred to in paragraph (1) of this Code section, applicable to the
24 physician or to the range of health care services reasonably expected to be delivered by
25 the physician under the physician contract;

26 (3) No amendment to any physician contract or to any addenda, schedule, exhibit, or
27 policy thereto or new addenda, schedule, exhibit, or policy applicable to the physician or
28 to the range of health care services reasonably expected to be delivered by the physician
29 shall be effective as to the physician unless the physician has been provided with the
30 applicable portion of the proposed amendment or of the proposed new addenda, schedule,
31 exhibit, or policy and the physician has failed to notify the carrier within 30 days of
32 receipt of the documentation of the physician's intention to terminate the physician
33 contract at the earliest date thereafter permitted under the physician contract; and

34 (4) No carrier may impose on a physician any retroactive denial of a previously paid
35 claim or any part thereof unless:

36 (A) The carrier has provided to the physician in writing the reason for the retroactive
37 denial;

1 (B) The time which has elapsed since the date of the payment of the original
 2 challenged claim does not exceed the lesser of 12 months or the number of days within
 3 which the carrier requires under its physician contract that a claim be submitted by the
 4 physician following the date on which a health care service is provided; and

5 (C) Either:

6 (i) The original claim was submitted fraudulently;

7 (ii) The original claim payment was incorrect because the physician was already paid
 8 for the health care services identified in the claim; or

9 (iii) The health care services identified in the claim were not delivered by the
 10 physician.

11 Effective July 1, 2001, a carrier shall notify a physician at least 30 days in advance of the
 12 imposition of any retroactive denial of a claim.

13 33-20A-67.

14 Every carrier subject to regulation by this title shall adhere to and comply with the
 15 minimum fair business standards required under Code Section 33-20A-66 and the
 16 Commissioner shall have jurisdiction to determine if a carrier has violated the standards
 17 set forth in Code Section 33-20A-66 by failing to include the requisite provisions in its
 18 physician contracts and shall have jurisdiction to determine if the carrier has failed to
 19 implement the minimum fair business standards set forth in Code Section 33-20A-66.

20 33-20A-68.

21 No carrier or its network, physician panel, or intermediary may terminate or fail to renew
 22 any physician contract or the employment or other contractual relationship with a physician
 23 or otherwise penalize a physician for invoking any of the physician's rights under this
 24 article or under the physician contract.

25 33-20A-69.

26 No carrier shall be in violation of this article if the carrier's compliance is rendered
 27 impossible due to matters beyond the carrier's reasonable control including, but not limited
 28 to, an act of God, insurrection, strike, power outage, and fire, which are not caused in
 29 material part by the carrier.

30 33-20A-70.

31 Any physician who suffers loss as the result of a carrier's violation of this article or a
 32 carrier's breach of any physician contract provision required by this article shall be entitled
 33 to initiate an action to recover actual damages. If the trier of fact finds that the violation

1 or breach resulted from a carrier's gross negligence or willful conduct, it may increase
2 damages to an amount not exceeding three times the actual damages sustained.
3 Notwithstanding any other provision of law to the contrary, in addition to any damages
4 awarded, such physician also may be awarded reasonable attorney's fees and court costs.
5 Each claim for payment that is paid, denied, or otherwise processed in violation of this
6 article or with respect to which a violation of this article exists shall constitute a separate
7 violation. The Commissioner shall not be deemed to be a trier of fact for purposes of this
8 Code section."

9 **SECTION 2.**

10 Said title is further amended in Code Section 33-6-5, relating to unfair methods of
11 competition and unfair and deceptive acts or practices, by adding a new paragraph (12.1) to
12 read as follows:

13 "(12.1) No insurer or managed care entity subject to licensing by the Commissioner shall
14 violate any provision of Chapter 20A of this title;"

15 **SECTION 3.**

16 Code Section 10-1-393 of the Official Code of Georgia Annotated, relating to unfair or
17 deceptive practices in consumer transactions, is amended in subsection (b) by adding a new
18 paragraph (12.1) to read as follows:

19 "(12.1) Violation by an insurance carrier of the provisions of Chapter 20A of Title 33;"

20 **SECTION 4.**

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