

Senate Bill 76

By: Senators Hill of the 32nd, Smith of the 52nd, Seabaugh of the 28th, Carter of the 13th, Whitehead, Sr. of the 24th and others

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 change certain provisions relating to medical malpractice insurance rate filings; to change
3 certain provisions relating to rate increases for medical malpractice insurance; to provide for
4 approval or rejection of such rate increases; to provide for certain hearings in connection with
5 such rate increase approvals; to provide for certain notices and reports; to provide for related
6 matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Title 33 of the Official Code of Georgia Annotated, relating to insurance, is amended by
10 striking Code Section 33-3-27, relating to reports of awards under medical malpractice
11 insurance policies, in its entirety and inserting in lieu thereof a new Code Section 33-3-27
12 to read as follows:

13 "33-3-27.

14 (a) For the purposes of this Code section, the term 'medical malpractice claim' means any
15 claim for damages resulting from the death of or injury to any person arising out of health,
16 medical, or surgical service, diagnosis, prescription, treatment, or care rendered by a person
17 authorized by law to practice medicine in this state or by any person acting under such
18 person's supervision and control.

19 (b) Every insurer providing medical malpractice insurance coverage in this state, including
20 authorized insurers, captive insurers, risk retention groups, and persons or entities
21 self-insured against medical malpractice claims, shall notify in writing the Composite State
22 Board of Medical Examiners and the Commissioner when it pays a judgment in excess of
23 \$10,000.00 or ~~enters into an agreement to pay an amount~~ makes a payment in excess of
24 \$10,000.00 to settle a medical malpractice claim against a person authorized by law to
25 practice medicine in this state; such judgments or ~~agreements~~ payments shall be reported
26 to the board regardless of the dollar amount if the records of the insurer establish that there
27 have been two or more previous judgments against or settlements with a licensed physician

1 which relate to the practice of medicine. Such notice shall be sent within 30 days after the
 2 judgment has been paid or ~~the agreement has been entered into by the parties involved in~~
 3 ~~the claim~~ a payment has been made to settle a medical malpractice claim against a person
 4 authorized by law to practice medicine in this state. Such report shall include:

5 (1) The insured's name;

6 (2) The insurer's claim number;

7 (3) The hospital where the incident occurred;

8 (4) The physician's Georgia medical license number;

9 (5) A description of the injury;

10 (6) The claimant's name;

11 (7) The patient's name;

12 (8) The insurer's name;

13 (9) The payment amount;

14 (10) The date of payment;

15 (11) If a civil action was filed, a copy of the complaint and affidavit;

16 (12) If a civil action was not filed, a copy of the claim letter from the plaintiff's attorney
 17 or the patient; and

18 (13) A copy of the insured's National Practitioner Data Bank form.

19 (c) Every insurer providing medical malpractice insurance coverage in this state, including
 20 authorized insurers, captive insurers, risk retention groups, and persons or entities
 21 self-insured against medical malpractice claims, shall submit an annual report on or before
 22 March 31 of each year to the Commissioner containing the following information relating
 23 to the immediately preceding calendar year:

24 (1) The number of medical malpractice claims pending at the beginning of the year;

25 (2) The number of medical malpractice claims pending at the end of the year;

26 (3) The number of medical malpractice claims paid;

27 (4) The number of medical malpractice claims closed with no payment;

28 (5) The number and amounts of medical malpractice claims in which a judgment was
 29 paid, including an identification of the following:

30 (A) Highest amount;

31 (B) Lowest amount;

32 (C) Average amount; and

33 (D) Median amount;

34 (6) The number and amounts of medical malpractice claims in which a settlement was
 35 paid, including an identification of the following:

36 (A) Highest amount;

37 (B) Lowest amount;

1 (C) Average amount; and

2 (D) Median amount;

3 (7) The total premium collected;

4 (8) The total general and administrative expenses paid; and

5 (9) The total loss adjustment expenses paid.

6 (d)(1) All information provided pursuant to subsection (c) of this Code section by an
 7 insurer to the Commissioner or the Composite State Board of Medical Examiners shall
 8 be provided on an aggregate basis only and shall not provide specific information on any
 9 individual claim, payment, or settlement.

10 (2) The Commissioner shall be authorized to develop data elements and formats for the
 11 filing of reports pursuant to subsections (b) and (c) of this Code section and to request
 12 additional information for all reports submitted pursuant to subsections (b) and (c) of this
 13 Code section in order for the Commissioner to fulfill his or her duties and to ensure
 14 compliance with this Code section.

15 (e) All information submitted to the Commissioner or the Composite State Board of
 16 Medical Examiners pursuant to subsection (b) or (c) of this Code Section shall not be
 17 subject to the provisions of Article 4 of Chapter 18 of Title 50, relating to the inspection
 18 of public records, and thereby shall not be disclosed or otherwise made public. However,
 19 nothing in this subsection shall prohibit the Commissioner from using or analyzing such
 20 information for the purpose of conducting actuarial or market analysis so long as such use
 21 or analysis is performed in a manner which does not identify, either directly or by reference
 22 to other publicly available information, the case, parties, or sums involved in any payment
 23 or settlement agreement."

24 SECTION 2.

25 Said title is further amended by adding a new Code section 33-9-21.3 to read as follows:

26 "33-9-21.3

27 (a) Every domestic, foreign, and alien insurer that is authorized to write medical
 28 malpractice insurance in this state shall maintain with the Commissioner copies of the
 29 rates, rating plans, rating systems, underwriting rules, and policy or bond forms used by it.
 30 The maintenance of rates, rating plans, rating systems, underwriting rules, and policy or
 31 bond forms with the Commissioner by a licensed rating organization of which an insurer
 32 is a member or subscriber will be sufficient compliance with this Code section for any
 33 insurer maintaining membership or subscriberships in such organization, to the extent that
 34 the insurer uses the rates, rating plans, rating systems, underwriting rules, and policy or
 35 bond forms of such organization; provided, however, that the Commissioner, when he or
 36 she deems it necessary, without compliance with the rule-making procedures of this title

1 or Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' may require any
2 such insurer to file the required rates, rating plans, rating systems, underwriting rules, and
3 policy or bond forms used independent of any filing made on its behalf or as a member of
4 a licensed rating organization, as the Commissioner shall deem to be necessary to ensure
5 compliance with the standards of this chapter and for the best interests of the citizens of
6 this state.

7 (b) Any domestic, foreign, or alien insurer that is authorized to write medical malpractice
8 insurance in this state must file with the Commissioner any rate, rating plan, rating system,
9 or underwriting rule used in connection with such insurance. No such rate, rating plan,
10 rating system, or underwriting rule shall become effective nor shall any premium be
11 collected by any insurer unless the filing has been received by the Commissioner in his or
12 her office and such filing has been approved by the Commissioner or a period of 45 days
13 has elapsed from the date such filing was received by the Commissioner during which time
14 such filing has not been disapproved by the Commissioner. The Commissioner shall be
15 authorized to extend such 45 day period by no more than 45 days at his or her discretion.
16 If a filing is disapproved, notice of such disapproval order shall be given within 90 days
17 of receipt of filing by the Commissioner, specifying in what respects such filing fails to
18 meet the requirements of this chapter. The filer shall be given a hearing upon written
19 request made within 30 days after the issuance of the disapproval order and such hearing
20 shall commence within 30 days after such request unless postponed by mutual consent.
21 Such hearing, once commenced, may be postponed or recessed by the Commissioner only
22 for weekends, holidays, or after normal business hours or at any time by mutual consent
23 of all parties to the hearing. After such a hearing, the Commissioner must affirm, modify,
24 or reverse his or her previous action within the time period provided in subsection (a) of
25 Code Section 33-2-23 relative to orders of the Commissioner. The requirement of approval
26 or disapproval of a rate filing by the Commissioner under this subsection shall not prohibit
27 actions by the Commissioner regarding compliance of such rate filing with the
28 requirements of Code Section 33-9-4 brought after such approval or disapproval.

29 (c) When a rate filing of an insurer required under subsection (b) of this Code section is
30 not accompanied by the information upon which the insurer supports the filing and the
31 Commissioner does not have sufficient information to determine whether the filing meets
32 the requirements of this chapter, then the Commissioner must request in writing, within 20
33 days of the date he or she receives the filing, the specifics of such additional information
34 as he or she requires and the insurer shall be required to furnish such information and in
35 such event the 45 day period provided for in subsection (b) of this Code section shall
36 commence as of the date such information is furnished.

1 (d) When a rate filing of an insurer required under subsection (b) of this Code section will
2 result in any overall rate increase of 10 percent within any 12 month period, the
3 Commissioner shall order an examination of that insurer to determine the accuracy of the
4 claim reserves, the applicability of the claim reserve practices for the loss data used in
5 support of such filing, and any other component of the rate filing; provided, however, that,
6 in the event the overall increase is less than 25 percent within any 12 month period and the
7 Commissioner affirmatively determines that he or she has sufficient information to evaluate
8 such rate increase and that the cost thereof would not be justified, he or she may waive all
9 or part of such examination. In all other rate filings required under subsection (b) of this
10 Code section, the Commissioner may order an examination of that insurer as provided in
11 this subsection. Such examination shall be conducted in accordance with the provisions
12 of Chapter 2 of this title. Upon notification by the Commissioner of his or her intent to
13 conduct such examination, the insurer shall be prohibited from placing the rates so filed in
14 effect until such examination has been reviewed and certified by the Commissioner as
15 being complete. Such examination, if conducted by the Commissioner, shall be reviewed
16 and certified within 90 days of the date such rate, rating plan, rating system, or
17 underwriting rule is filed; provided, however, that, if the Commissioner makes an
18 affirmative finding that the examination may not be completed within the 90 day period,
19 he or she may extend such time for one additional 60 day period. Any examination
20 required under this Code section shall be conducted in accordance with Chapter 2 of this
21 title.

22 (e) Rates for medical malpractice insurance shall be based upon each individual insurer's
23 experience in this state to the extent actuarially credible. However, to the extent that an
24 individual insurer's data is not credible, then the insurer may utilize the data of other
25 similar admitted insurers in this state. The experience filed by the insurer shall include, at
26 a minimum, the loss ratios, allocated and unallocated loss adjustment expenses related to
27 claims, expenses including commissions and dividends paid, prospective investment
28 income reasonably expected by the insurer, and pure premium data adjusted for loss
29 development and loss trending. The insurer's submission may also include a consideration
30 for a profit or contingency. The Commissioner is authorized to accept such rate
31 classifications as are reasonable and necessary for compliance with this chapter.

32 (f) Notwithstanding the provisions of subsection (d) of this Code section, in the event the
33 filing of any rate, rating plan, rating system, or underwriting rule under subsection (b) of
34 this Code section is not necessary, in the judgment of the Commissioner, to accomplish the
35 purposes of this chapter as set forth in Code Section 33-9-1, then the Commissioner may
36 exempt all domestic, foreign, and alien insurers from being required to file such rate, rating
37 plan, rating system, or underwriting rule.

1 (g) Filings required pursuant to this Code section shall be accompanied by a fee or fees as
2 provided in Code Section 33-8-1."

3 **SECTION 3.**

4 Said title is further amended by adding a new Code Section 33-9-21.4 to read as follows:

5 "33-9-21.4

6 When a rate filing of an insurer submitted under subsection (b) of Code Section 33-9-21.3
7 will result in an average base rate increase greater than 25 percent within any 12 month
8 period, the Commissioner may notify the public of such proposed rate increase and may
9 hold a public hearing as to the appropriateness of such rate increase. The hearing shall be
10 conducted in accordance with the provisions of Chapter 2 of this title. Any person or group
11 that can demonstrate that they would be affected by the proposed rate increase may
12 intervene in or be heard in such hearing in accordance with the provisions of Code Section
13 33-2-21."

14 **SECTION 4.**

15 Said title is further amended by striking Code Section 33-24-47, relating to notice required
16 of termination or nonrenewal, in its entirety and inserting in lieu thereof a new Code Section
17 33-24-47 to read as follows:

18 "33-24-47.

19 (a) Each insurer licensed to transact business in this state which issues or issues for
20 delivery in this state policies or contracts of insurance insuring risks or residents in this
21 state and insuring against liability for loss of, damage to, or injury to persons or property
22 shall comply with the provisions of this Code section. This Code section shall not apply
23 to personal automobile or personal property and casualty insurance policies. Cancellation
24 of a policy for failure of the named insured to discharge when due any obligations in
25 connection with the payment of premiums or cancellation for any reason of a policy that
26 has been in effect for less than 60 days shall be governed by the provisions of Code Section
27 33-24-44.

28 (b) A notice of termination, including a notice of cancellation or nonrenewal, by the
29 insurer, a notice of an increase in premiums, other than an increase in premiums due to a
30 change in risk or exposure, including a change in experience modification or resulting from
31 an audit of auditable coverages, which exceeds 15 percent of the current policy's premium,
32 or a notice of change in any policy provision which limits or restricts coverage shall be
33 delivered to the insured in person or by depositing the notice in the United States mail, to
34 be dispatched by at least first-class mail to the last address of record of the insured, at least
35 45 days prior to the termination date of such policy; provided, however, that a notice of

1 cancellation or nonrenewal of a policy of workers' compensation insurance shall be
2 controlled by the provisions of subsection (f) of this Code section. In those instances
3 where an increase in premium exceeds 15 percent, the notice to the insured shall indicate
4 the dollar amount of the increase. The insurer may obtain a receipt provided by the United
5 States Postal Service as evidence of mailing such notice or such other evidence of mailing
6 as prescribed or accepted by the United States Postal Service.

7 (c) The failure of an insurer to comply with the requirements of subsection (b) of this Code
8 section or the failure of a medical malpractice insurer to comply with the requirements of
9 subsection (g) of this Code section shall entitle the policyholder to purchase, under the
10 same premiums and policy terms and conditions, an additional 30 day period of insurance
11 coverage beyond the termination date of such policy; provided, however, that the
12 policyholder shall tender the premium amount, computed on a pro rata basis, to the insurer
13 on or before the termination date. No provision of this Code section shall be construed as
14 requiring the insurance coverage under a policy to be extended for more than 30 days from
15 the termination date stated in such policy. An insurer shall not be subject to any other
16 penalty for the failure to comply with the requirements of subsection (b) of this Code
17 section unless the Commissioner finds, after a hearing, that such noncompliance by the
18 insurer has occurred with such frequency as to indicate a general business practice by the
19 insurer of noncompliance with subsection (b) of this Code section. There shall be no
20 liability on the part of and no cause of action of any nature shall arise against the
21 Commissioner or the Commissioner's employees or against any insurer, its authorized
22 representatives, its agents, its employees, or any firm, person, or corporation furnishing to
23 the insurer information as to reasons for cancellation or nonrenewal for any statement made
24 by any of them and in written notice of cancellation or nonrenewal or in any other
25 communication, oral or written, specifying the reasons for cancellation or nonrenewal or
26 providing information pertaining thereto or for statements made or evidence submitted at
27 any formal or informal hearing conducted in connection therewith.

28 (d) This Code section shall not apply to policies canceled in accordance with the
29 provisions of Chapter 22 of this title.

30 (e) Cancellation by the insured shall be accomplished in accordance with Code Section
31 33-24-44.1.

32 (f) A notice of cancellation or nonrenewal of a policy of workers' compensation insurance
33 shall be dispatched to the insured by certified mail or statutory overnight delivery, return
34 receipt requested, to the last address of record of the insured at least 75 days prior to the
35 termination date of such policy. The workers' compensation insurer shall retain the receipt
36 of mailing provided by the United States Postal Service as evidence of mailing.

1 (g) A notice of increase in premium of a policy of medical malpractice insurance, other
2 than an increase in premium due to a change in risk or exposure, including a change of
3 experience modification or resulting from an audit of auditable coverages, which exceeds
4 15 percent of the current policy's premium shall be delivered to the insured in person or
5 by depositing the notice in the United States mail, to be dispatched by at least first-class
6 mail to the last address of record of the insured, at least 60 days prior to the termination
7 date of such policy. In those instances in which an increase in premium exceeds 15
8 percent, the notice to the insured shall indicate the dollar amount of the increase. The
9 insurer may obtain a receipt provided by the United States Postal Service as evidence of
10 mailing such notice or such other evidence of mailing as prescribed or accepted by the
11 United States Postal Service."

12 **SECTION 5.**

13 This Act shall become effective upon its approval by the Governor or upon its becoming law
14 without such approval. This Act shall apply only to those rate filings that are first filed with
15 the Commissioner on or after the effective date of this Act.

16 **SECTION 6.**

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