

COMMITTEE OF CONFERENCE SUBSTITUTE TO SB 140

A BILL TO BE ENTITLED

AN ACT

1 To amend Chapter 20A of Title 33 of the Official Code of Georgia Annotated, relating to
 2 managed health care plans, so as to create the Joint Committee to Study Prescription Costs
 3 in State Funded Health Care Plans; to provide for its membership, operation, and duties; to
 4 provide for automatic repeal; to amend Article 2 of Chapter 20A of Title 33 of the Official
 5 Code of Georgia Annotated, relating to the patient's right to independent review, so as to
 6 revise and add definitions; to change references to conform to revised and new terms; to
 7 amend Article 7 of Chapter 4 of Title 49 of the Official Code of Georgia Annotated, relating
 8 to medical assistance generally, so as to strike Code Section 49-4-156, which is reserved, and
 9 inserting a new Code Section 49-4-156 to provide that certain requirements shall not apply
 10 to health maintenance organizations which contract with the department of community
 11 health; to amend Article 13 of Chapter 5 of Title 49 of the Official Code of Georgia
 12 Annotated, relating to PeachCare for Kids, so as to provide for a definition; to change certain
 13 provisions relating to the creation of PeachCare, availability, eligibility, payment of
 14 premiums, and enrollment; to provide for related matters; to provide for an effective date;
 15 to repeal conflicting laws; and for other purposes.

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

17 **SECTION 1.**

18 Chapter 20A of Title 33 of the Official Code of Georgia Annotated, relating to managed
 19 health care plans, is amended by adding a new article to the end of such chapter to read as
 20 follows:

21 "ARTICLE 4

22 33-20A-70.

23 (a) There is created as a joint committee of the General Assembly the Joint Committee to
 24 Study Prescription Costs in State Funded Health Care Plans. The committee shall be

1 composed of three members of the House of Representatives to be appointed by the
2 Speaker of the House of Representatives and three members of the Senate to be appointed
3 by the President Pro Tempore of the Senate. The members of the committee shall be
4 appointed no later than May 1, 2005. The Speaker of the House of Representatives and the
5 President Pro Tempore of the Senate shall each designate one of the members appointed
6 to serve as cochairpersons of the committee. The committee shall meet at the call of the
7 cochairpersons.

8 (b) The committee may conduct such meetings at such places and at such times as it may
9 deem necessary or convenient to enable it to exercise fully and effectively its powers,
10 perform its duties, and accomplish the objectives and purposes of this Code section.

11 (c) The committee shall study and review prior authorization, formularies, and any other
12 related issues with respect to coverage of prescription drugs under any state funded health
13 care plans, including, but not limited to, plans and health care services offered, established,
14 and provided pursuant to Article 1 of Chapter 18 of Title 45, Article 7 of Chapter 4 of Title
15 49, and Article 13 of Chapter 5 of Title 49. In the event the committee makes a report of
16 its findings and recommendations, with suggestions for proposed legislation, if any, such
17 report shall be made on or before December 31, 2005.

18 (d) The Department of Community Health shall cooperate with the committee and its
19 authorized personnel in order that the committee may efficiently and effectively carry out
20 its duties. The Department of Community Health shall submit to the committee such
21 reports and data as the committee shall reasonably require of said department in order that
22 the committee may adequately inform itself.

23 (e) The members of the committee shall receive the same expenses and allowances for
24 their services on the committee as are authorized by law for members of interim legislative
25 study committees. The expenses and allowances authorized by this subsection shall not be
26 received by any member of the committee for more than five days unless additional days
27 are authorized by the Speaker of the House of Representatives and the President Pro
28 Tempore of the Senate. The funds necessary for the purposes of the committee shall come
29 from the funds appropriated to and available to the legislative branch of government.

30 (f) The committee shall stand abolished and this Code section shall be automatically
31 repealed on December 31, 2005."

32 SECTION 2.

33 Article 2 of Chapter 20A of Title 33 of the Official Code of Georgia Annotated, relating to
34 the patient's right to independent review, is amended by striking such article in its entirety
35 and inserting in lieu thereof a new Article 2 to read as follows:

"ARTICLE 2

33-20A-30.

This article shall be known and may be cited as the 'Patient's Right to Independent Review Act.'

33-20A-31.

As used in this article:

(1) 'Department' means the Department of Community Health established under Chapter 5A of Title 31.

(2) 'Eligible enrollee' means a person who:

(A) Is an enrollee or an eligible dependent of an enrollee of a managed care plan or was an enrollee or an eligible dependent of an enrollee of such plan at the time of the request for treatment; ~~and~~

(B) Seeks a treatment which reasonably appears to be a covered service or benefit under the enrollee's evidence of coverage; provided, however, that this subparagraph shall not apply if the notice from a managed care plan of the outcome of the grievance procedure was that a treatment is experimental; and

(C) Is not a Medicaid care management member.

~~(2)~~(3) 'Grievance procedure' means the grievance procedure established pursuant to Code Section 33-20A-5.

~~(3)~~(4) 'Independent review organization' means any organization certified as such by the ~~planning agency~~ department under Code Section 33-20A-39.

(5) 'Medicaid care management member' means a recipient of medical assistance, as that term is defined in paragraph (7) of Code Section 49-4-141, and shall also include a child receiving health care benefits pursuant to Article 13 of Chapter 5 of Title 49.

~~(4)~~(6) 'Medical and scientific evidence' means:

(A) Peer reviewed scientific studies published in or accepted for publication by medical journals that meet nationally recognized requirements for scientific manuscripts and that submit most of their published articles for review by experts who are not part of the editorial staff;

(B) Peer reviewed literature, biomedical compendia, and other medical literature that meet the criteria of the National Institutes of Health's National Library of Medicine for indexing in Index Medicus, Excerpta Medicus (EMBASE), Medline, and MEDLARS data base or Health Services Technology Assessment Research (HSTAR);

(C) Medical journals recognized by the United States secretary of health and human services, under Section 1861(t)(2) of the Social Security Act;

1 (D) The following standard reference compendia: the American Hospital Formulary
 2 Service-Drug Information, the American Medical Association Drug Evaluation, the
 3 American Dental Association Accepted Dental Therapeutics, and the United States
 4 Pharmacopoeia-Drug Information; or

5 (E) Findings, studies, or research conducted by or under the auspices of federal
 6 government agencies and nationally recognized federal research institutes including the
 7 Federal Agency for Health Care Policy and Research, National Institutes of Health,
 8 National Cancer Institute, National Academy of Sciences, the Centers for Medicare and
 9 Medicaid Services, and any national board recognized by the National Institutes of
 10 Health for the purpose of evaluating the medical value of health services.

11 ~~(5)~~(7) 'Medical necessity,' 'medically necessary care,' or 'medically necessary and
 12 appropriate' means care based upon generally accepted medical practices in light of
 13 conditions at the time of treatment which is:

14 (A) Appropriate and consistent with the diagnosis and the omission of which could
 15 adversely affect or fail to improve the eligible enrollee's condition;

16 (B) Compatible with the standards of acceptable medical practice in the United States;

17 (C) Provided in a safe and appropriate setting given the nature of the diagnosis and the
 18 severity of the symptoms;

19 (D) Not provided solely for the convenience of the eligible enrollee or the convenience
 20 of the health care provider or hospital; and

21 (E) Not primarily custodial care, unless custodial care is a covered service or benefit
 22 under the eligible enrollee's evidence of coverage.

23 ~~(6) 'Planning agency' means the Health Planning Agency established under Chapter 6 of~~
 24 ~~Title 31 or its successor agency.~~

25 ~~(7)~~(8) 'Treatment' means a medical service, diagnosis, procedure, therapy, drug, or
 26 device.

27 ~~(8)~~(9) Any term defined in Code Section 33-20A-3 shall have the meaning provided for
 28 that term in Code Section 33-20A-3 except that 'enrollee' shall include the enrollee's
 29 eligible dependents.

30 33-20A-32.

31 An eligible enrollee shall be entitled to appeal to an independent review organization when:

32 (1) The eligible enrollee has received notice of an adverse outcome pursuant to a
 33 grievance procedure or the managed care entity has not complied with the requirements
 34 of Code Section 33-20A-5 with regard to such procedure; or

35 (2) A managed care entity determines that a proposed treatment is excluded as
 36 experimental under the managed care plan, and all of the following criteria are met:

1 (A) The eligible enrollee has a terminal condition that, according to the treating
2 physician, has a substantial probability of causing death within two years from the date
3 of the request for independent review or the eligible enrollee's ability to regain or
4 maintain maximum function, as determined by the treating physician, would be
5 impaired by withholding the experimental treatment;

6 (B) After exhaustion of standard treatment as provided by the evidence of coverage or
7 a finding that such treatment would be of substantially lesser or of no benefit, the
8 eligible enrollee's treating physician certifies that the eligible enrollee has a condition
9 for which standard treatment would not be medically indicated for the eligible enrollee
10 or for which there is no standard treatment available under the evidence of coverage of
11 the eligible enrollee more beneficial than the treatment proposed;

12 (C) The eligible enrollee's treating physician has recommended and certified in writing
13 treatment which is likely to be more beneficial to the eligible enrollee than any
14 available standard treatment;

15 (D) The eligible enrollee has requested a treatment as to which the eligible enrollee's
16 treating physician, who is a licensed, board certified or board eligible physician
17 qualified to practice in the area of medicine appropriate to treat the eligible enrollee's
18 condition, has certified in writing that scientifically valid studies using accepted
19 protocols, such as control group or double-blind testing, published in peer reviewed
20 literature, demonstrate that the proposed treatment is likely to be more beneficial for the
21 eligible enrollee than available standard treatment; and

22 (E) A specific treatment recommended would otherwise be included within the eligible
23 enrollee's certificate of coverage, except for the determination by the managed care
24 entity that such treatment is experimental for a particular condition.

25 33-20A-33.

26 Except where required pursuant to Code Section 51-1-49, a proposed treatment must
27 require the expenditure of a minimum of \$500.00 to qualify for independent review.

28 33-20A-34.

29 (a) The parent or guardian of a minor who is an eligible enrollee may act on behalf of the
30 minor in requesting independent review. The legal guardian or representative of an
31 incapacitated eligible enrollee shall be authorized to act on behalf of the eligible enrollee
32 in requesting independent review. Except as provided in Code Section 51-1-49,
33 independent review may not be requested by persons other than the eligible enrollee or a
34 person acting on behalf of the eligible enrollee as provided in this Code section.

1 (b) A managed care entity shall be required to pay the full cost of applying for and
2 obtaining the independent review.

3 (c) The eligible enrollee and the managed care entity shall cooperate with the independent
4 review organization to provide the information and documentation, including executing
5 necessary releases for medical records, which are necessary for the independent review
6 organization to make a determination of the claim.

7 33-20A-35.

8 (a) In the event that the outcome of the grievance procedure under Code Section 33-20A-5
9 is adverse to the eligible enrollee, the managed care entity shall include with the written
10 notice of the outcome of the grievance procedure a statement specifying that any request
11 for independent review must be made to the ~~planning agency~~ department on forms
12 developed by the ~~planning agency~~ department, and such forms shall be included with the
13 notification. Such statement shall be in simple, clear language in boldface type which is
14 larger and bolder than any other typeface which is in the notice and in at least 14 point
15 typeface.

16 (b) An eligible enrollee must submit the written request for independent review to the
17 ~~planning agency~~ department. Instructions on how to request independent review shall be
18 given to all eligible enrollees with the written notice required under this Code section
19 together with instructions in simple, clear language as to what information, documentation,
20 and procedure are required for independent review.

21 (c) Upon receipt of a completed form requesting independent review as required by
22 subsection (a) of this Code section, the ~~planning agency~~ department shall notify the eligible
23 enrollee of receipt and assign the request to an independent review organization on a
24 rotating basis according to the date the request is received.

25 (d) Upon assigning a request for independent review to an independent review
26 organization, the ~~planning agency~~ department shall provide written notification of the name
27 and address of the assigned organization to both the requesting eligible enrollee and the
28 managed care entity.

29 (e) No managed care entity may be certified by the Commissioner under Article 1 of this
30 chapter unless the entity agrees to pay the costs of independent review to the independent
31 review organization assigned by the ~~planning agency~~ department to conduct each review
32 involving such entity's eligible enrollees.

1 33-20A-36.

2 (a) Within three business days of receipt of notice from the ~~planning agency~~ department
3 of assignment of the application for determination to an independent review organization,
4 the managed care entity shall submit to that organization the following:

5 (1) Any information submitted to the managed care entity by the eligible enrollee in
6 support of the eligible enrollee's grievance procedure filing;

7 (2) A copy of the contract provisions or evidence of coverage of the managed care plan;
8 and

9 (3) Any other relevant documents or information used by the managed care entity in
10 determining the outcome of the eligible enrollee's grievance.

11 Upon request, the managed care entity shall provide a copy of all documents required by
12 this subsection, except for any proprietary or privileged information, to the eligible
13 enrollee. The eligible enrollee may provide the independent review organization with any
14 additional information the eligible enrollee deems relevant.

15 (b) The independent review organization shall request any additional information required
16 for the review from the managed care entity and the eligible enrollee within five business
17 days of receipt of the documentation required under this Code section. Any additional
18 information requested by the independent review organization shall be submitted within
19 five business days of receipt of the request, or an explanation of why the additional
20 information is not being submitted shall be provided.

21 (c) Additional information obtained from the eligible enrollee shall be transmitted to the
22 managed care entity, which may determine that such additional information justifies a
23 reconsideration of the outcome of the grievance procedure. A decision by the managed care
24 entity to cover fully the treatment in question upon reconsideration using such additional
25 information shall terminate independent review.

26 (d) The expert reviewer of the independent review organization shall make a determination
27 within 15 business days after expiration of all time limits set forth in this Code section, but
28 such time limits may be extended or shortened by mutual agreement between the eligible
29 enrollee and the managed care entity. The determination shall be in writing and state the
30 basis of the reviewer's decision. A copy of the decision shall be delivered to the managed
31 care entity, the eligible enrollee, and the ~~planning agency~~ department by at least first-class
32 mail.

33 (e) The independent review organization's decision shall be based upon a review of the
34 information and documentation submitted to it.

35 (f) Information required or authorized to be provided pursuant to this Code section may
36 be provided by facsimile transmission or other electronic transmission.

1 33-20A-37.

2 (a) A decision of the independent review organization in favor of the eligible enrollee shall
3 be final and binding on the managed care entity and the appropriate relief shall be provided
4 without delay. A managed care entity bound by such decision of an independent review
5 organization shall not be liable pursuant to Code Section 51-1-48 for abiding by such
6 decision. Nothing in this Code section shall relieve the managed care entity from liability
7 for damages proximately caused by its determination of the proposed treatment prior to
8 such decision.

9 (b) A determination by the independent review organization in favor of a managed care
10 entity shall create a rebuttable presumption in any subsequent action that the managed care
11 entity's prior determination was appropriate and shall constitute a medical record for
12 purposes of Code Section 24-7-8.

13 (c) In the event that, in the judgment of the treating health care provider, the health
14 condition of the enrollee is such that following the provisions of Code Section 33-20A-36
15 would jeopardize the life or health of the eligible enrollee or the eligible enrollee's ability
16 to regain maximum function, as determined by the treating health care provider, an
17 expedited review shall be available. The expedited review process shall encompass all
18 elements enumerated in Code Sections 33-20A-36 and 33-20A-40; provided, however, that
19 a decision by the expert reviewer shall be rendered within 72 hours after the expert
20 reviewer's receipt of all available requested documents.

21 33-20A-38.

22 Neither an independent review organization nor its employees, agents, or contractors shall
23 be liable for damages arising from determinations made pursuant to this article, unless an
24 act or omission thereof is made in bad faith or through gross negligence, constitutes fraud
25 or willful misconduct, or demonstrates malice, wantonness, oppression, or that entire want
26 of care which would raise the presumption of conscious indifference to the consequences.

27 33-20A-39.

28 (a) The ~~planning agency~~ department shall certify independent review organizations that
29 meet the requirements of this Code section and any regulations promulgated by the
30 ~~planning agency~~ department consistent with this article. The ~~planning agency~~ department
31 shall deem certified any independent review organization meeting standards developed for
32 this purpose by an independent national accrediting organization. To qualify for
33 certification, an independent review organization must show the following:

1 (1) Expert reviewers assigned by the independent review organization must be
2 physicians or other appropriate providers who meet the following minimum
3 requirements:

4 (A) Are expert in the treatment of the medical condition at issue and are
5 knowledgeable about the recommended treatment through actual clinical experience;

6 (B) Hold a nonrestricted license issued by a state of the United States and, for
7 physicians, a current certification by a recognized American medical specialty board
8 in the area or areas appropriate to the subject of review; and

9 (C) Have no history of disciplinary action or sanctions, including, but not limited to,
10 loss of staff privileges or participation restriction, taken or pending by any hospital,
11 government, or regulatory body;

12 (2) The independent review organization shall not be a subsidiary of, nor in any way
13 owned or controlled by, a health plan, a trade association of health plans, a managed care
14 entity, or a professional association of health care providers; and

15 (3) The independent review organization shall submit to the ~~planning agency~~ department
16 the following information upon initial application for certification, and thereafter within
17 30 days of any change to any of the following information:

18 (A) The names of all owners of more than 5 percent of any stock or options, if a
19 publicly held organization;

20 (B) The names of all holders of bonds or notes in excess of \$100,000.00, if any;

21 (C) The names of all corporations and organizations that the independent review
22 organization controls or is affiliated with, and the nature and extent of any ownership
23 or control, including the affiliated organization's type of business; and

24 (D) The names of all directors, officers, and executives of the independent review
25 organization, as well as a statement regarding any relationships the directors, officers,
26 and executives may have with any health care service plan, disability insurer, managed
27 care entity or organization, provider group, or board or committee.

28 (b) Neither the independent review organization nor any expert reviewer of the
29 independent review organization may have any material professional, familial, or financial
30 conflict of interest with any of the following:

31 (1) A managed care plan or entity being reviewed;

32 (2) Any officer, director, or management employee of a managed care plan which is
33 being reviewed;

34 (3) The physician, the physician's medical group, health care provider, or the
35 independent practice association proposing a treatment under review;

36 (4) The institution at which a proposed treatment would be provided;

37 (5) The eligible enrollee or the eligible enrollee's representative; or

1 (6) The development or manufacture of the treatment proposed for the eligible enrollee
2 whose treatment is under review.

3 (c) As used in subsection (b) of this Code section, the term 'conflict of interest' shall not
4 be interpreted to include a contract under which an academic medical center or other
5 similar medical research center provides health care services to eligible enrollees of a
6 managed care plan, except as subject to the requirement of paragraph (4) of subsection (b)
7 of this Code section; affiliations which are limited to staff privileges at a health care
8 facility; or an expert reviewer's participation as a contracting plan provider where the
9 expert is affiliated with an academic medical center or other similar medical research center
10 that is acting as an independent review organization under this article. An agreement to
11 provide independent review for an eligible enrollee or managed care entity is not a conflict
12 of interest under subsection (b) of this Code section.

13 (d) The independent review organization shall have a quality assurance mechanism in
14 place that ensures the timeliness and quality of the reviews, the qualifications and
15 independence of the experts, and the confidentiality of medical records and review
16 materials.

17 (e) The ~~planning agency~~ department shall provide upon the request of any interested
18 person a copy of all nonproprietary information filed with it pursuant to this article. The
19 ~~planning agency~~ department shall provide at least quarterly a current list of certified
20 independent review organizations to all managed care entities and to any interested
21 persons.

22 33-20A-40.

23 (a) For the purposes of this article, in making a determination as to whether a treatment is
24 medically necessary and appropriate, the expert reviewer shall use the definition provided
25 in paragraph ~~(5)~~(7) of Code Section 33-20A-31.

26 (b) For the purposes of this article, in making a determination as to whether a treatment
27 is experimental, the expert reviewer shall determine:

28 (1) Whether such treatment has been approved by the federal Food and Drug
29 Administration; or

30 (2) Whether medical and scientific evidence demonstrates that the expected benefits of
31 the proposed treatment would be greater than the benefits of any available standard
32 treatment and that the adverse risks of the proposed treatment will not be substantially
33 increased over those of standard treatments.

34 For either determination, the expert reviewer shall apply prudent professional practices and
35 shall assure that at least two documents of medical and scientific evidence support the
36 decision.

1 33-20A-41.

2 The ~~planning agency~~ department shall provide necessary rules and regulations for the
3 implementation and operation of this article.

4 33-20A-42.

5 Medicaid care management members shall, after first exhausting the grievance procedure
6 of the managed care plan providing health care benefits pursuant to Article 7 of Chapter
7 4 of Title 49 or Article 13 of Chapter 5 of Title 49, be afforded the fair hearing rights
8 provided pursuant to Code Section 49-4-153 or the state plan provided for in Article 13 of
9 Chapter 5 of Title 49."

10

SECTION 3.

11 Article 7 of Chapter 4 of Title 49 of the Official Code of Georgia Annotated, relating to
12 medical assistance generally, is amended by striking Code Section 49-4-156, which is
13 reserved, and inserting in lieu thereof a new Code Section 49-4-156 to read as follows:

14 "49-4-156.

15 ~~Reserved.~~ The provisions of Code Section 33-21-16 shall not apply to health maintenance
16 organizations with respect to contracts entered into with the department for the furnishing
17 of health care services to persons pursuant to this article."

18

SECTION 4.

19 Article 13 of Chapter 5 of Title 49 of the Official Code of Georgia Annotated, relating to
20 PeachCare for Kids, is amended by striking Code Section 49-5-272, relating to definitions,
21 and inserting in lieu thereof the following:

22 "49-5-272.

23 As used in this article, the term:

24 (1) 'Board' means the Board of Community Health.

25 (2) 'Department' means the Department of Community Health.

26 ~~(2)~~(3) 'Federal law' means Title XXI of the federal Social Security Act.

27 ~~(3)~~(4) 'Medicaid' means medical assistance provided under Article 7 of Chapter 4 of this
28 title, the 'Georgia Medical Assistance Act of 1977.'

29 ~~(4)~~(5) 'PeachCare' or 'program' means the PeachCare for Kids Program created by Code
30 Section 49-5-273."

1 children ~~in a metropolitan statistical area~~; provided, however, that such contracts shall
2 require payment of premiums and copayments in a manner consistent with this article. The
3 department may ~~not~~ require enrollment in a health maintenance organization (HMO) or
4 provider sponsored health care corporation (PSHCC) as a condition of receiving coverage
5 under the program.

6 ~~(n) There shall be created a separate budget unit 'C' and a separate appropriation in the~~
7 ~~department for the purpose of carrying out the provisions of this article.~~

8 ~~(o)~~ The Department of Education and local boards of education shall cooperate with and
9 provide assistance to the department and its designated agents for the purposes of
10 identifying and enrolling eligible children in the program."

11 **SECTION 6.**

12 This Act shall become effective upon its approval by the Governor or upon its becoming law
13 without such approval.

14 **SECTION 7.**

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