

The Senate Government Oversight Committee offered the following substitute to HB 977:

LOST

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 provide for legislative intent; to provide an exemption from insurance premium taxes for
 3 certain insurance products; to provide for the Commissioner of Insurance to adopt policies
 4 to promote, approve, and encourage health savings account eligible high deductible plans in
 5 Georgia; to provide for exemptions from certain unfair trade practices for certain wellness
 6 and health promotion programs, condition or disease management programs, health risk
 7 appraisal programs, and similar provisions in such plans; to provide for certain requirements
 8 for such plans; to provide for health reimbursement arrangement only plans that encourage
 9 employer financial support of health insurance or health related expenses under certain
 10 circumstances; to enact the "Georgia Health Marketplace Act"; to establish the Georgia
 11 Health Marketplace to provide access to health care products for Georgia consumers; to
 12 provide for definitions; to establish the Georgia Health Marketplace Authority; to provide
 13 for its membership and powers; to provide for health care products and programs in the
 14 Georgia Health Marketplace; to create a marketing trust fund; to provide for limited liability;
 15 to provide for consumer complaints; to provide for catastrophic coverage products; to
 16 provide for rules and regulations; to amend Chapter 7 of Title 48 of the Official Code of
 17 Georgia Annotated, relating to income taxes, so as to provide for an income tax deduction
 18 for high deductible health plans established and used with a health savings account; to
 19 provide for an income tax credit for certain employers who provide high deductible health
 20 plans established and used with a health savings account; to provide for procedures,
 21 conditions, and limitations; to provide for powers, duties, and authority of the state revenue
 22 commissioner with respect to the foregoing; to provide for related matters; to provide for
 23 applicability and effective dates; to repeal conflicting laws; and for other purposes.

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

1 reaching many otherwise uninsured Georgians and the general intent of creating
2 affordable comprehensive health insurance for all Georgians; and

3 (3) To enhance the affordability of insurance with the flexible health savings account
4 eligible high deductible plans allowed under this chapter by allowing rewards and
5 incentives for participation in and adherence to health behaviors that recognize the value
6 of the personal responsibility of each citizen to maintain good health, seek preventative
7 care services, and comply with approved treatments.

8 33-51-3.

9 (a) The Commissioner shall develop flexible guidelines for coverage and approval of
10 health savings account eligible high deductible plans which are designed to qualify under
11 federal and state requirements as high deductible health plans for use with health savings
12 accounts which comply with federal requirements under the applicable provisions of the
13 federal Internal Revenue Code for high deductible health plans sold in connection with
14 health savings accounts.

15 (b) The Commissioner shall be authorized to encourage and promote the marketing of
16 health savings account eligible high deductible plans by accident and sickness insurers in
17 this state; provided, however, that nothing in this Code section shall be construed to
18 authorize the sale of insurance in violation of Chapter 3 of this title or interstate sales of
19 insurance.

20 (c) The Commissioner shall be authorized to conduct a national study of health savings
21 account eligible high deductible plans available in other states and to determine if and how
22 these products serve the uninsured and if they should be made available to Georgians.

23 (d) The Commissioner shall be authorized to develop an automatic or fast track approval
24 process for health savings account eligible high deductible plans already approved under
25 the laws and regulations of this state or other states.

26 (e) The Commissioner shall be authorized to promulgate such rules and regulations as he
27 or she deems necessary and appropriate for the design, promotion, and regulation of health
28 savings account eligible high deductible plans, including rules and regulations for the
29 expedited review of standardized policies, advertisements and solicitations, and other
30 matters deemed relevant by the Commissioner.

31 33-51-4.

32 Insurers that include and operate wellness and health promotion programs, disease and
33 condition management programs, health risk appraisal programs, and similar provisions in
34 their high deductible health policies in keeping with federal requirements shall not be

1 considered to be engaging in unfair trade practices under Code Section 33-6-4 with respect
2 to references to the practices of illegal inducements, unfair discrimination, and rebating.

3 33-51-5.

4 There shall be no required relationship between preferred provider and nonpreferred
5 provider plan reimbursements for health savings account eligible high deductible plans
6 using nonpreferred provider reimbursements. Such plans, however, shall not:

- 7 (1) Unfairly deny health benefits for medically necessary covered services;
8 (2) Have differences in benefit levels payable to preferred providers compared to other
9 providers that unfairly deny benefits for covered services;
10 (3) Have a plan coinsurance percentage applicable to benefit levels for services provided
11 by nonpreferred providers that is less than 60 percent of the benefit levels under the
12 policy for such services; or
13 (4) Have an adverse effect on the availability or the quality of services.

14 33-51-6.

15 Notwithstanding the provisions of paragraphs (2) and (3) of Code Section 33-51-5, health
16 benefit plans providing incentives for covered persons to use pharmaceutical or dental
17 services of preferred providers shall provide, and clearly indicate, that the payment or
18 reimbursement for a noncontracting provider of covered pharmaceutical or dental services
19 shall be the same as the payment or reimbursement for a preferred provider of covered
20 pharmaceutical or dental services; provided, however, that the health benefit plan shall not
21 be required to make payment or reimbursement in an amount which is greater than the
22 actual fee charged by the provider for such dental or pharmaceutical services."

23 **SECTION 3A.**

24 Said title is further amended by adding a new chapter to read as follows:

25 "CHAPTER 62

26 33-62-1.

27 This chapter shall be known and may be cited as the "Georgia Health Marketplace Act."

28 33-62-2.

29 For purposes of this chapter, the term:

- 30 (1) 'Authority' means the Georgia Health Marketplace Authority established pursuant to
31 Code Section 33-62-3.

1 (2) 'Board' means the board of directors of the Georgia Health Marketplace Authority.

2 (3) 'Commissioner' means the Commissioner of Insurance.

3 (4) 'Fund' means the GHM Marketing Trust Fund, as established in Code Section
4 33-62-6.

5 (5) 'GHM' means the Georgia Health Marketplace established pursuant to Code Section
6 33-62-5.

7 (6) 'Insurer' means any insurer or nonprofit organization authorized to sell accident and
8 sickness policies, subscriber contracts, certificates, or agreements of any form under
9 Chapters 15, 18, 19, 20, 21, 29, and 30 of this title.

10 33-62-3.

11 (a) There is established the Georgia Health Marketplace Authority as a body corporate and
12 politic, an instrumentality of the state, and a public corporation; and by that name the
13 authority may contract and be contracted with and bring and defend actions. The authority
14 shall have perpetual existence.

15 (b) The authority shall be governed by a board of directors composed of ten members as
16 follows:

17 (1) The executive director of the Georgia Technology Authority;

18 (2) The Commissioner of the Department of Community Health;

19 (3) The Commissioner of Insurance;

20 (4) A physician who is licensed under Chapter 34 of Title 43, appointed by the
21 Governor;

22 (5) A representative of a health insurance company licensed to offer health insurance
23 policies in this state, appointed by the Lieutenant Governor;

24 (6) A consumer representative, appointed by the Lieutenant Governor;

25 (7) A health care marketing expert, appointed by the Lieutenant Governor;

26 (8) An agent licensed to offer health insurance policies in this state, appointed by the
27 Speaker of the House of Representatives;

28 (9) A consumer representative, appointed by the Speaker of the House of
29 Representatives; and

30 (10) A hospital administrator, appointed by the Speaker of the House of Representatives.

31 The initial members of the board shall be appointed to terms of office beginning July 1,
32 2008. All members shall serve for terms of three years; provided, however, that for the
33 purpose of providing for staggered terms, of the Lieutenant Governor's and Speaker's
34 initial appointments, one each shall be appointed for a term of one year, two years, and
35 three years, respectively. Any vacancy on the board shall be filled in the same manner as
36 the original appointment, and any member appointed to fill a vacancy occurring because

1 of death, resignation, or ineligibility for membership shall serve only for the unexpired
2 term of the member's predecessor. A member shall be eligible for reappointment.

3 (c) The board shall at its initial meeting and the first meeting of each calendar year
4 thereafter select from among its members a chairperson and a vice chairperson. Meetings
5 shall be held at the call of the chairperson or whenever any two members so request.

6 (d) The members of the board who are not public officers shall be entitled to an expense
7 allowance and reimbursement from funds of the authority for their actual travel expenses
8 necessarily incurred in the performance of their duties and for each day actually spent in
9 performance of their duties in the same manner as provided in Code Section 45-7-21.

10 (e) A majority of the members of the board shall constitute a quorum for the transaction
11 of business of the authority. The vote of at least a majority of the members present at any
12 meeting at which a quorum is present is necessary for any action to be taken by the board.
13 No vacancy in the membership of the board shall impair the right of a quorum to exercise
14 all rights and perform all duties of the board.

15 (f) No member or employer of a member shall be eligible to bid on, or enter into, any
16 contract let by the authority or receive payment from the authority as an employee,
17 contractor, consultant, or vendor; provided, however, that this subsection shall not be
18 construed to prohibit a member of the authority or employee of such member from
19 submitting health care products for inclusion on the GHM in accordance with established
20 policies and procedures of the authority.

21 (g) The authority is assigned to the Department of Community Health for administrative
22 purposes only, as prescribed in Code Section 50-4-3.

23 33-62-4.

24 The authority shall have the following powers:

- 25 (1) To hire officers, agents, and employees, including an executive director, as necessary
26 to perform the duties and carry out the powers conferred by this chapter;
- 27 (2) To have a seal and alter the same at its pleasure;
- 28 (3) To make and execute contracts, lease agreements, and all other instruments necessary
29 or convenient to exercise the powers of the authority or to further the public purpose for
30 which the authority is created;
- 31 (4) To acquire by purchase, lease, or otherwise and to hold, lease, and dispose of real or
32 personal property of every kind and character, or any interest therein, in furtherance of
33 the public purpose of the authority;
- 34 (5) To apply for and to accept any gifts or grants or loan guarantees or loans of funds or
35 property or financial or other aid in any form from the federal government or any agency
36 or instrumentality thereof, or from the state or any agency or instrumentality thereof, or

1 from any other source for any or all of the purposes specified in this chapter and to
2 comply, subject to the provisions of this chapter, with the terms and conditions thereof;

3 (6) To solicit, receive, and review proposals from technology vendors for the
4 development and implementation of technology to operate and maintain the GHM,
5 including an Internet website accessible to all Georgians;

6 (7) To identify health care products which fall under the categories set out in
7 paragraphs (2) through (6) of subsection (b) of Code Section 33-62-5 for inclusion in the
8 GHM, provided that the authority shall not have the power to directly issue insurance
9 policies;

10 (8) To suspend, at its sole discretion, products from inclusion in the GHM and
11 companies and entities from submitting products for inclusion based on evidence of
12 fraud, provided such suspension or any reinstatement shall occur only upon the written
13 request of the Commissioner or federal law enforcement authorities;

14 (9) To develop and approve specific measurement tools for consumers to use in
15 comparing health care products, including brief summaries of deductibles, copayment
16 requirements, covered providers, benefits, premiums, and coverage limits. To the
17 maximum extent possible, the authority shall utilize cost and quality measurements
18 established by the Georgia Health Information Technology and Transparency Advisory
19 Board;

20 (10) To develop a brief questionnaire of not more than ten questions to enable visitors
21 to the GHM website to obtain instant approximate price quotes consisting of either
22 specific prices or price ranges for products they may wish to purchase. Approximate
23 rates provided by insurers pursuant to such questionnaire shall be used only for
24 informational purposes and shall create no contractual obligation on the part of an insurer
25 to offer an individual a policy at such rate prior to completion of medical underwriting
26 by such insurer. If identical policies are sold by an insurer on the GHM and outside the
27 GHM, monthly premiums shall be comparable to each other for each policy. Information
28 provided by consumers through the GHM for purposes of obtaining price quotes on
29 products shall not be transferred outside the GHM or recorded in written or electronic
30 form by the GHM;

31 (11) To develop a common battery of medical underwriting questions that can be
32 uniformly utilized by health insurance companies on a voluntary basis to medically
33 underwrite policies;

34 (12) To fix and collect fees and charges associated with the operation of the GHM,
35 including but not limited to listing charges for health insurance companies and licensed
36 insurance agents to register on the GHM; provided, however, that any fees and charges

1 collected shall be used only for purposes of promoting the GHM to Georgia consumers
2 and shall not be used for general administrative expenses associated with the GHM;

3 (13) To administer the GHM Marketing Trust Fund, as established in Code Section
4 33-62-6;

5 (14) To deposit or invest funds held by it in any state depository or in any investment
6 which is authorized for the investment of proceeds of state general obligation bonds and
7 to use for its corporate purposes or redeposit or reinvest interest earned on such funds;

8 (15) To exercise any power granted by the laws of this state to public or private
9 corporations which is not in conflict with the public purpose of the authority; and

10 (16) To do all things necessary or convenient to carry out the powers conferred by this
11 chapter.

12 33-62-5.

13 (a) The authority shall establish, operate, and maintain the Georgia Health Marketplace,
14 which shall serve as an Internet portal for access to health care products which fall under
15 the categories set out in paragraphs (2) through (6) of subsection (b) of this Code section
16 and to the PeachCare for Kids Program. The GHM shall also include specific measurement
17 tools for consumers to use in comparing individual health care products, including brief
18 summaries of deductibles, copayment requirements, covered providers, benefits, premiums,
19 financial soundness ratings, and coverage limits.

20 (b) The health care products and programs included in the GHM shall be in one of the
21 following categories:

22 (1) PeachCare for Kids Program created by Code Section 49-5-273;

23 (2) Initiatives or programs established by the Department of Community Health aimed
24 at providing accessible health insurance coverage to employees of small businesses in this
25 state, such as the Health Insurance Partnership;

26 (3) Traditional individual health insurance products sold by licensed Georgia insurers;

27 (4) Individual health care savings accounts, including any health care plan offering
28 medical savings accounts, health reimbursement arrangement accounts, or health savings
29 accounts.

30 (5) Health care services provided directly from a physician or hospital which do not
31 require a health care provider to manage any risk, such as, but not limited to, a set number
32 of office visits, annual checkups, a set range of imaging services, immunizations, and
33 services provided on a regular schedule for chronic diseases. Prior to receiving health
34 care services directly from a physician or hospital pursuant to this paragraph, a consumer
35 shall be required to sign an acknowledgment and understanding of the following
36 statement:

1 I understand I am purchasing a prepaid package of medical services. This package of
2 services is not health insurance and provides only prepaid services at a discounted rate.
3 Purchasing this package without also purchasing catastrophic coverage insurance may
4 leave me without coverage for many major medical problems.'

5 These services shall not be treated as insurance products under Georgia law. The
6 Composite State Board of Medical Examiners shall be responsible for disciplining any
7 physician or physician acting on behalf of a hospital for unprofessional conduct in
8 offering or providing such services; and

9 (6) Individual catastrophic coverage products only as authorized pursuant to Code
10 Section 33-62-8.

11 (c) The GHM shall provide consumers who identify health care products on the GHM the
12 option of contacting a health insurance company or a licensed insurance agent by telephone
13 or direct electronic referral to the agent or company website when he or she has additional
14 questions about a product at any point in the selection process, or is ready to purchase a
15 product. For consumers choosing the licensed insurance agent option, licensed agents
16 selling the selected plan shall be listed in the order directed by the authority, with that order
17 being determined by professional qualifications of the agent and the agent's geographical
18 proximity to the address given by the consumer; provided, however, that the authority may
19 take into consideration a licensed insurance agent's history of consumer complaints against
20 such agent in the listed order. The authority shall include on the GHM a description of the
21 important role of licensed agents in educating consumers on health insurance products.
22 Each agent listing provided to the consumer shall include a list of the GHM vendor
23 companies for which the agent is licensed.

24 (d) The provisions of Chapter 21 of this title shall not be deemed to prohibit licensees
25 thereunder from selling the policies provided for in this Code section.

26 (e) The purchase of an accident and sickness policy or contract under this Code section
27 shall not preclude the purchaser from purchasing additional limited benefit insurance
28 policies or contracts.

29 (f) All insurance policies offered for sale on the GHM shall include coverage for the
30 following procedures which are critical to the early detection of life-threatening diseases:
31 ovarian cancer screening, colorectal cancer screening, diabetes screening, pap smears,
32 mammograms, and prostate specific antigen tests. Further, policies offered for sale on the
33 GHM which include a primary care component shall offer beneficiaries the choice of
34 designating an obstetrician or gynecologist as their primary care physician.

1 33-62-6.

2 (a) There is created the GHM Marketing Trust Fund as a separate fund in the state
3 treasury. The trust fund shall be administered by the authority.

4 (b) The trust fund shall consist of such moneys as appropriated by the General Assembly,
5 fees and charges determined and collected by the authority for the operation of the Georgia
6 Health Marketplace, which shall be limited to initial listing charges for health insurance
7 companies and licensed insurance agents to register on the GHM, and private contributions
8 from any source.

9 (c) State funds received by the authority through appropriations by the General Assembly
10 shall not be expended by the authority unless the authority collects or receives matching
11 private funds at a ratio of 1:1 to the state funds through fees, charges, or contributions from
12 health insurance companies, licensed insurance agents, or other private sources. State
13 funds not matched within two years shall be returned from the trust fund to the general
14 fund.

15 (d) Funds from the trust fund shall be expended only for the purpose of entering into
16 competitively bid contracts for private sector marketing, advertising, and public relations
17 to promote the GHM to Georgia consumers. Funds shall not be expended for general
18 administrative expenses associated with the GHM.

19 33-62-7.

20 (a) The authority shall not be liable for any acts or omissions of an insurer related to its
21 participation in the GHM.

22 (b) Consumer complaints relating to health care products and programs purchased or
23 enrolled in through the GHM shall be handled in the same manner as would be applicable
24 if the consumer purchased or enrolled in the health care product or program through other
25 means.

26 33-62-8.

27 (a) Notwithstanding any other provision of law and on and after the effective date of this
28 Code section, catastrophic coverage products may be offered by an insurer for purposes of
29 this chapter only. Such products shall:

30 (1) Have deductibles in at least a minimum amount as established by the authority;
31 provided, however, that an insurer may set a higher deductible. Such minimum amount
32 shall be equal to the amount established by the United States Department of Treasury as
33 the minimum deductible for high deductible health plans, as it exists on the effective date
34 of this Code section. The authority shall establish and maintain rules governing the
35 adjustments of this figure for purposes of inflation which may be based on the method

1 of adjustment for high deductible health plans established by the United States
2 Department of Treasury or on the Consumer Price Index;

3 (2) Provide coverage for services or treatment based solely upon a contractual agreement
4 between the insurer and the consumer;

5 (3) Be offered only through the GHM by participating insurers and agents; and

6 (4) Be available for purchase only by individuals:

7 (A) Between the ages of 18 and 25; or

8 (B) Who certify in writing that they will open, within 60 days of purchase of the
9 catastrophic coverage product, and maintain an active health care savings account
10 capitalized to an amount equal to or greater than the annual deductible of the
11 catastrophic coverage product the individual intends to purchase through the GHM.

12 Products offered pursuant to this Code section shall not be subject to other Title 33
13 provisions including but not limited to provisions which require specific state mandated
14 health benefits, which regulate premiums, or which regulate the issuance or cancellation
15 of policies.

16 (b) Prior to purchasing a catastrophic coverage product pursuant to this chapter, a
17 consumer shall be required to sign an acknowledgment and understanding of the following
18 statement:

19 'I understand that the catastrophic coverage product I am purchasing or enrolling in is not
20 subject to any of the coverage requirements that state law mandates of standard health
21 insurance plans. I understand that in exchange for paying a lower premium, I may be
22 responsible for higher out of pocket expenses if I get sick or am in an accident.'

23 (c) An insurer that offers one or more catastrophic coverage products through the GHM
24 shall also make available for purchase on the GHM at least one individual accident and
25 sickness insurance policy that contains all state mandated health benefits.

26 (d) The Commissioner may promulgate rules and regulations as necessary to implement
27 the provisions of this Code section.

28 (e) All products offered for sale on the GHM pursuant to this Code section shall include
29 coverage for the following procedures which are critical to the early detection of
30 life-threatening diseases: ovarian cancer screening, colorectal cancer screening, diabetes
31 screening, pap smears, mammograms, and prostate specific antigen tests. Further, products
32 offered under this Code section which include a primary care component shall offer
33 beneficiaries the choice of designating an obstetrician or gynecologist as their primary care
34 physician.

1 33-62-9.

2 The authority and the Commissioner, as appropriate, shall be authorized to adopt rules and
3 regulations to effect the implementation of this chapter."

4 **SECTION 4.**

5 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is
6 amended by adding a new paragraph in subsection (a) of Code Section 48-7-27, relating to
7 computation of taxable net income, to read as follows:

8 "(13.1) An amount equal to 100 percent of the premium paid by the taxpayer during the
9 taxable year for high deductible health plans established and used with a health savings
10 account under the applicable provisions of Section 223 of the Internal Revenue Code to
11 the extent the deduction has not been included in federal adjusted gross income, as
12 defined under the Internal Revenue Code of 1986, and the expenses have not been
13 provided from a health reimbursement arrangement and have not been included in
14 itemized nonbusiness deductions;"

15 **SECTION 5.**

16 Said title is further amended by adding a new Code section to read as follows:

17 "48-7-29.13.

18 (a) As used in this Code section, the term:

19 (1) 'Qualified health insurance' means a high deductible health plan that includes, at a
20 minimum, catastrophic health care coverage which is established and used with a health
21 savings account under the applicable provisions of Section 223 of the Internal Revenue
22 Code.

23 (2) 'Qualified health insurance expense' means the expenditure of funds of at least
24 \$250.00 annually for health insurance premiums for qualified health insurance.

25 (3) 'Taxpayer' means an employer who employs directly, or who pays compensation to
26 individuals whose compensation is reported on Form 1099, 50 or fewer persons and for
27 whom the taxpayer provides high deductible health plans that include, at a minimum,
28 catastrophic health care coverage which are established and used with a health savings
29 account under the applicable provisions of Section 223 of the Internal Revenue Code and
30 in which such employees are enrolled.

31 (b) A taxpayer shall be allowed a credit against the tax imposed by Code Section 48-7-20
32 or 48-7-21, as applicable, for qualified health insurance expenses in an amount of \$250.00
33 for each employee enrolled for twelve consecutive months in a qualified health insurance
34 plan if such qualified health insurance is made available to all of the employees and

1 compensated individuals of the employer pursuant to the applicable provisions of Section
2 125 of the Internal Revenue Code.

3 (c) In no event shall the total amount of the tax credit under this Code section for a taxable
4 year exceed the taxpayer's income tax liability. Any unused tax credit shall be allowed the
5 taxpayer against succeeding years' tax liability. No such credit shall be allowed the
6 taxpayer against prior years' tax liability.

7 (d) The commissioner shall be authorized to promulgate any rules and regulations
8 necessary to implement and administer the provisions of this Code section.

9 (e) The credit allowed by this Code section shall apply only with regard to qualified health
10 insurance expenses."

11 **SECTION 6.**

12 (a) Sections 1, 4, and 5 of this Act shall become effective on January 1, 2009, and shall be
13 applicable to all taxable years beginning on or after January 1, 2009. The remaining sections
14 of this Act shall become effective upon its approval by the Governor or upon its becoming
15 law without such approval.

16 (b) Section 2 of this Act shall expire on January 1, 2015, unless the General Assembly acts
17 to extend these provisions.

18 **SECTION 7.**

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