

Senate Bill 50

By: Senators Hudgens of the 47th, Hawkins of the 49th and Smith of the 52nd

AS PASSED SENATE

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 definitions; to provide for applicability; to provide for the registration of certain
 3 contracting entities; to prohibit access to a provider's health care services and contractual
 4 discounts by certain contracting entities under certain circumstances; to provide certain
 5 requirements for contracting entities; to provide for the rights and responsibilities of third
 6 parties; to prohibit unauthorized access to provider network contracts; to provide for
 7 enforcement; to provide an effective date; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

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

12 "CHAPTER 20C

13 33-20C-1.

14 As used in this chapter, the term:

15 (1) 'Commissioner' means the Commissioner of Insurance.

16 (2) 'Contracting entity' means any person or entity that enters into direct contracts with
 17 providers for the delivery of health care services in the ordinary course of business.

18 (3) 'Covered individual' means an individual who is covered under a health insurance
 19 plan.

20 (4) 'Department' means the Department of Insurance.

21 (5) 'Direct notification' means a written or electronic communication from a contracting
 22 entity to a provider documenting third-party access to a provider network.

23 (6) 'Health care services' means the examination or treatment of persons for the
 24 prevention of illness or the correction or treatment of any physical or mental condition

25 resulting from illness, injury, or other human physical problem and includes, but is not
 26 limited to:

27 (A) Hospital services which include the general and usual care, services, supplies, and
 28 equipment furnished by hospitals;

29 (B) Medical services which include the general and usual services and care rendered
 30 and administered by doctors of medicine, doctors of dental surgery, and doctors of
 31 podiatry; and

32 (C) Other health care services which include appliances and supplies; nursing care by
 33 a registered nurse or a licensed practical nurse; care furnished by such other licensed
 34 practitioners as may be expressly approved by the board of directors from time to time;
 35 institutional services, including the general and usual care, services, supplies, and
 36 equipment furnished by health care institutions and agencies or entities other than
 37 hospitals; physiotherapy; ambulance services; drugs and medications; therapeutic
 38 services and equipment, including oxygen and the rental of oxygen equipment; hospital
 39 beds; iron lungs; orthopedic services and appliances, including wheelchairs, trusses,
 40 braces, crutches, and prosthetic devices, including artificial limbs and eyes; and any
 41 other appliance, supply, or service related to health care.

42 (7) 'Health insurance plan' means any hospital and medical expense incurred policy,
 43 nonprofit health care service plan contract, health maintenance organization subscriber
 44 contract, or any other health care plan or arrangement that pays for or furnishes medical
 45 or health care services, whether by insurance or otherwise. The term shall not include
 46 any of the following: coverage only for accident or disability income insurance; coverage
 47 issued as a supplement to liability insurance; liability insurance, including general
 48 liability insurance and automobile liability insurance; automobile medical payment
 49 insurance; workers' compensation insurance; credit-only insurance; coverage for on-site
 50 medical clinics; coverage similar to the foregoing as specified in federal regulations
 51 issued pursuant to Pub. L. No. 104-191, under which benefits for medical care are
 52 secondary or incidental to other insurance benefits; benefits for long-term care, nursing
 53 home care, home health care, or community based care; specified disease or illness
 54 coverage, hospital indemnity or other fixed indemnity insurance, or such other similar,
 55 limited benefits as are specified in regulations; medicare supplemental health insurance
 56 as defined under Section 1882(g)(1) of the federal Social Security Act; coverage
 57 supplemental to the coverage provided under Chapter 55 of Title 10 of the United States
 58 Code; or other similar limited benefit supplemental coverages.

59 (8) 'Provider' means an individual licensed pursuant to Chapter 9, 11, 26, 30, or 34 of
 60 Title 43 or Chapter 4 of Title 26, a physician organization, or a physician hospital
 61 organization that is acting exclusively as an administrator on behalf of a provider to

62 facilitate the provider's participation in health care contracts. The term shall not include
 63 a physician organization or physician hospital organization that leases or rents the
 64 physician organization's or physician hospital organization's network to a third party.

65 (9) 'Provider network contract' means a contract between a contracting entity and a
 66 provider specifying the rights and responsibilities of the contracting entity and provider
 67 for the delivery of and payment for health care services to covered individuals.

68 (10) 'Third party' means an organization that enters into a contract with a contracting
 69 entity or with another third party to gain access to a provider network contract.

70 33-20C-2.

71 (a) This chapter shall not apply to provider network contracts for services provided to
 72 Medicaid, medicare, or State Children's Health Insurance Program (SCHIP) beneficiaries.

73 (b) This chapter shall not apply in circumstances where access to the provider network
 74 contract is granted to an entity operating under the same brand licensee program as the
 75 contracting entity.

76 (c) This chapter shall not apply to a contract between a contracting entity and a discount
 77 medical plan organization.

78 33-20C-3.

79 (a) Any person who commences business as a contracting entity shall register with the
 80 Commissioner within 30 days of commencing business in this state unless such person is
 81 licensed by the Commissioner as an insurer. Effective July 1, 2010, each person not
 82 licensed by the Commissioner as a contracting entity shall be required to register with the
 83 Commissioner within 90 days following July 1, 2010.

84 (b) Registration shall consist of the submission of the following information:

85 (1) The official name of the contracting entity, including any d/b/a designations used in
 86 this state;

87 (2) The mailing address and main telephone number for the contracting entity's main
 88 headquarters; and

89 (3) The name and telephone number of the contracting entity's representative who shall
 90 serve as the primary contact with the department.

91 (c) The information required by this Code section shall be submitted in written or
 92 electronic format, as prescribed by the Commissioner by rule or regulation.

93 (d) The Commissioner may, pursuant to rule or regulation, collect a reasonable fee for the
 94 purpose of administering the registration process.

95 33-20C-4.

96 (a) A contracting entity shall not grant access to a provider's health care services and
97 contractual discounts pursuant to a provider network contract unless:

98 (1) The provider network contract specifically states that the contracting entity may enter
99 into an agreement with a third party allowing the third party to obtain the contracting
100 entity's rights and responsibilities under the provider network contract as if the third party
101 were the contracting entity;

102 (2) The provider network contract, and all agreements between a contracting entity and
103 any third party, prohibits such third party from increasing the contractual discounts or
104 otherwise reducing the compensation to a provider to an amount below that which the
105 provider was entitled from the contracting entity for health care services at the time the
106 third party was granted access to the provider network contract unless such third party
107 becomes a contracting entity; and

108 (3) The third party accessing the provider network contract is contractually obligated to
109 comply with all applicable terms, limitations, and conditions of the provider network
110 contract.

111 (b) A contracting entity that grants access to a provider's health care services and
112 contractual discounts pursuant to a provider network contract shall:

113 (1) Identify and provide to the provider, at the time a provider network contract is
114 entered into with a provider, a written or electronic list of all third parties known at the
115 time of contracting to which the contracting entity has or will grant access to the
116 provider's health care services and contractual discounts pursuant to a provider network
117 contract;

118 (2) Maintain an Internet website or other readily available mechanism, such as a toll-free
119 telephone number, through which a provider may obtain a listing, updated at least every
120 90 days, of the third parties to which the contracting entity or another third party has
121 executed contracts to grant access to such provider's health care services and contractual
122 discounts pursuant to a provider network contract;

123 (3) Provide the third party who contracts with the contracting entity to gain access to the
124 provider network contract with sufficient information regarding the provider network
125 contract to enable the third party to comply with all applicable terms, limitations, and
126 conditions of the provider network contract;

127 (4) Require that the third party who contracts with the contracting entity to gain access
128 to the provider network contract identify the source of the contractual discount taken by
129 the third party on each remittance advice (RA) or explanation of payment (EOP) form
130 furnished to a health care provider when such discount is pursuant to the contracting
131 entity's provider network contract; and

132 (5) Notify the third party that contracts with the contracting entity to gain access to the
133 provider network contract of the termination of the provider network contract no later
134 than 30 days after receipt of notice of the termination of the provider network contract;
135 and require those that are by contract eligible to claim the right to access a provider's
136 discounted rate to cease claiming entitlement to those rates or other contracted rights or
137 obligations for services rendered after termination of the provider network contract. The
138 notice required under this paragraph may be provided through any reasonable means,
139 including, but not limited to written notice, electronic communication, or an update to an
140 electronic data base or other provider listing.

141 (c) Subject to any applicable continuity of care requirements, agreements, or contractual
142 provisions:

143 (1) A third party's right to access a provider's health care services and contractual
144 discounts pursuant to a provider network contract shall terminate on the date the provider
145 network contract is terminated;

146 (2) In accordance with the provider network contract, claims for health care services
147 performed after the termination date of the provider network contract shall not be eligible
148 for processing and payment; and

149 (3) Claims for health care services performed before the termination date of the provider
150 network contract, but processed after the termination date, shall be eligible for processing
151 and payment in accordance with the provider network contract.

152 (d) All information made available to a provider in accordance with the requirements of
153 this chapter shall be confidential and shall not be disclosed to any person or entity not
154 involved in the provider's practice or the administration thereof without the prior written
155 consent of the contracting entity.

156 (e) Nothing contained in this chapter shall be construed to prohibit a contracting entity
157 from requiring the provider to execute a reasonable confidentiality agreement to ensure that
158 confidential or proprietary information disclosed by the contracting entity is not used for
159 any purpose other than the provider's direct practice management or billing activities.

160 33-20C-5.

161 (a) A third party, having itself been granted access to a provider's health care services and
162 contractual discounts pursuant to a provider network contract, that subsequently grants
163 access to another third party shall be obligated to comply with the rights and
164 responsibilities imposed on contracting entities under Code Sections 33-20C-4 and
165 33-20C-6.

166 (b) A third party that enters into a contract with another third party to access a provider's
167 health care services and contractual discounts pursuant to a provider network contract shall

168 be obligated to comply with the rights and responsibilities imposed on third parties under
169 this Code section.

170 (c)(1) A third party shall provide to the contracting entity the location of an Internet
171 website, or identify another readily available mechanism such as a toll-free telephone
172 number, which the contracting entity will make available to the providers under the
173 provider network contract accessed through the contracting entity. The website or other
174 readily available mechanism shall identify the name of the person or entity to which the
175 third party subsequently grants access to the provider's health care services and
176 contractual discounts pursuant to the provider network contract.

177 (2) The website shall allow the providers under the contracting entity's provider network
178 contract access to the information referenced in paragraph (1) of this subsection and shall
179 be updated on a routine basis as additional persons or entities are granted access. The
180 website shall be updated every 90 days to reflect all current persons and entities with
181 access. Upon request, a contracting entity shall make updated access information
182 available to a provider by telephone or through direct notification.

183 33-20C-6.

184 (a) It shall be an unfair trade practice for the purposes of Article 1 of Chapter 6 of this title
185 to knowingly access or utilize a provider's contractual discount pursuant to a provider
186 network contract without a contractual relationship with the provider, contracting entity,
187 or third party, as specified in this chapter.

188 (b) A provider may refuse the discount taken on services referenced on a remittance advice
189 (RA) or explanation of payment (EOP) if the provider did not receive notice by ID card or
190 pursuant to paragraph (2) of subsection (b) of Code Section 33-20C-4 or subsection (c) of
191 Code Section 33-20C-5 prior to the services referenced in the RA or EOP.

192 (c) A contracting entity shall not lease, rent, or otherwise grant to a third party access to
193 a provider network contract unless the third party accessing the health care contract is:

194 (1) A payor or third party administrator or another entity that administers or processes
195 claims on behalf of the payor;

196 (2) A preferred provider organization or preferred provider network, including a
197 physician organization or physician-hospital organization; or

198 (3) An entity engaged in the electronic claims transport between the contracting entity
199 and the payor that does not provide access to the provider's services and discount to any
200 other third party.

201 33-20C-7.

202 A violation of this chapter shall be an unfair trade practice under Article 1 of Chapter 6 of
203 this title and shall be subject to the same enforcement as provided in such article; provided,
204 however, that the monetary penalty for a violation of this article shall not be more than
205 \$25,000.00 for each and every act or violation, unless the person knew or reasonably
206 should have known he or she was in violation of this article, in which case the penalty shall
207 be not more than \$50,000.00 for each and every act or violation.

208 33-20C-8.

209 Any person may file a civil action for damages arising from a violation of the provisions
210 of this article."

211 **SECTION 2.**

212 This Act shall become effective on July 1, 2010.

213 **SECTION 3.**

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