

The Senate Insurance and Labor Committee offered the following substitute to HB 412:

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 for an effective date and applicability; to repeal conflicting laws; and
8 for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 SECTION 1.

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

13 "CHAPTER 20C

14 33-20C-1.

15 As used in this chapter, the term:

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

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

19 (3) 'Control' and 'under common control with' mean possession, directly or indirectly, of
20 the power to direct or cause the direction of the management and policies of an entity
21 through the ownership of 50 percent or more of the voting securities of the entity.

22 (4) 'Covered individual' means an individual who is covered under a health insurance
23 plan.

24 (5) 'Department' means the Department of Insurance.

25 (6) 'Health care services' means the examination or treatment of persons for the
26 prevention of illness or the correction or treatment of any physical or mental condition
27 resulting from illness, injury, or other human physical problem and includes, but is not
28 limited to:

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

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

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

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

61 (8) 'Provider' means an individual licensed pursuant to Chapter 9, 10A, 11, 26, 30, or 34
 62 of Title 43 or Chapter 4 of Title 26, an institution as defined in Chapter 7 of Title 31, a
 63 physician organization, or a physician hospital organization that is acting exclusively as
 64 an administrator on behalf of a provider to facilitate the provider's participation in health
 65 care contracts. The term shall not include a physician organization or physician hospital
 66 organization that leases or rents the physician organization's or physician hospital
 67 organization's network to a third party.

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

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

73 33-20C-2.

74 (a) This chapter shall not apply to provider network contracts for services provided to
 75 Medicaid, medicare, the state employees' health insurance plan authorized under Article
 76 1 of Chapter 18 of Title 45, or State Children's Health Insurance Program (SCHIP)
 77 beneficiaries.

78 (b) This chapter shall not apply in circumstances where access to the provider network
 79 contract is granted to an affiliate entity under common control with or under the same
 80 brand licensee program as the contracting entity. Contracting entities shall, however, make
 81 the list of such affiliate entities available on a website or by other means. The affiliate
 82 entities shall have the same rights and responsibilities under the provider network contracts
 83 as the contracting entities.

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

86 (d) This chapter shall not apply to the provision of any medical services for injuries
 87 covered by workers' compensation.

88 (e) This chapter shall not apply to a pharmacy benefits manager.

89 33-20C-3.

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

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

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

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

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

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

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

106 33-20C-4.

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

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

113 (2) The third party has a contractual right to access the contractual rates or discounts in
114 the provider network contract, and such third parties shall reimburse the provider in
115 accordance with the rates established in the provider network contract; and

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

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

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

126 (2) Maintain an Internet website or other readily available mechanism, such as a toll-free
127 telephone number, through which a provider may obtain a listing, updated at least every
128 90 days, of the third parties to which the contracting entity or another third party has
129 executed contracts to grant access to such provider's health care services and contractual
130 discounts pursuant to a provider network contract;

131 (3) Provide the third party who contracts with the contracting entity to gain access to the
132 provider network contract with sufficient information regarding the provider network
133 contract to enable the third party to comply with all applicable terms, limitations, and
134 conditions of the standard provider network contract;

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

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

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

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

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

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

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

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

168 33-20C-5.

169 (a) A third party, having itself been granted access to a provider's health care services and
170 contractual discounts pursuant to a provider network contract, that subsequently grants
171 access to another third party shall be obligated to comply with the rights and
172 responsibilities imposed on contracting entities under Code Sections 33-20C-4 and
173 33-20C-6.

174 (b) A third party that enters into a contract with another third party to access a provider's
175 health care services and contractual discounts pursuant to a provider network contract shall
176 be obligated to comply with the rights and responsibilities imposed on third parties under
177 this Code section.

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

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

191 33-20C-6.

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

196 (b) A provider may refuse the discount taken on a remittance advice (RA) or explanation
197 of payment (EOP) if the discount is taken without a contractual basis or in violation of
198 paragraph (2) of subsection (b) of Code Section 33-20C-4 and subsection (c) of Code
199 Section 33-20C-5 concerning the services referenced on the RA or EOP.

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

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

- 204 (2) A preferred provider organization or preferred provider network, including a
205 physician organization or physician-hospital organization; or
206 (3) An entity engaged in the electronic claims transport between the contracting entity
207 and the payor that does not provide access to the provider's services and discount to any
208 other third party.

209 33-20C-7.

210 A violation of this chapter shall be an unfair trade practice under Article 1 of Chapter 6 of
211 this title and shall be subject to the same enforcement as provided in such article."

212 **SECTION 2.**

213 This Act shall become effective on July 1, 2010, and shall apply to provider network
214 contracts entered into or materially amended on or after such date.

215 **SECTION 3.**

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