

House Bill 1268 (AS PASSED HOUSE AND SENATE)

By: Representative Knox of the 24th

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 revise the time periods and eligibility for continuation coverage under certain group accident
3 and sickness insurance plans; to provide for related matters; to provide an effective date; to
4 repeal conflicting laws; and for other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

6 style="text-align:center">**SECTION 1.**

7 Title 33 of the Official Code of Georgia Annotated, relating to insurance, is amended by
8 revising Code Section 33-24-21.1, relating to conversion privilege and continuation right
9 provisions for group accident and sickness insurance, as follows:

10 "33-24-21.1.

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

12 (1) 'Assistance eligible individual' shall have the same meaning as provided by Section
13 3001 of Title III of the federal American Recovery and Reinvestment Act of 2009, as
14 amended.

15 (2) 'Creditable coverage' under another health benefit plan means medical expense
16 coverage with no greater than a 90 day gap in coverage under any of the following:

17 (A) Medicare or Medicaid;

18 (B) An employer based accident and sickness insurance or health benefit arrangement;

19 (C) An individual accident and sickness insurance policy, including coverage issued
20 by a health maintenance organization, nonprofit hospital or nonprofit medical service
21 corporation, health care corporation, or fraternal benefit society;

22 (D) A spouse's benefits or coverage under medicare or Medicaid or an employer based
23 health insurance or health benefit arrangement;

24 (E) A conversion policy;

- 25 (F) A franchise policy issued on an individual basis to a member of a true association
 26 as defined in subsection (b) of Code Section 33-30-1;
- 27 (G) A health plan formed pursuant to 10 U.S.C. Chapter 55;
- 28 (H) A health plan provided through the Indian Health Service or a tribal organization
 29 program or both;
- 30 (I) A state health benefits risk pool;
- 31 (J) A health plan formed pursuant to 5 U.S.C. Chapter 89;
- 32 (K) A public health plan; or
- 33 (L) A Peace Corps Act health benefit plan.
- 34 (3) 'Eligible dependent' means a person who is entitled to medical benefits coverage
 35 under a group contract or group plan by reason of such person's dependency on or
 36 relationship to a group member.
- 37 (4) 'Group contract or group plan' is synonymous with the term 'contract or plan' and
 38 means:
- 39 (A) A group contract of the type issued by a nonprofit medical service corporation
 40 established under Chapter 18 of this title;
- 41 (B) A group contract of the type issued by a nonprofit hospital service corporation
 42 established under Chapter 19 of this title;
- 43 (C) A group contract of the type issued by a health care plan established under Chapter
 44 20 of this title;
- 45 (D) A group contract of the type issued by a health maintenance organization
 46 established under Chapter 21 of this title; or
- 47 (E) A group accident and sickness insurance policy or contract, as defined in Chapter
 48 30 of this title.
- 49 (5) 'Group member' means a person who has been a member of the group for at least six
 50 months and who is entitled to medical benefits coverage under a group contract or group
 51 plan and who is an insured, certificate holder, or subscriber under the contract or plan.
- 52 (6) 'Insurer' means an insurance company, health care corporation, nonprofit hospital
 53 service corporation, medical service nonprofit corporation, health care plan, or health
 54 maintenance organization.
- 55 (7) 'Qualifying eligible individual' means:
- 56 (A) A Georgia domiciliary, for whom, as of the date on which the individual seeks
 57 coverage under this Code section, the aggregate of the periods of creditable coverage
 58 is 18 months or more; and
- 59 (B) Who is not eligible for coverage under any of the following:
- 60 (i) A group health plan, including continuation rights under this Code section or the
 61 federal Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA);

62 (ii) Part A or Part B of Title XVIII of the federal Social Security Act; or
 63 (iii) The state plan under Title XIX of the federal Social Security Act or any
 64 successor program.

65 (a.1) Any group member or qualifying eligible individual who is an assistance eligible
 66 individual as provided by Section 3001 of Title III of the federal American Recovery and
 67 Reinvestment Act (P.L. 111-5), as amended, during the period permitted under such act
 68 whose coverage has been terminated and who has been continuously covered under the
 69 group contract or group plan, and under any contract or plan providing similar benefits that
 70 it replaces, for at least six months immediately prior to such termination, shall be entitled
 71 to have his or her coverage and the coverage of his or her eligible dependents continued
 72 under the contract or plan in accordance with paragraph (2) of subsection (c) of this Code
 73 section. Such coverage shall continue for the fractional policy month remaining, if any,
 74 at termination plus ~~nine~~ up to the maximum number of additional policy months specified
 75 in paragraph (2) of subsection (c) of this Code section upon payment of the premium to the
 76 insurer by cash, certified check, or money order, at the same rate for active group members
 77 set forth in the contract or plan, on a monthly basis in advance as such premium becomes
 78 due during this coverage period. An assistance eligible individual who is in a transition
 79 period as defined in Section 3001 of Title III of the federal American Recovery and
 80 Reinvestment Act (P.L. 111-5), as amended, shall be treated for purposes of any
 81 continuation of coverage provision as having timely paid such premium if such individual
 82 was covered under the continuation of coverage to which such premium relates for the
 83 period immediately preceding such transition period, if such individual remains eligible for
 84 such continuation of coverage, and if such individual pays the amount of such premium not
 85 later than 30 days after the date of provision of notice regarding eligibility for extended
 86 continuation of coverage. For the period that the assistance eligible individual is eligible
 87 for the premium reduction assistance ~~subsidy~~ as provided in Section 3001 of Title III of the
 88 federal American Recovery and Reinvestment Act (P.L. 111-5), as amended, such premium
 89 payment shall be calculated as 35 percent of the rate for active group members including
 90 any portion of the premium paid by a former employer or other person if such employer
 91 or other person no longer contributes premium payments for this coverage.

92 (a.2) The rights and benefits under this Code section attributable to Section 3001 of Title
 93 III of the federal American Recovery and Reinvestment Act (P.L. 111-5), as amended, shall
 94 expire when that act expires. Any extension of such benefits shall require an Act of the
 95 Georgia General Assembly. Under no circumstances shall the extended benefits for
 96 assistance eligible individuals become the responsibility of the State of Georgia or any
 97 insurer after ~~September 30, 2010~~ the expiration of the premium subsidy made available to

98 individuals pursuant to Section 3001 of Title III of the federal American Recovery and
 99 Reinvestment Act (P.L. 111-5), as amended.

100 (b) Each group contract or group plan delivered or issued for delivery in this state, other
 101 than a group accident and sickness insurance policy, contract, or plan issued in connection
 102 with an extension of credit, which provides hospital, surgical, or major medical coverage,
 103 or any combination of these coverages, on an expense incurred or service basis, excluding
 104 contracts and plans which provide benefits for specific diseases or accidental injuries only,
 105 shall provide that members and qualifying eligible individuals whose insurance under the
 106 group contract or plan would otherwise terminate shall be entitled to continue their
 107 hospital, surgical, and major medical insurance coverage under that group contract or plan
 108 for themselves and their eligible dependents.

109 (c)(1) Any group member or qualifying eligible individual whose coverage has been
 110 terminated and who has been continuously covered under the group contract or group
 111 plan, and under any contract or plan providing similar benefits which it replaces, for at
 112 least six months immediately prior to such termination, shall be entitled to have his or her
 113 coverage and the coverage of his or her eligible dependents continued under the contract
 114 or plan. Such coverage must continue for the fractional policy month remaining, if any,
 115 at termination plus three additional policy months, ~~except the period of continuation~~
 116 ~~coverage for assistance eligible individual in subsection (a.1) of this Code section, shall~~
 117 ~~be nine months~~, upon payment of the premium by cash, certified check, or money order,
 118 at the option of the employer, to the policyholder or employer, at the same rate for active
 119 group members set forth in the contract or plan, on a monthly basis in advance as such
 120 premium becomes due during this coverage period. Such premium payment must include
 121 any portion of the premium paid by a former employer or other person if such employer
 122 or other person no longer contributes premium payments for this coverage. At the end
 123 of such period, the group member shall have the same conversion rights that were
 124 available on the date of termination of coverage in accordance with the conversion
 125 privileges contained in the group contract or group plan.

126 (2) ~~A covered individual~~ Any group member or qualifying eligible individual who is an
 127 assistance eligible individual has a right to elect continuation of his or her coverage and
 128 the coverage of his or her dependents at any time between May 5, 2009, and 60 days after
 129 receiving notice from the employer's insurer of the right to participate in a ~~second election~~
 130 ~~period~~ for state continuation benefits under this Code section in accordance with Section
 131 3001 of Title III of the federal American Recovery and Reinvestment Act (P.L. 111-5),
 132 as amended, if:

133 (A) The individual was involuntarily terminated from employment ~~between September~~
 134 ~~1, 2008, and February 17, 2009, as defined~~ or otherwise experienced a loss of coverage

135 due to qualifying events specified in Section 3001 of Title III of the federal American
 136 Recovery and Reinvestment Act (P.L. 111-5), as amended;

137 (B) The individual was eligible for state continuation under this chapter at the time of
 138 termination;

139 (C) The individual continues to be eligible for state continuation benefits under this
 140 chapter, provided that the total period of continuous eligibility shall not exceed ~~nine~~ the
 141 number of policy months equal to the maximum premium reduction period specified
 142 in Section 3001 of Title III of the federal American Recovery and Reinvestment Act
 143 (P.L. 111-5), as amended, as measured from the month of the qualifying event making
 144 the individual an assistance eligible individual ~~or the date of the election as provided~~
 145 ~~in this paragraph, whichever is later;~~ and

146 (D) The individual or the employer of the individual contacts the insurer and informs
 147 the insurer that the individual wants to take advantage of ~~the second election period for~~
 148 state continuation coverage under the provisions of Section 3001 of Title III of the
 149 federal American Recovery and Reinvestment Act (P.L. 111-5), as amended.

150 (3) In addition to the group policy under which the group member was insured, the group
 151 member and any qualifying eligible individual shall, to the extent that such plan is
 152 currently offered under the group plans offered by the company, also be offered the
 153 option of continuation coverage through a high deductible health plan, or its actuarial
 154 equivalent, that is eligible for use with a health savings account under the applicable
 155 provisions of Section 223 of the Internal Revenue Code. Such high deductible health
 156 plans shall have premiums consistent with the underlying group plan of coverage rated
 157 relative to the standard or manual rates for the benefits provided.

158 ~~(4) Claims for a covered individual under continuation of coverage shall not be~~
 159 ~~considered in rating or rerating the group premiums for the group from which the~~
 160 ~~continuation of coverage is provided, except that the pooled experience for all of the~~
 161 ~~insurer's continuation of coverage claims for fully insured claims may impact all such~~
 162 ~~groups on an equal percentage basis.~~

163 (d)(1) A group member shall not be entitled to have coverage continued if: (A)
 164 termination of coverage occurred because the employment of the group member was
 165 terminated for cause; (B) termination of coverage occurred because the group member
 166 failed to pay any required contribution; or (C) any discontinued group coverage is
 167 immediately replaced by similar group coverage including coverage under a health
 168 benefits plan as defined in the federal Employee Retirement Income Security Act of
 169 1974, 29 U.S.C. Section 1001, et seq. Further, a group member shall not be entitled to
 170 have coverage continued if the group contract or group plan was terminated in its entirety
 171 or was terminated with respect to a class to which the group member belonged. This

172 subsection shall not affect conversion rights available to a qualifying eligible individual
173 under any contract or plan.

174 (2) A qualifying eligible individual shall not be entitled to have coverage continued if
175 the most recent creditable coverage within the coverage period was terminated based on
176 one of the following factors: (A) failure of the qualifying eligible individual to pay
177 premiums or contributions in accordance with the terms of the health insurance coverage
178 or failure of the issuer to receive timely premium payments; (B) the qualifying eligible
179 individual has performed an act or practice that constitutes fraud or made an intentional
180 misrepresentation of material fact under the terms of coverage; or (C) any discontinued
181 group coverage is immediately replaced by similar group coverage including coverage
182 under a health benefits plan as defined in the federal Employee Retirement Income
183 Security Act of 1974, 29 U.S.C. Section 1001, et seq. This subsection shall not affect
184 conversion rights available to a group member under any contract or plan.

185 (e) If the group contract or group plan terminates while any group member or qualifying
186 eligible individual is covered or whose coverage is being continued, the group
187 administrator, as prescribed by the insurer, must notify each such group member or
188 qualifying eligible individual that he or she must exercise his or her conversion rights
189 within:

190 (1) Thirty days of such notice for group members who are not qualifying eligible
191 individuals; or

192 (2) Sixty-three days of such notice for qualifying eligible individuals.

193 (f) Every group contract or group plan, other than a group accident and sickness insurance
194 policy, contract, or plan issued in connection with an extension of credit, which provides
195 hospital, surgical, or major medical expense insurance, or any combination of these
196 coverages, on an expense incurred or service basis, excluding policies which provide
197 benefits for specific diseases or for accidental injuries only, shall contain a conversion
198 privilege provision.

199 (g) Eligibility for the converted policies or contracts shall be as follows:

200 (1) Any qualifying eligible individual whose insurance and its corresponding eligibility
201 under the group policy, including any continuation available, elected, and exhausted
202 under this Code section or the federal Consolidated Omnibus Budget Reconciliation Act
203 of 1986 (COBRA), has been terminated for any reason, including failure of the employer
204 to pay premiums to the insurer, other than fraud or failure of the qualifying eligible
205 individual to pay a required premium contribution to the employer or, if so required, to
206 the insurer directly and who has at least 18 months of creditable coverage immediately
207 prior to termination shall be entitled, without evidence of insurability, to convert to
208 individual or group based coverage covering such qualifying eligible individual and any

209 eligible dependents who were covered under the qualifying eligible individual's coverage
210 under the group contract or group plan. Such conversion coverage must be, at the option
211 of the individual, retroactive to the date of termination of the group coverage or the date
212 on which continuation or COBRA coverage ended, whichever is later. The insurer must
213 offer qualifying eligible individuals at least two distinct conversion options from which
214 to choose. One such choice of coverage shall be comparable to comprehensive health
215 insurance coverage offered in the individual market in this state or comparable to a
216 standard option of coverage available under the group or individual health insurance laws
217 of this state. The other choice may be more limited in nature but must also qualify as
218 creditable coverage. Each coverage shall be filed, together with applicable rates, for
219 approval by the Commissioner. Such choices shall be known as the 'Enhanced
220 Conversion Options';

221 (2) Premiums for the enhanced conversion options for all qualifying eligible individuals
222 shall be determined in accordance with the following provisions:

223 (A) Solely for purposes of this subsection, the claims experience produced by all
224 groups covered under comprehensive major medical or hospitalization accident and
225 sickness insurance for each insurer shall be fully pooled to determine the group pool
226 rate. Except to the extent that the claims experience of an individual group affects the
227 overall experience of the group pool, the claims experience produced by any individual
228 group of each insurer shall not be used in any manner for enhanced conversion policy
229 rating purposes;

230 (B) Each insurer's group pool shall consist of each insurer's total claims experience
231 produced by all groups in this state, regardless of the marketing mechanism or
232 distribution system utilized in the sale of the group insurance from which the qualifying
233 eligible individual is converting. The pool shall include the experience generated under
234 any medical expense insurance coverage offered under separate group contracts and
235 contracts issued to trusts, multiple employer trusts, or association groups or trusts,
236 including trusts or arrangements providing group or group-type coverage issued to a
237 trust or association or to any other group policyholder where such group or group-type
238 contract provides coverage, primarily or incidentally, through contracts issued or issued
239 for delivery in this state or provided by solicitation and sale to Georgia residents
240 through an out-of-state multiple employer trust or arrangement; and any other
241 group-type coverage which is determined to be a group shall also be included in the
242 pool for enhanced conversion policy rating purposes; and

243 (C) Any other factors deemed relevant by the Commissioner may be considered in
244 determination of each enhanced conversion policy pool rate so long as it does not have
245 the effect of lessening the risk-spreading characteristic of the pooling requirement.

246 Duration since issue and tier factors may not be considered in conversion policy rating.
247 Notwithstanding subparagraph (A) of this paragraph, the total premium calculated for
248 all enhanced conversion policies may deviate from the group pool rate by not more than
249 plus or minus 50 percent based upon the experience generated under the pool of
250 enhanced conversion policies so long as rates do not deviate for similarly situated
251 individuals covered through the pool of enhanced conversion policies;

252 (3) Any group member who is not a qualifying eligible individual and whose insurance
253 under the group policy has been terminated for any reason, including failure of the
254 employer to pay premiums to the insurer, other than eligibility for medicare (reaching a
255 limiting age for coverage under the group policy) or failure of the group member to pay
256 a required premium contribution, and who has been continuously covered under the
257 group contract or group plan, and under any contract or plan providing similar benefits
258 which it replaces, for at least six months immediately prior to termination shall be
259 entitled, without evidence of insurability, to convert to individual or group coverage
260 covering such group member and any eligible dependents who were covered under the
261 group member's coverage under the group contract or group plan. Such conversion
262 coverage must be, at the option of the individual, retroactive to the date of termination
263 of the group coverage or the date on which continuation or COBRA coverage ended,
264 whichever is later. The premium of the basic converted policy shall be determined in
265 accordance with the insurer's table of premium rates applicable to the age and
266 classification of risks of each person to be covered under that policy and to the type and
267 amount of coverage provided. This form of conversion coverage shall be known as the
268 'Basic Conversion Option'; and

269 (4) Nothing in this Code section shall be construed to prevent an insurer from offering
270 additional options to qualifying eligible individuals or group members.

271 (h) Each group certificate issued to each group member or qualifying eligible individual,
272 in addition to setting forth any conversion rights, shall set forth the continuation right in a
273 separate provision bearing its own caption. The provisions shall clearly set forth a full
274 description of the continuation and conversion rights available, including all requirements,
275 limitations, and exceptions, the premium required, and the time of payment of all premiums
276 due during the period of continuation or conversion.

277 (i) This Code section shall not apply to limited benefit insurance policies. For the
278 purposes of this Code section, the term 'limited benefit insurance' means accident and
279 sickness insurance designed, advertised, and marketed to supplement major medical
280 insurance. The term limited benefit insurance includes accident only, CHAMPUS
281 supplement, dental, disability income, fixed indemnity, long-term care, medicare
282 supplement, specified disease, vision, and any other accident and sickness insurance other

283 than basic hospital expense, basic medical-surgical expense, and comprehensive major
284 medical insurance coverage.

285 (j) The Commissioner shall adopt such rules and regulations as he or she deems necessary
286 for the administration of this Code section. Such rules and regulations may prescribe
287 various conversion plans, including minimum conversion standards and minimum benefits,
288 but not requiring benefits in excess of those provided under the group contract or group
289 plan from which conversion is made, scope of coverage, preexisting limitations, optional
290 coverages, reductions, notices to covered persons, and such other requirements as the
291 Commissioner deems necessary for the protection of the citizens of this state.

292 (k)(1) Except as provided in paragraph (2) of this subsection, this Code section shall
293 apply to all group plans and group contracts delivered or issued for delivery in this state
294 on or after July 1, 2009, and to group plans and group contracts then in effect on the first
295 anniversary date occurring on or after July 1, 2009.

296 (2) The provisions of paragraphs (1), (2), and (3) of subsection (c) of this Code section
297 shall apply to all group plans and group contracts in effect on September 1, 2008.

298 (l) As soon as practicable, but no later than June 4, 2009, the Commissioner shall develop
299 and direct insurers to issue notices for assistance eligible individuals regarding availability
300 of expanded eligibility, ~~second election~~, and continuation coverage assistance to be sent to
301 the last known addresses of such assistance eligible individuals.

302 (m) Nothing in this chapter shall imply that individuals entitled to continuation coverage
303 who are not assistance eligible individuals shall receive benefits beyond the period of
304 coverage provided in paragraph (1) of subsection (c) of this Code section or that assistance
305 eligible individuals are entitled to any continuation benefit period beyond what is provided
306 by Section 3001 of Title III of the federal American Recovery and Reinvestment Act of
307 2009 or extensions to that Act which are enacted on and after May 5, 2009."

308 **SECTION 2.**

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

311 **SECTION 3.**

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