

Senate Bill 407

By: Senators Hill of the 32nd, Rogers of the 21st, Thomas of the 54th, Seabaugh of the 28th, Hawkins of the 49th and others

AS PASSED SENATE

**A BILL TO BE ENTITLED
AN ACT**

1 To amend Chapter 29A of Title 33 of the Official Code of Georgia Annotated, relating to
2 individual health insurance coverage, so as to provide for legislative intent; to provide
3 definitions; to authorize the Commissioner of Insurance to authorize insurers to offer
4 individual medical and surgical health insurance policies in Georgia that have been approved
5 for issuance in selected other states; to authorize the Commissioner of Insurance to initiate
6 a multi-state consortium for the establishment of reciprocity agreements allowing the sale of
7 individual medical and surgical health insurance policies among the participating states as
8 a single entity; to provide for minimum standards for such policies; to provide for certain
9 notices; to provide for examinations of such insurers; to authorize the Commissioner of
10 Insurance to adopt rules and regulations; to provide for related matters; to repeal conflicting
11 laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 **SECTION 1.**

14 Chapter 29A of Title 33 of the Official Code of Georgia Annotated, relating to individual
15 health insurance coverage, is amended by adding a new article to read as follows:

16 "ARTICLE 3

17 33-29A-40.

18 The General Assembly recognizes the high number of uninsureds in the state and the need
19 of individuals seeking medical and surgical health insurance coverage in this state to have
20 the opportunity to choose among competitive medical and surgical health insurance plans
21 that are affordable and flexible. Therefore, the General Assembly seeks to increase the
22 competitive availability of medical and surgical health insurance coverage by allowing
23 insurers authorized to engage in the business of insurance in this state who are also
24 authorized to engage in the business of insurance in selected other states to issue individual

medical and surgical health policies in Georgia based upon their policy approval in the other selected states. In addition, the General Assembly seeks to initiate cooperation of like-minded states to create a multi-state consortium with reciprocity agreements for approval; offer; sale; rating, including medical underwriting; renewal; and issuance of individual medical and surgical health insurance policies. Under the current state-by-state approval process, it may take years before an insurer introduces a new lower cost product in Georgia. By creating a consortium of states with reciprocity agreements, the larger population of several states with a single approval for sale in multiple states will be attractive to insurers to develop and rapidly introduce lower cost effective products to Georgians.

33-29A-41.

As used in this article, the term:

(1) 'Comprehensive individual medical and surgical insurance policy' shall have the same meaning as 'accident and sickness insurance policy' as that term is defined in Code Section 33-29-1 including, at a minimum, comprehensive major medical coverage for medical and surgical benefits.

(2) 'High deductible health plan' means accident and sickness insurance plans sold or maintained under the applicable provisions of Section 223 of the Internal Revenue Code.

(3) 'Primary state' means the state designated by the issuer as the state whose covered laws shall govern the health insurance issuer in the sale of such coverage.

(4) 'Secondary state' means any state that is not the primary state.

33-29A-42.

In accordance with the provisions of this article, the Commissioner shall identify at least five states with insurance laws sufficiently consistent with Georgia laws and regulations. For those states so identified, the Commissioner shall approve for sale in Georgia selected comprehensive individual medical and surgical insurance policies that have been approved for issuance in those other states where the insurer is authorized to engage in the business of insurance so long as the insurer is also authorized to engage in the business of insurance in this state and provided that any such policy meets the requirements set forth in this article. High deductible health plans that meet national standards for comprehensive medical and surgical coverage should be among the policies automatically approved in Georgia if approved in the states identified as acceptable by the Commissioner.

33-29A-43.

(a) Any insurer selling an insurance policy pursuant to this article, and any plan approved under this article, shall satisfy actuarial standards and insurer solvency requirements set forth by the National Association of Insurance Commissioners (NAIC) and adopted by regulation promulgated by the Commissioner or as otherwise prescribed by regulation promulgated by the Commissioner so long as any such regulation is not inconsistent with such NAIC standards.

(b) Any policy sold in Georgia under the coverage and administrative laws and regulations of another state that are not covered by a guarantee association or similar association of that state will be protected under the Georgia Life and Health Insurance Guaranty Association under Chapter 38 of this title.

(c) The Commissioner shall have the authority to determine whether an insurer satisfies the standards required by this Code section and may not approve a policy or plan that he or she finds lacking in compliance with this Code section. The Commissioner shall have the authority to determine whether the policies sold pursuant to this article continue to satisfy the requirements set forth in this Code section in the same manner as he or she does with an individual accident and sickness insurance policy approved pursuant to this title. The Commissioner shall have the authority to suspend or revoke new sales of out-of-state policies if the laws and regulations of those states are determined to substantially harm Georgians. Upon such suspension or revocation, the issuers of the out-of-state policies shall be required to notify in writing all affected Georgia policyholders of such determination by the Commissioner.

33-29A-44.

(a) Each written application for participation in an out-of-state health benefit plan shall contain the following language in boldface type at the beginning of the document:

'This policy is primarily governed by the laws of (insert state where the master policy is filed); therefore, all of the rating laws applicable to policies filed in this state do not apply to this policy, which may result in increases in your premium at renewal that would not be permissible in a Georgia-approved policy. Any purchase of individual health insurance should be considered carefully since future medical conditions may make it impossible to qualify for another individual health policy. FOR INFORMATION CONCERNING INDIVIDUAL HEALTH COVERAGE UNDER A GEORGIA-APPROVED POLICY, PLEASE CONSULT YOUR INSURANCE AGENT OR THE INSURANCE DEPARTMENT.'

(b) Each out-of-state health benefit policy shall contain the following language in boldface type at the beginning of the document:

'The benefits of this policy providing your coverage are governed primarily by the laws of a state OTHER than Georgia. While this health benefit plan may provide you a more affordable health insurance policy, it may also provide fewer health benefits than those normally included as state-mandated health benefits in policies in Georgia. PLEASE CONSULT YOUR INSURANCE AGENT TO DETERMINE WHICH STATE-MANDATED HEALTH BENEFITS ARE EXCLUDED UNDER THIS POLICY.'

33-29A-45.

(a) The Commissioner shall take the lead in creating a consortium of like-minded states in establishing rules of reciprocity for the approval of comprehensive individual medical and surgical health insurance policies among the participating states.

(b) At a minimum, the rules of approval reciprocity shall include terms and conditions to protect Georgians similar to the following:

(1) An issuer, with respect to a particular policy, may only designate one state as its primary state with respect to all such coverage it offers. Such an issuer may not change the designated primary state with respect to individual health insurance coverage once the policy is issued; provided, however, that such a change may be made upon renewal of the policy with approval of the policyholder. With respect to such designated primary state, the issuer must be licensed and approved to be doing business in that state;

(2) In the case of a health insurance issuer that is selling a policy in, or to a resident of, a secondary state, the issuer must be licensed and approved to be doing business in that secondary state; and

(3) The covered laws of the primary state shall apply to individual health insurance coverage offered by a health insurance issuer in the primary state and policies sold in any secondary state. The coverage and issuer shall comply with the terms and conditions with respect to the offering of coverage in Georgia.

(c) Except as provided in this Code section, a health insurance issuer with respect to its offer; sale; rating, including medical underwriting; renewal; and issuance of comprehensive individual medical and surgical health insurance coverage in Georgia is exempt from any covered laws of Georgia as the secondary state and any rules, regulations, agreements, or orders sought or issued by Georgia under or related to such covered laws to the extent that such laws would:

(1) Make unlawful or regulate, directly or indirectly, the operation of the health insurance issuer operating in Georgia as a secondary state, except that any Georgian may require such an issuer:

(A) To pay on a nondiscriminatory basis applicable premium and other taxes, including high risk pool assessments, which are levied on insurers and surplus lines insurers, brokers, or policyholders under the laws of the State of Georgia;

(B) To register with and designate the Commissioner as its agent solely for the purpose of receiving service of legal documents or process;

(C) To submit to an examination of its financial condition by a state insurance commissioner in any state in which the issuer is doing business to determine the issuer's financial condition, if the state insurance commissioner of the primary state has not done an examination within the period recommended by the National Association of Insurance Commissioners; and any such examination is conducted in accordance with the examiners' handbook of the National Association of Insurance Commissioners and is coordinated to avoid unjustified duplication and unjustified repetition;

(D) To comply with a lawful order issued in a delinquency proceeding commenced by the Commissioner if there has been a finding of financial impairment under subparagraph or in a voluntary dissolution proceeding;

(E) To comply with an injunction issued by a court of competent jurisdiction, upon a petition by the Commissioner alleging that the issuer is in hazardous financial condition;

(F) To participate, on a nondiscriminatory basis, in any insurance insolvency guaranty association or similar association to which a health insurance issuer in the state is required to belong;

(G) To comply with any state law regarding fraud and abuse, except that if the state seeks an injunction regarding the conduct described in this subparagraph, such injunction must be obtained from a court of competent jurisdiction;

(H) To comply with any state law regarding unfair claims settlement practices; and

(I) To comply with the applicable requirements for independent review with respect to coverage offered in the state;

(2) Require any individual health insurance coverage issued by the issuer to be countersigned by an insurance agent or broker residing in that secondary state; or

(3) Otherwise discriminate against the issuer issuing insurance in both the primary state and in any secondary state.

(d) A health insurance issuer shall provide the following notice, in 12-point bold type, in any insurance coverage offered in Georgia by such a health insurance issuer and at any renewal of the policy, with the blank spaces being appropriately filled with the name of the health insurance issuer, the name of the primary state, and the name of the secondary state, respectively, for the coverage concerned:

'Notice: This policy is issued by [insert state name] and is governed by the laws and regulations of the State of [insert state name], and it has met all the laws of that state as determined by that state's Department of Insurance. This policy may be less expensive than others because it is NOT subject to all of the insurance laws and regulations of Georgia, including coverage of some services or benefits mandated by the law of the State of Georgia. Additionally, this policy is NOT subject to all of the consumer protection laws or restrictions on rate changes of the State of Georgia. As with all insurance products, before purchasing this policy, you should carefully review the policy and determine what health care services the policy covers and what benefits it provides, including any exclusions, limitations, or conditions for such services or benefits.'

(e) A health insurance issuer that provides individual health insurance coverage in a primary or secondary state shall not upon renewal:

(1) Move or reclassify the individual insured under the health insurance coverage from the class such individual is in at the time of issue of the contract based on the health-status related factors of the individual;

(2) Increase the premiums assessed the individual for such coverage based on a health status-related factor or change of a health status-related factors not defined at the issuance of the policy; or

(3) Increase premiums assessed the individual for past or prospective claims experience of the insured individual.

(f) Nothing in this Code section shall be construed to prohibit a health insurance issuer:

(1) From terminating or discontinuing coverage or a class of coverage in accordance with the laws of the primary state;

(2) From raising premium rates for all policy holders within a class based on claims experience in accordance with the laws of the primary state;

(3) From changing premiums or offering discounted premiums to individuals who engage in wellness activities at intervals prescribed by the issuer, if such premium changes or incentives in accordance with the laws of the primary state:

(A) Are disclosed to the consumer in the insurance contract;

(B) Are based on specific wellness activities that are not applicable to all individuals; and

(C) Are not obtainable by all individuals to whom coverage is offered;

(4) From reinstating lapsed coverage; or

(5) From retroactively adjusting the rates charged an insured individual if the initial rates were set based on material misrepresentation by the individual at the time of issue.

(g) A health insurance issuer may not offer for sale individual health insurance coverage in Georgia unless that coverage is currently offered for sale in the primary state.

(h) A person acting, or offering to act, as an agent or broker for a health insurance issuer with respect to the offering of individual health insurance coverage must obtain a license from Georgia, with commissions or other compensation subject to the provisions of the laws of Georgia, except that Georgia may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

(i) Each health insurance issuer issuing individual health insurance coverage in both primary and secondary states shall submit to the insurance commissioner of each state in which it intends to offer such coverage before it may offer individual health insurance coverage in such state:

(1) A copy of the plan of operation or feasibility study or any similar statement of the policy being offered and its coverage which shall include the name of its primary state and its principal place of business;

(2) Written notice of any change in its designation of its primary state;

(3) Written notice from the issuer of the issuer's compliance with all the laws of the primary state; and

(4) To the insurance commissioner of each secondary state in which it offers individual health insurance coverage, a copy of the issuer's quarterly financial statement submitted to the primary state, which statement shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries; or a qualified loss reserve specialist.

(j) Nothing in this Code section shall be construed to affect the authority of any federal or state court to enjoin:

(1) The solicitation or sale of individual health insurance coverage by a health insurance issuer to any person or group who is not eligible for such insurance; or

(2) The solicitation or sale of individual health insurance coverage that violates the requirements of the law of a secondary state.

(k) Nothing in this Code section shall be construed to affect the authority of any state to enjoin conduct in violation of that state's laws. All policies authorized and approved in accordance with this chapter shall submit to the jurisdiction and venue of Georgia.

33-29A-46.

(a) If a policy holder exhausts the primary state's policy holder's rights and privileges, then all claims under health benefit plans sold to Georgia residents by out-of-state companies shall be subject to the provisions of Article 2 of Chapter 20A of this title, and no out-of-state company seeking to offer health benefit plans in this state shall receive

236 approval to offer health benefit plans in this state unless such company agrees to comply
237 with this Code section.

238 (b) Out-of-state companies offering health benefit plans under this article shall be subject
239 to regulation by the Commissioner with regard to enforcement of the contractual benefits
240 under the health benefit plan, including the requirements regarding prompt payment of
241 claims for benefits pursuant to Code Section 33-24-59.5.

242 (c) Nothing in this article shall be construed to limit the ability of the Commissioner to
243 establish requirements for consumer protection beyond those otherwise available to the
244 policy holder in the primary state.

245 33-29A-47.

246 (a) The Commissioner shall adopt rules and regulations necessary to implement this
247 article.

248 (b) Any dispute resolution mechanism or provision for notice and hearing in this title shall
249 apply to insurers issuing and delivering plans pursuant to this article."

250 **SECTION 2.**

251 Any insurance policy for health care sold in Georgia under the provisions of this statute
252 shall comply with all mandates of coverage required by Georgia Law, except service
253 provided by athletic trainer pursuant to 33-24-27.2.

254 **SECTION 3.**

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