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INSURANCE Fraud: Provide for Increased Penalties for Felony Insurance Fraud. Rules and Regulations: Change Certain Provisions Relating to Rules and Regulations; Change Certain Provisions Relating to Required Insurance Policy Provisions. Uninsured Motorists: Change Certain Provisions Relating to Service of Process Upon Insurance Companies that Issue Uninsured Motorist Policies; Provide for an Extended Discovery Period. Health Insurance Coverage, Availability, and Portability: Change Certain Provisions Relating to Group Accident and Sickness Contracts and Conversion Privileges and

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INSURANCE

Fraud: Provide for Increased Penalties for Felony Insurance Fraud. Rules and Regulations: Change Certain Provisions Relating to Rules and Regulations; Change Certain Provisions Relating to Required Insurance Policy Provisions. Uninsured Motorists: Change Certain Provisions Relating to Service of Process Upon Insurance Companies that Issued Uninsured Motorist Policies; Provide for an Extended Discovery Period. Health Insurance Coverage, Availability, and Portability: Change Certain Provisions Relating to Group Accident and Sickness Contracts and Conversion Privileges and Continuation Right Provisions; Change Certain Provisions Relating to Health Insurance Policies for Coverage of Newly Born or Adopted Children; Change Certain Provisions Relating to Definition of Group Accident and Sickness Insurance and Association; Change Certain Provisions Relating to Required Insurance Policy Provisions; Change Certain Provisions Relating to Rules and Regulations Pertaining to Individual Health Insurance Coverage Availability and Assignment Systems and Compensation to Licensed Insurance Agents. Obstetrician-Gynecologist Provider Access: Change Certain Provisions Relating to Women's Access to Health Care and Health Insurance and Required Provisions Disclosing an Insured's Right to Direct Access to Obstetricians and Gynecologists. Automobile Insurance Medical Payment Coverage: Change Certain Provisions Relating to Filing of Rates and Forms and Optional Coverage

CODE SECTIONS: O.C.G.A. §§ 33-1-9, 33-2-9, 33-7-11, 33-24-21.1, -22, -59, 33-29-3, 33-29A-8, 33-30-1, -15, 33-34-3.1 (amended)

BILL NUMBER: HB 233

ACT NUMBER: 890

GEORGIA LAWS: 1998 Ga. Laws 1064

SUMMARY: The Act amends eleven Code sections relating to insurance. The Act classifies as "felonies" all acts that meet the current definition of insurance fraud and increases the maximum penalty for insurance fraud to ten years imprisonment and/or a \$10,000 fine. The Act prohibits the Insurance

Commissioner and the Office of the Insurance Commissioner from adopting or proposing rules relating to the sale of gasoline to the public, unless the rules require that a gas station be supervised by an on-site employee. The Act changes provisions relating to service of process on uninsured motorist carriers; the injured party need only serve the carrier if the party has a reasonable belief that the other party's vehicle is uninsured. The Act also relaxes the statute of limitations for filing a claim against uninsured motorist carriers in certain circumstances, and provides for a minimum 120-day discovery period for the uninsured motorist carrier after service. The Act brings Code sections relating to conversion provisions and continuation rights under group accident and sickness contracts into compliance with the Kennedy-Kassenbaum legislation recently enacted by the United States Congress. The Act amends provisions relating to effective dates for health insurance for newly born children and adopted children to include the date an adopted child is placed for adoption. The Act redesignates what was formerly termed an "association" in the definitions relating to accident and sickness insurance as a "true association." The Act increases time limitations and requirements relating to the continuation of health coverage, preexisting conditions, and procedures from thirty days to thirty-one days. The Act changes the requirements an accident and sickness insurance carrier must meet to void a policy or deny coverage to an insured. The Act eliminates the need for licensed agents to adhere to the certificate of authority requirements for applications

for the Georgia Health Insurance Assignment System and the Georgia Health Benefits Assignment System. The Act eliminates notice provisions relating to women's healthcare and direct access to obstetricians and gynecologists when the policy or plan in question does not require referral as a prerequisite to treatment by an obstetrician or gynecologist. Finally, the Act mandates medical payments coverage rate filing requirements for auto insurers and prohibits the Commissioner from requiring agents to offer or quote medical payments coverage.

EFFECTIVE DATE: July 1, 1998

History

The Act represents a conglomeration of once-separate insurance bills.¹ As introduced, HB 233 only addressed insurance fraud.² When the Act passed, the insurance fraud provision appeared in Section 1, but the Georgia General Assembly had also added twelve other sections.³ Many different factors motivated the General Assembly to amend the various Code sections.⁴

Section 1 relates to insurance fraud.⁵ According to the House Insurance Committee Chairman, Representative Jimmy Lord of the 121st District, fraud accounts for approximately thirty percent of the indemnity dollars paid by insurance companies annually.⁶ Before the Act, Georgia law classified certain insurance fraud offenses as misdemeanors.⁷ The Act redesignates all insurance fraud offenses as

1. See Telephone Interview with Rep. Jimmy Lord, House District No. 121 (June 1, 1998) [hereinafter Lord Interview]; see also Letter from Rep. Keith Heard, House District No. 89, regarding HB 233 (July 10, 1998) (available in Georgia State University College of Law Library). Representative Heard's letter states that, *inter alia*, HB 233 includes what were formerly Senate bills 436 and 665. See *id.* When the Georgia General Assembly passed HB 233, section 3 contained SB 436, and sections 4 through 10 contained SB 665. See *id.*

2. See HB 233, as introduced, 1997 Ga. Gen. Assem.

3. Compare *id.* with 1998 Ga. Laws 1064.

4. See Lord Interview, *supra* note 1.

5. See 1998 Ga. Laws 1064, § 1, at 1065 (codified at O.C.G.A. § 33-1-9 (Supp. 1998)).

6. See Lord Interview, *supra* note 1.

7. See 1997 Ga. Laws 1296, § 1, at 1297 (formerly found at O.C.G.A. § 33-1-9 (Supp.

felonies, regardless of the dollar amount, in hopes of deterring fraud and, consequently, reducing the payment of fraudulent claims.⁸

The General Assembly enacted Section 2 based on public safety concerns.⁹ Specifically, Section 2 arose out of the concern that certain groups might try to convince the Insurance Commissioner to promulgate rules or regulations eliminating the need for on-site employees at gas stations.¹⁰ Because on-site gas station employees reduce the possibility of damage by fire or explosion, the General Assembly thought it necessary to quell any attempts to eliminate this safety measure.¹¹

Section 3 contains one of the Act's more important provisions and relates to service of process and discovery in actions against uninsured motorist carriers.¹² Under prior law, a party who sought to recover damages from an uninsured motorist carrier had to serve the carrier with "a copy of [the] action and all pleadings thereto . . . as prescribed by law."¹³ In tort actions, the law required parties to serve their uninsured motorist carriers within the two-year statute of limitations regardless of whether the party initially believed that the other driver lacked adequate liability insurance.¹⁴

This requirement created two significant problems. First, in an abundance of caution, plaintiffs' attorneys would serve uninsured motorist carriers in practically all auto accident cases—even in those cases when the probability of utilizing uninsured motorist coverage appeared low.¹⁵ Consequently, "[t]he additional service cost to . . .

1997)).

8. See O.C.G.A. § 33-1-9 (Supp. 1998); Lord Interview, *supra* note 1.

9. See Lord Interview, *supra* note 1.

10. See *id.*

11. See *id.*

12. See 1998 Ga. Laws 1064, § 3, at 1065-67 (codified at O.C.G.A. § 33-7-11(d) (Supp. 1998)).

13. 1975 Ga. Laws 1221 (formerly found at O.C.G.A. § 33-7-11(d) (Supp. 1997)).

14. See *Stout v. Cincinnati Ins. Co.*, 226 Ga. App. 220, 486 S.E.2d 195 (1997); Interview with Robert Potter, Partner at Swift, Currie, McGhee & Hiers, L.L.P. (June 9, 1998) [hereinafter Potter Interview].

15. See *Stout*, 226 Ga. App. at 221, 486 S.E.2d at 196 (noting that the effect of *Bohannon v. J.C. Penney Casualty Insurance Co.*, 259 Ga. 162, 377 S.E.2d 853 (1989) was "to require every plaintiff, including those who never make an uninsured motorist claim, to serve their uninsured motorist carrier for their protection, even when the plaintiff cannot show that defendant meets the statutory definition of an uninsured motorist."); Potter Interview, *supra* note 14.

plaintiffs . . . and the expense to the uninsured motorist carriers” resulted in “higher insurance premiums for all Georgia drivers.”¹⁶

Second, in some cases, the statute of limitations could run before the tortfeasor became uninsured or before the plaintiff had cause to believe that the tortfeasor lacked adequate insurance.¹⁷ In these circumstances, the former Code sections simply left injured plaintiffs without any means to recover damages, notwithstanding the fact that they had purchased insurance to cover these situations.¹⁸ According to the Georgia Court of Appeals, “fact situations such as this cr[ie]d] out for legislative action.”¹⁹ Accordingly, the Georgia General Assembly “formulate[d] an exception [that] . . . allow[s] a plaintiff to serve process within a reasonable time after it is legally determined that the negligent motorist is uninsured.”²⁰

Federal legislation fueled the changes embodied in Sections 4, 9, and 10.²¹ Indeed, the General Assembly amended Code sections 33-24-21.1, 33-30-1 and -15 to comply with the Kennedy-Kassenbaum Bill, also known as the “Health Insurance Portability and Accountability Act of 1996” (HIPAA).²² HIPAA’s primary purpose is “to protect health insurance coverage for individuals” by guaranteeing that workers can change jobs without losing health coverage and by prohibiting the denial of coverage based on preexisting conditions and the like.²³ The changes to these Code sections are relatively minor and reflect the refinement of amendments made in 1997 to synchronize Georgia’s law with HIPAA.²⁴

16. *Stout*, 226 Ga. App. at 221, 486 S.E.2d at 196.

17. *See id.*; *Bohannon*, 259 Ga. at 163, 377 S.E.2d at 853.

18. *See Stout*, 226 Ga. App. at 221, 486 S.E.2d at 196.

19. *Id.* (quotations omitted) (quoting *Reid v. U.S. Fidelity & Cas. Co.*, 223 Ga. App 204, 477 S.E.2d 369 (1996)).

20. *Bohannon*, 259 Ga. at 163, 377 S.E.2d at 853.

21. *See* Lord Interview, *supra* note 1.

22. *See id.*; *see also* 1997 Ga. Laws 1462, § 1 (providing that Act No. 446, amending Code sections 33-2-9, 33-24-21.1, 33-29-21, 33-30-1, 33-30-12, and 33-30-15, and creating Code sections 33-29-21 and 33-30-1.1 and chapter 29A of the Code, is “intended to comply with the requirements of the federal Health Insurance Portability and Accountability Act of 1996”). *See generally* Kathleen E. Kienitz, *The Hidden Dagger of the 1996 Health Care Reform Bill: Criminal Penalties for Transferring Assets to Qualify for Medicaid*, 12 M.E. B.J. 32 (1997) (discussing Kennedy-Kassenbaum Healthcare Reform Act).

23. Kienitz, *supra* note 22, at 32.

24. *See* 1997 Ga. Laws 1462, § 1 (noting that the Code sections were amended to comply with the Health Insurance Portability and Accountability Act of 1996).

The need for clarification provided the impetus for Section 6.²⁵ The unamended version of Code section 33-24-59²⁶ required all health insurers and plans to disclose their respective policies on women's rights to direct access to obstetricians and gynecologists.²⁷ In plans that did not prohibit women from going directly to an obstetrician or gynecologist, the prior law created an unnecessary burden for providers.²⁸ The amended Code section relieves these providers of the notice requirement, but preserves the notice provision for plans that require women to obtain referrals to obstetricians and gynecologists.²⁹

Section 7 reflects a balance of competing concerns between the insurance industry and consumer groups.³⁰ Indeed, the Act amends Code section 33-29-3 in a manner that reflects the insurance industry's concerns about fraud, while creating additional requirements that an insurer must fulfill before it can void a policy or deny a claim based on misstatements during the application process.³¹ According to Senator Robert Brown of the 26th District, who sits on the Senate Insurance and Labor Committee, a large portion of the population has difficulty reading and comprehending insurance policies.³² Concern for these individuals is at least part of the reason behind the heightened requirements insurance companies must meet under the Act before they can void a policy or deny a claim based on an applicant's misrepresentation.³³ The changes to Code section 33-29-3 also reflect concerns about insurance companies voiding policies or denying claims when the insurance company's agent—not the policyholder—made or encouraged the misrepresentation in order to sell a policy his or her company might not otherwise underwrite.³⁴

25. See Lord Interview, *supra* note 1.

26. Pursuant to Code section 28-9-5, enacted in 1996, Code section 33-24-58 was redesignated as Code section § 33-24-59.

27. See 1996 Ga. Laws 703, § 2 (formerly found at O.C.G.A. § 33-24-59 (Supp. 1997)); *supra* note 26.

28. See Lord Interview, *supra* note 1; 1996 Ga. Laws 703, § 2 (formerly found at O.C.G.A. § 33-24-59 (Supp. 1997)); *supra* note 26.

29. See O.C.G.A. § 33-24-59(a)(2) (Supp. 1998); Lord Interview, *supra* note 1.

30. See 1998 Ga. Laws 1064, § 7, at 1074 (codified at O.C.G.A. § 33-29-3 (Supp. 1998)); Telephone Interview with Sen. Robert Brown, Senate District No. 26 (June 2, 1998) [hereinafter Brown Interview].

31. See O.C.G.A. § 33-29-3 (Supp. 1998); Brown Interview, *supra* note 30.

32. See Brown Interview, *supra* note 30.

33. See *id.*

34. See *id.*

Finally, section 11 of the Act amends Code section 33-34-3.1.³⁵ The Department of Insurance (DOI) proposed a measure that would require automobile insurers to issue medical payments coverage on every private passenger automobile policy sold.³⁶ This amendment reflects the General Assembly's opposition to that proposal and effectively prohibits the DOI from promulgating any rule or regulation that requires the issuance of medical payments coverage.³⁷

HB 233

Introduction

Representative Keith Heard of the 89th District introduced HB 233 for the first time on January 27, 1997.³⁸ As introduced, HB 233 addressed only Code section 33-1-9, relating to insurance fraud.³⁹ The bill passed by substitute in both the House and the Senate during the 1997 General Assembly.⁴⁰ However, the House refused to concur with the Senate amendments, so the bill proceeded to Conference Committee where it remained until the 1998 legislative session.⁴¹ In 1998, the General Assembly utilized HB 233 as a "vehicle" to which the Conference Committee added other insurance-related bills that had stalled in the legislative process.⁴²

The House rejected the first Conference Committee report on March 16, 1998.⁴³ However, on the last day of the regular session, the second Conference Committee submitted its report on HB 233 which,

35. See 1998 Ga. Laws 1064, § 11, at 1079 (codified at O.C.G.A. § 33-34-3.1(a) (Supp. 1998)).

36. See Lord Interview, *supra* note 1; Potter Interview, *supra* note 14.

37. See Lord Interview, *supra* note 1.

38. See HB 233, as introduced, 1997 Ga. Gen. Assem.; State of Georgia Final Composite Status Sheet, Mar. 19, 1998.

39. See HB 233, as introduced, 1997 Ga. Gen. Assem.

40. See Georgia Bill Tracking for HB 233, Mar. 27, 1997, available in LEXIS, States Library, GATRCK file; Potter Interview, *supra* note 14.

41. See Georgia Bill Tracking for HB 233, Mar. 28, 1997, available in LEXIS, States Library, GATRCK file.

42. Potter Interview, *supra* note 14. Since substitute versions of HB 233 passed in both houses before the House rejected the Senate amendments, HB 233 did not have to return to the House and Senate Committees on Insurance. See *id.* Instead, HB 233 headed to Conference Committee, which added other previously stalled provisions as amendments to HB 233 just prior to passing the bill in both houses. See *id.*

43. See Georgia Bill Tracking for HB 233, Mar. 16, 1998, available in LEXIS, States Library, GATRCK file.

for the first time, included Sections 2 through 13.⁴⁴ With only minutes remaining in the 1998 session, both houses adopted the second Conference Committee's report: 162 yeas and 4 nays in the House, and 50 yeas and no nays in the Senate.⁴⁵

Section 1

When Representative Heard introduced HB 233 in 1997, the bill only affected Code section 33-1-9 relating to insurance fraud.⁴⁶ Previously, this Code section did not tie the severity of the penalty to the victim's age; nor did the Code section classify all insurance fraud as a felony.⁴⁷ Rather, the Code section defined a number of specific acts as "insurance fraud."⁴⁸ When the "claim, benefit, or money [received as the result of fraud] exceed[ed] an aggregate of \$500.00, a person convicted of [insurance fraud]" was guilty of a felony and subject to punishment of not less than one nor more than five years imprisonment, or by a fine of not more than \$5000, or both.⁴⁹

As introduced, HB 233 heightened the penalty for insurance fraud when "such violation was committed against a person 60 years of age or older."⁵⁰ This version of HB 233 provided for imprisonment of not less than two nor more than ten years, or a fine of not more than \$10,000, or both.⁵¹ Notably, the amount of the "claim, benefit, or money" still had to exceed \$500 for the offense to qualify as a felony.⁵²

The House Insurance Committee's substitute broadened the punishment provision by classifying offenses as felonies when an act was committed against anyone sixty years or older regardless of the amount involved.⁵³ Punishment included a penalty of one to five years imprisonment, or a fine of not more than \$5000, or both, for fraud

44. *See id.*; HB 233 (CCS), 1998 Ga. Gen. Assem.

45. *See* Lord Interview, *supra* note 1; Georgia House of Representatives Voting Record, HB 233 (Mar. 19, 1998); Georgia Senate Voting Record, HB 233 (Mar. 19, 1998).

46. *See* HB 233, as introduced, 1997 Ga. Gen. Assem.; 1997 Ga. Laws 1296, § 1, at 1297 (formerly found at O.C.G.A. § 33-1-9 (Supp. 1997)).

47. *See* 1997 Ga. Laws 1296, § 1, at 1297 (formerly found at O.C.G.A. § 33-1-9 (Supp. 1997)).

48. *Id.*

49. *Id.*

50. HB 233, as introduced, 1997 Ga. Gen. Assem.

51. *See id.*

52. *See id.*; 1997 Ga. Laws 1296, § 1, at 1297 (formerly found at O.C.G.A. § 33-1-9 (Supp. 1997)).

53. *See* HB 233 (HCS), 1997 Ga. Gen. Assem.

offenses amounting to less than \$500 when committed against a person age sixty or older.⁵⁴

The Senate Insurance and Labor Committee's substitute reflects the language ultimately used in the Act.⁵⁵ The Committee deleted the language relating to the victim's age because lawmakers saw no justifiable reason to delineate between fraud committed upon elderly citizens and fraud committed upon younger citizens.⁵⁶ More importantly, the Act now classifies *all* "insurance fraud" as a felony punishable by two to ten years imprisonment, or up to a \$10,000 fine, or both, regardless of the amount of the fraud.⁵⁷

Section 2

Section 2 amends Code section 33-2-9 and first appeared in the second Conference Committee substitute.⁵⁸ Code section 33-2-9 sets forth the Insurance Commissioner's power and authority to promulgate rules and regulations.⁵⁹ The Act adds subsection (e), which prohibits the Insurance Commissioner from

adopt[ing] rules or regulations relating to the sale or dispensing of gasoline or diesel fuel to the general public by any business entity unless such rules or regulations require such sale or dispensing to be under the direct control and visual supervision of an on-site employee of such business entity.⁶⁰

Section 3

Code section 33-7-11 relates to coverage of claims against uninsured motorists.⁶¹ Prior to the Act, the Code section prohibited plaintiffs from filing suit against their uninsured motorist carriers after the

54. *See id.*

55. *Compare* HB 233 (SCS), 1997 Ga. Gen. Assem., *with* O.C.G.A. § 31-1-9 (Supp. 1998).

56. *See* Lord Interview, *supra* note 1. *Compare* HB 233 (SCS), 1997 Ga. Gen. Assem., *with* HB 233 (HCS), 1997 Ga. Gen. Assem.

57. *See* O.C.G.A. § 33-1-9(c) (Supp. 1998). At least one member of the General Assembly voiced concern that the Act provides too severe a penalty for what, in some instances, amounts to a relatively insignificant offense. *See* Brown Interview, *supra* note 30. *But see* Lord Interview, *supra* note 1 (noting that penalty provision is not mandatory because it calls for imprisonment *or* a fine with no lower limit).

58. 1998 Ga. Laws 1064, § 2, at 1065 (codified at O.C.G.A. § 33-2-9(e) (Supp. 1998)). *Compare* HB 233 (CCS), 1998 Ga. Gen. Assem., *with* HB 233 (SCS), 1997 Ga. Gen. Assem.

59. *See* 1997 Ga. Laws 1462, § 2 (formerly found at O.C.G.A. § 33-2-9 (Supp. 1997)).

60. O.C.G.A. § 33-2-9(e) (Supp. 1998).

61. *See* 1975 Ga. Laws 1221 (formerly found at O.C.G.A. § 33-7-11 (1992)).

applicable two-year statute of limitations on torts.⁶² The former Code section effectively required plaintiffs to serve their uninsured motorist carriers even when the plaintiff had no expectation of invoking that coverage.⁶³

In contrast, the Act provides that plaintiffs must serve their uninsured motorist carriers only when "a reasonable belief exists that the [tortfeasor's] vehicle is an uninsured motor vehicle."⁶⁴ Additionally, the Act resolves the problem that arose when a defendant's status as an uninsured motorist did not arise or was not discovered until after the statute of limitations had run.⁶⁵ Specifically, if a plaintiff commences an action against a defendant, but the plaintiff does not possess a "reasonable belief" that "the vehicle is an uninsured motor vehicle," the plaintiff may serve the uninsured motorist carrier "within either the remainder of the time allowed for valid service . . . or 90 days after the date on which the [plaintiff] discovered, or . . . should have discovered, that the vehicle was uninsured or underinsured, whichever period is greater."⁶⁶ The Act also allows the uninsured motorist carrier a minimum discovery period of "120 days after service prior to any hearing on the merits of the action."⁶⁷

The Act eliminates the unnecessary expense that insurance companies previously incurred to retain counsel and file answers in cases where uninsured motorist coverage would never be invoked.⁶⁸ By the same token, the Act ensures that plaintiffs will not find themselves without a source of recovery in situations when they learn that the defendant is uninsured or underinsured after the statute of limitations has run.⁶⁹ Because the Act benefits insurance carriers and plaintiffs, it has received support from the insurance industry and plaintiffs' lawyers alike.⁷⁰

62. *See id.*; *Bohannon v. J.C. Penney Cas. Ins. Co.*, 259 Ga. 162, 377 S.E.2d 853 (1989).

63. *See* 1975 Ga. Laws 1221 (formerly found at O.C.G.A. § 33-7-11 (1992)); Potter Interview, *supra* note 14.

64. O.C.G.A. § 33-7-11(d) (Supp. 1998).

65. *See* Potter Interview, *supra* note 14.

66. O.C.G.A. § 33-7-11(d) (Supp. 1998). The Act still requires, however, that the plaintiff serve the *defendant* within the normal two-year statute of limitations period. *See id.*

67. *Id.*

68. *See* Potter Interview, *supra* note 14.

69. *See id.*; O.C.G.A. § 33-7-11(d) (Supp. 1998).

70. *See* Potter Interview, *supra* note 14.

Section 4

In 1997, the General Assembly passed an Act that amended Code section 33-24-21.1 to comply with the requirements of the federal Health Insurance Portability and Accountability Act of 1996.⁷¹ Section 4 of the 1998 Act simply furthers that purpose by affecting a few minor changes.⁷² First, under prior law, Code section 33-24-21.1(a)(1) stated that “[c]reditable coverage’ under another health benefit plan means medical expense coverage with no greater than a 62 day gap in coverage”⁷³ The Act amends subsection (a)(1) by increasing the time limitation from sixty-two to ninety days.⁷⁴

Second, former Code section 33-24-21.1(e) required that when a group contract or group plan terminated, the group administrator had to advise eligible individuals to exercise their conversion rights within sixty-two days.⁷⁵ The Act amends subsection (e) by extending the sixty-two day requirement to sixty-three days.⁷⁶

Finally, the Act applies to all “group plans and group contracts delivered or issued for delivery in this state on or after July 1, 1998,” whereas prior law applied to plans and contracts delivered or issued for delivery on or after January 1, 1998.⁷⁷

Section 5

Code section 33-24-22 relates to health insurance policies for newly born or adopted children.⁷⁸ Prior to the Act, Code section 33-24-22 provided that “[a] newly born child of the insured or subscriber shall include an adopted child.”⁷⁹ Further, the Code section tied the coverage effective date for the child to the “moment of birth” or to the “final decree of adoption.”⁸⁰ Additionally, when the insurer required

71. See 1997 Ga. Laws 1462; Lord Interview, *supra* note 1.

72. See Lord Interview, *supra* note 1; 1998 Ga. Laws 1064, § 4, at 1067-72 (codified at O.C.G.A. § 33-24-2.1 (Supp. 1998)).

73. 1997 Ga. Laws 1462, § 3, at 1463 (formerly found at O.C.G.A. § 33-24-21.1(a)(1) (Supp. 1997)).

74. Compare *id.* with O.C.G.A. § 33-24-21.1(a)(1) (Supp. 1998).

75. See 1997 Ga. Laws 1462, § 3, at 1466 (formerly found at O.C.G.A. § 33-24-21.1(e)(2) (Supp. 1997)).

76. Compare *id.* with O.C.G.A. § 33-24-21.1(e)(2) (Supp. 1998).

77. Compare O.C.G.A. § 33-24-21.1(k) (Supp. 1998), with 1997 Ga. Laws 1462, § 3, at 1469 (formerly found at O.C.G.A. § 33-24-21.1(k) (Supp. 1997)).

78. See O.C.G.A. § 33-24-22 (Supp. 1998).

79. 1988 Ga. Laws 1535, § 1, at 1536 (formerly found at O.C.G.A. § 33-24-22 (1996)).

80. *Id.*

payment of a premium to cover the child, the Code section required parents or guardians to furnish the insurer with "notification of birth . . . or the date of the final adoption" within thirty-one days thereafter "in order to have the coverage continue beyond the thirty-one day period."⁸¹

The Act alters the policy effective date for adopted children to include the date "placement for adoption" occurs or the date of the "final decree of adoption, whichever occurs first."⁸² Similarly, the Act amends the thirty-one day notification period to run from the date of "placement for adoption" if "applicable."⁸³ Accordingly, the Act potentially provides broader coverage by linking the effective date to placement for adoption, rather than solely to the final decree.⁸⁴ This provision may also force parents and guardians to notify insurers earlier because placement for adoption will typically precede a final decree of adoption.⁸⁵

Section 6

Section 6 amends Code section 33-24-59,⁸⁶ relating to women's healthcare, and first appeared as part of the Act in the Conference Committee substitute.⁸⁷ In 1996, the General Assembly enacted Code section 33-24-59⁸⁸ entitled the "Women's Access to Health Care Act."⁸⁹ Prior to the 1998 amendment, the Code section required all issuers of "health benefit polic[ies]" that issued or renewed policies after July 1, 1996, to disclose "in clear, accurate language, [an enrollee's] right to direct access to obstetricians and gynecologists."⁹⁰ This language assured that policyholders would benefit from subsection (c), which provided that "[n]o health benefit policy which is issued . . . or

81. *Id.* (formerly found at O.C.G.A. § 33-24-22(c) (1996)).

82. O.C.G.A. § 33-24-22(a) (Supp. 1998).

83. *Id.* § 33-24-22(c).

84. *See id.* § 33-24-22(a).

85. *Compare id.* § 33-24-22(c), with 1988 Ga. Laws 1535, § 1, at 1536 (formerly found at O.C.G.A. § 33-24-22(c) (1997)).

86. *See* 1998 Ga. Laws 1064, § 6, at 1073-74 (codified at O.C.G.A. § 33-24-59 (Supp. 1998)); *supra* note 26.

87. *Compare* HB 233 (CCS), 1998 Ga. Gen. Assem., with HB 233 (SCS), 1997 Ga. Gen. Assem.

88. *See* 1996 Ga. Laws 703, § 2 (formerly found at O.C.G.A. § 33-24-59 (Supp. 1997)); *supra* note 26.

89. 1996 Ga. Laws 703, § 1.

90. *Id.* § 2, at 704 (formerly found at O.C.G.A. § 33-24-59(d) (Supp. 1997)).

renewed . . . after July 1, 1996, shall require . . . an enrollee . . . [to] obtain a referral” before seeing an obstetrician or gynecologist.⁹¹

Unfortunately, the notice requirement placed an unnecessary burden on health care providers whose policies never contained referral requirements with respect to obstetricians and gynecologists.⁹² Without hindering the purpose behind the Women’s Access to Health Care Act, the 1998 Act eliminates the notice requirement for insurers whose policies “contain no provisions which require referrals from another physician” before a woman can see an obstetrician or gynecologist.⁹³

Section 7

Section 7 amends Code section 33-29-3, relating to required insurance policy provisions in accident and sickness policies.⁹⁴ Specifically, subsection (b)(2) of the Code section requires accident and sickness insurers to include certain language in insurance policies that describes how and when the insurer may void the policy.⁹⁵

Before the amendment, the Code section prohibited accident and sickness insurers from voiding a policy or denying a claim based upon an insured’s “misstatements . . . in the application” when the insurer attempted to void the policy or deny the claim more than “two years from the date of issue of [the] policy.”⁹⁶ The Act amends this provision in several significant ways.⁹⁷ First, the Act allows insurers to void policies and deny claims based on “misstatements” in the application beyond the two-year period when they can show “fraud.”⁹⁸ Furthermore, the Act defines “fraud” as “the willful misrepresentation of a material fact.”⁹⁹ Essentially, this language allows accident and sickness insurers to void a policy or deny a claim at any time if the insurer can show that the policyholder willfully made a material misstatement on the application for insurance.¹⁰⁰

91. *Id.* (formerly found at O.C.G.A. § 33-24-59(c) (Supp. 1997)).

92. *See* Lord Interview, *supra* note 1.

93. O.C.G.A. § 33-24-59(b)(2) (Supp. 1998); Lord Interview, *supra* note 1.

94. *See* 1998 Ga. Laws 1064, § 7, at 1074-75 (codified at O.C.G.A. 33-29-3 (Supp. 1998)).

95. *Compare* 1960 Ga. Laws 289, § 1, at 717 (formerly found at O.C.G.A. § 33-29-3(b)(2) (1996)), *with* O.C.G.A. § 33-29-3(b)(2) (Supp. 1998).

96. O.C.G.A. § 33-29-3(b)(2) (1996).

97. *See id.* § 33-29-3 (Supp. 1998).

98. *See id.*

99. *Id.*

100. *See id.*; Brown Interview, *supra* note 30.

To balance the insurer's expanded right to void policies and deny claims, the Act conditions the right on several requirements.¹⁰¹ For example, an insurer must furnish "a copy of [the fraudulent] application . . . to the policyholder . . . and [the] misstatement must have been in writing, must be material to the risk assumed by the insurer, and, in the case of a claim, must also relate to the specific type of loss or disability for which the claim is made."¹⁰² Accordingly, while the Act furthers the policy against insurance fraud, it also protects those who inadvertently misrepresent themselves in a manner that does not justify the rescission of their insurance policy.¹⁰³

This section of the Act also diminishes the "incontestability" of "incontestability clauses."¹⁰⁴ Specifically, the former Code section provided that, in certain circumstances, insurers could include in their policies "under the caption 'incontestable': After this policy has been in force for a period of two years during the lifetime of the insured . . . it shall become incontestable. . . ."¹⁰⁵ The Act alters this language to provide incontestability only "in the absence of fraud."¹⁰⁶

Finally, the Act amends subsection (b) of Code section 33-29-3, which limits an insurer's right to deny coverage for preexisting conditions.¹⁰⁷ Consistent with the other amendments to this Code section, the Act broadens an insurer's right to deny coverage for preexisting conditions by allowing coverage denials at any time when the insurer can show fraud.¹⁰⁸ Before the amendment, insurers could not utilize the preexisting condition defense as a basis for denial if such denial came more than two years after the inception of the policy.¹⁰⁹

Section 8

During the 1997 session, the General Assembly enacted legislation designed to comport with section 2741 of the federal "Public Health

101. See O.C.G.A. § 33-29-3 (Supp. 1998); Brown Interview, *supra* note 30.

102. O.C.G.A. § 33-29-3 (Supp. 1998).

103. See Brown Interview, *supra* note 30.

104. See O.C.G.A. § 33-29-3 (Supp. 1998).

105. *Id.* § 33-29-3(b)(2)(A)(ii) (1996).

106. *Id.* § 33-29-3(b)(2)(A)(ii) (Supp. 1998).

107. Compare *id.* § 33-29-3(b)(2)(B), with *id.* § 33-29-3(b)(2)(B) (1996).

108. See O.C.G.A. § 33-29-3(b)(2)(B) (Supp. 1998).

109. See 1960 Ga. Laws 289, § 1, at 718 (formerly found at O.C.G.A. § 33-29-3(b)(2)(B) (1996)).

Service Act.”¹¹⁰ Congress passed the federal act to guarantee availability of individual health insurance coverage to certain individuals with prior group coverage.¹¹¹ Consistent with this purpose, the federal legislation prohibits health insurers that market insurance in a state from declining coverage for “eligible individual[s]” and imposing preexisting condition exclusions.¹¹² However, the federal legislation does not impose this requirement when the state implements an “acceptable alternative mechanism” to guarantee the availability of health insurance to individuals with prior group coverage.¹¹³ Georgia Code section 33-29A-1 states that Chapter 29A, together with Code section 33-24-21.1, is intended to provide the “acceptable alternative mechanism . . . contemplated by [s]ection 2741 of the federal Public Health Service Act.”¹¹⁴

The alternative mechanism implemented by the General Assembly divides eligible individuals into two categories. Individuals “whose most recent creditable coverage was provided by an entity other than a managed care organization shall be entitled to participate in the Georgia Health Insurance Assignment System” (GHAS).¹¹⁵ Those whose most recent creditable coverage “was provided by a managed care organization shall be entitled to participate in the Georgia Health Benefits Assignment System” (GHBAS).¹¹⁶ Both of these systems provide for the “equitable assignment” of individuals to health insurance providers based “primarily on the [providers’] pro rata volume of individual business done in this state.”¹¹⁷

Code section 33-23-4(b) provides that “[n]o agent or subagent shall solicit or take application for, procure, or place for others any kind of insurance for which such agent or subagent is not then licensed and for which a certificate of authority is not currently on file with the Commissioner.”¹¹⁸ Consistent with the other amendments to this Code section, the Act amends Code section 33-29A-8, relating to compensation of licensed agents who process GHAS and GHBAS

110. See 1997 Ga. Laws 1462, § 5, at 1469 (codified at O.C.G.A. §§ 33-29A-1 to -8 (Supp. 1997)).

111. See 42 U.S.C. § 300gg-41 (1997).

112. *Id.*

113. See *id.*

114. 1997 Ga. Laws 1462, § 5, at 1469 (codified at O.C.G.A. § 33-29A-1(a) (Supp. 1997)).

115. *Id.* at 1470 (codified at O.C.G.A. § 33-29A-4(a) (Supp. 1997)).

116. *Id.* at 1471 (codified at O.C.G.A. § 33-29A-5(a) (Supp. 1997)).

117. *Id.* (codified at O.C.G.A. §§ 33-29A-4, -5 (Supp. 1997)).

118. 1997 Ga. Laws 1296, § 4, at 1300 (codified at O.C.G.A. § 33-23-4(b) (Supp. 1997)).

applications, to state that such “agents shall not be subject to the certificate of authority requirements of subsection (b) of Code [s]ection 33-23-4.”¹¹⁹

Section 9

The General Assembly included this amendment in the Act to correct a minor technical deficiency in the definitions of group accident and sickness insurance and associations.¹²⁰ Code section 33-24-21.1 states that a creditable coverage includes a “franchise policy issued on an individual basis to a member of a *true association* as defined in subsection (b) of Code section 33-30-1.”¹²¹ However, former Code section 33-30-1 did not contain a definition of “true association,” but instead, referred only to “association.”¹²² The Act merely adds the word “true” to the term in order to comport with other related Code sections.¹²³

Section 10

Code section 33-30-15 relates to the continuation of similar health insurance coverage, preexisting conditions, and procedures and guidelines.¹²⁴ Prior to amendment, the Code section contained several time restrictions that were set at thirty days.¹²⁵ The Act changes the thirty-day time limitations to thirty-one days because other provisions in the Code section define limitations in terms of “months.”¹²⁶ Since several calendar months contain thirty-one days, the General Assembly enacted this section to mitigate confusion that might arise in calculating time limitations.¹²⁷ This section also changed the compliance date in subsection (b) of Code section 33-30-15 from July 1, 1997 to July 1, 1998.¹²⁸ Finally, under prior law, subsection (g)

119. O.C.G.A. § 33-29A-8(b) (Supp. 1998).

120. See Lord Interview, *supra* note 1.

121. 1997 Ga. Laws 1462, § 3, at 1463 (codified at O.C.G.A. § 33-24-21.1(a)(1)(F) (Supp. 1998)) (emphasis added).

122. See *id.* § 6, at 1473-75 (formerly found at O.C.G.A. § 33-30-1 (Supp. 1997)).

123. See O.C.G.A. § 33-30-1 (Supp. 1998); Lord Interview, *supra* note 1.

124. See 1997 Ga. Laws 1462, § 8, at 1477-81 (formerly found at O.C.G.A. § 33-30-15 (Supp. 1997)).

125. See *id.*

126. See O.C.G.A. § 33-30-15 (Supp. 1998); Lord Interview, *supra* note 1.

127. See Lord Interview, *supra* note 1.

128. Compare 1997 Ga. Laws 1462, § 8, at 1479 (formerly found at O.C.G.A. § 33-30-15(b) (1997)), with O.C.G.A. § 33-30-15(b) (Supp. 1998).

contained a provision which allowed the “Commissioner and any insurers” to implement the provisions of the Code section on a voluntary basis prior to July 1, 1997.¹²⁹ The Act deletes this language from subsection (g).¹³⁰

Section 11

Code section 33-34-3.1 governs the filing of rates and forms, as well as optional coverage for automobile insurers.¹³¹ Prior to the enactment of HB 233, this Code section required private passenger automobile insurers to “file rates and forms for medical payments coverage for a limit of at least \$2,000.00,” but also allowed these insurers to file rates for higher limits.¹³² The Act seemingly nullifies the mandatory filing minimum by allowing insurers to “file rates for higher *or lower* limits.”¹³³ The Act also amends Code section 33-24-3.1 by stating that “[t]he requirement for filing forms and rates . . . shall not be construed as a requirement for the offering or quoting of medical payment coverages to insureds or as authority for the Commissioner to require the offering or quoting of such coverage.”¹³⁴

Sections 12 and 13

Section 12 states that section 1 shall apply prospectively to all offenses committed on or after July 1, 1998.¹³⁵ Moreover, section 12 also states that “section 3 of [the] Act shall apply to all actions pending on July 1, 1998, and to all actions commenced on or after that date.”¹³⁶ Section 13 contains the repealer clause.¹³⁷

Benjamin D. Briggs

129. 1997 Ga. Laws 1462, § 8, at 1480 (formerly found at O.C.G.A. § 33-30-15(g) (Supp. 1997)).

130. See O.C.G.A. § 33-30-15(g) (Supp. 1998).

131. See 1997 Ga. Laws 683, § 5, at 688 (formerly found at O.C.G.A. § 33-34-3.1 (Supp. 1997)).

132. *Id.*

133. O.C.G.A. 33-34-3.1(a) (Supp. 1998) (emphasis added).

134. *Id.* As noted earlier, this section was inspired by concern that the Insurance Commissioner might promulgate a rule requiring medical payments coverage in automobile policies. See Lord Interview, *supra* note 1.

135. See 1998 Ga. Laws 1064, § 12, at 1079-80.

136. *Id.* Section 3 of the Act amends provisions relating to service for uninsured motorist claims. See text accompanying *supra* notes 61-70.

137. See 1998 Ga. Laws 1064, § 13, at 1080.