Georgia State University Law Review

Volume 13
Issue 1 *November 1996*

Article 44

3-29-2012

INSURANCE Department of Commissioner of Insurance: Require Insurance Commissioner to File Periodic Reports; Regulation of Rates, Underwriting Rules, and Related Organizations: Allow Upward Adjustments of Workers' Compensation Insurance Ratings; Health Maintenance Organizations: Allow HMO Member to Retain Preferred Physician; Insurance Generally: Change Review Process for Cancellation or Failure to Renew Policy

Georgia State University Law Review

Follow this and additional works at: http://scholarworks.gsu.edu/gsulr

Part of the Law Commons

Recommended Citation
Georgia State University Law Review (1996) "INSURANCE Department of Commissioner of Insurance: Require Insurance Commissioner to File Periodic Reports; Regulation of Rates, Underwriting Rules, and Related Organizations: Allow Upward Adjustments of Workers' Compensation Insurance Ratings; Health Maintenance Organizations: Allow HMO Member to Retain Preferred Physician; Insurance Generally: Change Review Process for Cancellation or Failure to Renew Policy," *Georgia State University Law Review*: Vol. 13: Iss. 1, Article 44.
Available at: http://scholarworks.gsu.edu/gsulr/vol13/iss1/44

This Peach Sheet is brought to you for free and open access by the College of Law Publications at ScholarWorks @ Georgia State University. It has been accepted for inclusion in Georgia State University Law Review by an authorized administrator of ScholarWorks @ Georgia State University. For more information, please contact scholarworks@gsu.edu.

INSURANCE

Department and Commissioner of Insurance: Require Insurance Commissioner to File Periodic Reports; Regulation of Rates, Underwriting Rules, and Related Organizations: Allow Upward Adjustments of Workers' Compensation Insurance Ratings; Health Maintenance Organizations: Allow HMO Member to Retain Preferred Physician; Insurance Generally: Change Review Process for Cancellation or Failure to Renew Policy

CODE SECTIONS:	O.C.G.A. §§ 33-2-8.2 (new), 33-7-14, 33-9-3, -21, -40.1, 33-11-20, 33-16-14 (amended); 33-21-29 (new); 33-23-4 to -5, -18, -31 to -32, -44, 33-24-45, -47, 33-43-1 to -3, -5 (amended)
BILL NUMBER:	HB 1404
ACT NUMBER:	821
GEORGIA LAWS:	1996 Ga. Laws 705
SUMMARY:	The Act adjusts the workers' compensation criteria defining risk, allowing lower rates for insurance companies with a history of fewer claims. Further, the Act allows people to retain their chosen health care professionals through their health maintenance organization when they are willing to pay higher rates. The Act also allows the Insurance Commissioner to establish criteria that will permit commercial insurance risks to be exempt from filing requirements, and requires the Insurance Commissioner to give more timely responses to requests for review of a policy cancellation or nonrenewal.
EFFECTIVE DATE:	Retroactive to April 28, 1996, O.C.G.A. §§ 33-43-1 to -3, -5; July 1, 1996, §§ 33-2-8.2, 33-7-14, 33-9-3, -21, -40.1, 33-11-20, 33-16-14, 33-21-29, 33-23-4 to -5, -18, -31 to -32, -44, 33-24-45, -47

History

HB 1404 was designed to update many aspects of the Georgia insurance system. Prior to the Act, experienced commercial insurers were being forced to "jump[ ] through hoops," such as working within established premiums and having to justify premiums to the Insurance

Published by ScholarWorks @ Georgia State University, 1996
HeinOnline -- 13 Ga. St. U. L. Rev. 183 1996-1997

Commission.[1] Further, in the workers' compensation area, many legislators found that growth in the insurance market was being hindered by unreasonably high rates, and thus stifling competition.[2] Further, it was often the case that when people became members of a health maintenance organization (HMO), they were forced to leave their physicians of choice and choose one covered under the HMO.[3] Legislators believed that people should have a choice between their personal physician and an HMO physician; this Act allows for that choice.[4]

HB 1404

Life of the Bill

Representative Harbin introduced HB 1404 in the Georgia General Assembly.[5] The House adopted a floor substitute that provided some substantial additions to the original, some of which remained in the final version.[6] The Senate referred the bill to the Insurance and Labor Committee and offered a Senate floor substitute.[7] The final version of HB 1404 was resolved in a House/Senate Conference Committee and then passed by both houses.[8]

Commissioner's Reports

The Act adds Code section 33-2-8.2, which requires the Insurance Commissioner to file periodic reports with the chairpersons of the House and Senate Committees on Insurance.[9] This provision was incorporated at the urging of the Senate during the Conference Committee negotiations.[10] The Act requires that the Commissioner report various rate changes upon meeting certain criteria listed in the Act.[11] The Act also requires reporting of rate increases and decreases

1. Telephone Interview with Rep. Ben Harbin, House District No. 113 (Apr. 28, 1996) [hereinafter Harbin Interview]. Representative Harbin is the chief sponsor of the Act. *Id.*
2. *Id.*
3. *Id.*
4. *Id.*
5. HB 1404, as introduced, 1996 Ga. Gen. Assem.
6. HB 1404 (HFS), 1996 Ga. Gen. Assem.
7. HB 1404 (SFS), 1996 Ga. Gen. Assem.
8. HB 1404 (CCS), 1996 Ga. Gen. Assem.
9. O.C.G.A. § 33-2-8.2 (Supp. 1996).
10. Telephone Interview with Rep. Jimmy Lord, House District No. 121, House Insurance Committee Chairman (June 23, 1996) [hereinafter Lord Interview].
11. O.C.G.A. § 33-2-8.2 (Supp. 1996). Categorization shall be in terms of "(A) [f]ive percent or less; (B) [g]reater than 5 percent but less than 10 percent; (C) [g]reater than 10 percent but less than 20 percent; and (D) [g]reater than 20 percent." *Id.*

HeinOnline -- 13 Ga. St. U. L. Rev. 184 1996-1997

: INSURANCE Department of Commissioner of Insurance: Require Insur

that were in an amount other than that requested.[12] Although formerly, the Commissioner was not required to give such a report,[13] the Commissioner will provide information that is already public.[14] These reports give the chairpersons of both the Senate and House Insurance Committees an overview of the insurance industry in Georgia.[15] The Committees, for example, will be able to determine easily which insurance companies are entering or exiting the Georgia market.[16]

Previously, insurers did not need to submit books and records to the state for examination, so long as the insurer maintained "a surplus with regard to policyholders in an amount not less than $20 million."[17] This exemption was allowed for any insurer licensed to deal in insurance in this state.[18]

The Act allows the Commissioner to set criteria not yet established, so that defined commercial risks may be exempt from filing requirements.[19] According to Representative Harbin, this provision was designed to allow educated and experienced sellers and buyers of insurance to avoid some of the bureaucratic steps of the Georgia insurance system and to streamline the process.[20] This provision was designed for large companies with experience in the insurance industry, who do not need the protection of numerous bureaucratic reviews.[21]

Workers' Compensation Experience Ratings

The Act amends Code section 33-9-40.1.[22] The new section is the same as the original, except for the addition of subsection (b), which allows for upward adjustments on workers' compensation insurance ratings only when there are "additional paid claims or a case reserve established on a claim, which was previously closed but reopened due to a claimant's request for additional benefits."[23] This paragraph was designed to attract business and promote competition in the insurance

---

§ 33-2-8.2(1)(A) to (D).

12. *Id.* § 33-2-8.2(1).
13. Lord Interview, *supra* note 10.
14. *Id.*
15. *Id.*
16. *Id.*
17. 1991 Ga. Laws 1424, § 3, at 1430 (formerly found at O.C.G.A. § 33-7-14(a)(3)(A) (Supp. 1995)).
18. *Id.* at 1429.
19. O.C.G.A. § 33-9-3(a.1) (Supp. 1996).
20. Harbin Interview, *supra* note 1.
21. *Id.*
22. *Compare* 1992 Ga. Laws 1286, § 1 (formerly found at O.C.G.A. § 33-9-40.1 (1992)) *with* O.C.G.A. § 33-9-40.1 (Supp. 1996).
23. O.C.G.A. § 33-9-40.1(b) (Supp. 1996).

Published by ScholarWorks @ Georgia State University, 1996

industry by allowing those workers' compensation companies with "good histories" of fewer claims to have lower rates available.[24] The Act, therefore, considers a history of lower claim amounts in determining the insurer's rates.[25] Further, the Act replaces subsection (a) of Code section 33-16-14, relating to "limitations on amounts of risks retainable by farmers' mutual insurance companies. . . ."[26] The Act provides a new table that increases the amount of maximum risk allowed for some insurance companies.[27]

Subsection (a)(2) of Code section 33-9-21 is replaced by a new subsection regarding loss reserves of workers' compensation insurers.[28] This subsection provides that an insurer may not retain excess loss reserves for more than ninety days following the settlement of a claim or determination of liability.[29] This provision is designed to prevent insurers from delaying the return of excess funds to their general reserve, which serves to lower the insurance companies' amount of assets.[30]

Health Maintenance Organizations

The provision regarding the Act's treatment of HMOs was the largest, and practically the only, topic of debate during the writing of the conference committee substitute, which became the Act.[31] The remainder of the bill largely enjoyed bipartisan support and was not the subject of debate.[32] The express purpose of the new Code section 33-21-29 dealing with HMOs is to provide insured individuals "the right to choose their own health care providers with as few mandates from government and business as possible."[33]

This new Code section allows an employee member of an HMO to retain his or her preferred physician regardless of whether or not that physician is among the provider panel, those contracted to provide health services under the HMO, provided that the insured will pay the extra cost of going outside the provider panel for services.[34]

---

24. Harbin Interview, *supra* note 1; *see* O.C.G.A. § 33-9-40.1 (Supp. 1996).
25. Harbin Interview, *supra* note 1; *see* O.C.G.A. § 33-9-40.1 (Supp. 1996).
26. O.C.G.A. § 33-16-14(a) (Supp. 1996).
27. *Id.*
28. *Id.* § 33-9-21(a)(2).
29. *Id.*
30. Harbin Interview, *supra* note 1.
31. *Id.*; Lord Interview, *supra* note 10. Both representatives agreed that, with the exception of the point-of-services provisions of the legislation, most members approved of much of the bill. Harbin Interview, *supra* note 1; Lord Interview, *supra* note 10.
32. Lord Interview, *supra* note 10.
33. O.C.G.A. § 33-21-29(a) (Supp. 1996).
34. *Id.* § 33-21-29(c), (d).

HeinOnline -- 13 Ga. St. U. L. Rev. 186 1996-1997

: INSURANCE Department of Commissioner of Insurance: Require Insur

This "point-of-service option" allows the insured to choose the services of an independent physician, not covered by the HMO, under the terms of the HMO contract.[35] The insured, however, is responsible for any additional costs of retaining a personal physician while under the HMO.[36] Further, the insured, when deciding to go outside the provider panel, must be willing to pay reasonable administrative costs to the HMO for doing so.[37] The HMO will continue to pay under the plan, but the insured will have to pay any costs not covered by the HMO payment.[38] The Senate was willing to establish a right to go outside the provider panel as long as it did not create an extra cost to the business providing the HMO.[39] Some of the legislators, however, were hesitant to mandate the point-of-service provisions, because most HMOs already provide this option.[40]

The Senate substitute incorporated a substantial section on medical insurance that differed greatly from the House Bill, but these provisions were not included in the final passed version.[41] The Senate version, for example, included language describing the intent of the Senate in passing the health insurance legislation.[42] The Conference Committee, however, did not include such language, because it did not impact Georgia health insurance law.[43] The Conference Committee chose to compromise and use the House language regarding HMOs, while the House agreed to incorporate the Senate's provisions for the Insurance Commissioner's reports to the chairpersons of the House and Senate Insurance Committees.[44]

License Requirements

The Act redesignates subsection (g) of Code section 33-23-4, which involves licensing requirements, as subsection (h) and inserts a new subsection (g).[45] This subsection relaxes the licensing requirements for any agent who has been licensed for ten consecutive years and performs only limited duties, such as receipt of renewal or deferred

35. *Id.* § 33-21-29(c).
36. *Id.* § 33-21-29(d).
37. *Id.* § 33-21-29(g).
38. Harbin Interview, *supra* note 1.
39. *Id.*
40. Lord Interview, *supra* note 10.
41. *Compare* HB 1404 (CCS), 1996 Ga. Gen. Assem. *with* HB 1404 (SFS), 1996 Ga. Gen. Assem.
42. *See* HB 1404 (SFS), 1996 Ga. Gen. Assem.
43. Harbin Interview, *supra* note 1. Representative Harbin noted that this language only indicated the intent of the legislature and provided no substantive law. *Id.*
44. *Id.*
45. *Compare* O.C.G.A. § 33-23-4 (1996) *with* 1992 Ga. Laws 2830, § 1, at 2837 (formerly found at O.C.G.A. § 33-23-4 (Supp. 1995)).

Published by ScholarWorks @ Georgia State University, 1996
HeinOnline -- 13 Ga. St. U. L. Rev. 187 1996-1997

commissions.[46] The Act also amends Code section 33-23-18(e) to exempt agents licensed for ten consecutive years and performing such limited duties from continuing education requirements.[47] This portion of the legislation targets retired insurance agents who should no longer be required to obtain continuing education provided they are not performing full duties.[48] In order for such an agent to perform full duties, he must comply with the standard licensing requirements.[49] Further, paragraph (1) of subsection (a) of Code section 33-23-5 was rewritten to allow licensing of agents who have a "principal place of business" within this state, whereas before, agents generally were required to be a resident of the state of Georgia in order to obtain a license.[50]

Requests for Review

The Act amends subsection (o) of Code section 33-24-45, by changing the process by which an insured individual may complain to the Insurance Commissioner about an insurer's cancellation of or failure to renew a policy in violation of this Code section.[51] Previously, an insured's request for review by the Commissioner had to be in writing, and a hearing would be scheduled within twenty days of the request, unless the Commissioner determined the request was without merit.[52] The Commissioner then had ten more days to issue a written determination.[53] Under the Act, the request for review is not required to be in writing, and a hearing must be conducted within thirty days of the request.[54] The Commissioner must notify the parties of his decision within the thirty-day period.[55] This provision requires that the Commissioner give a timely answer to the complaint; formerly he was able to delay a ruling on a complaint.[56]

Further, the provision is intended to expedite the grievance process for the Commissioner.[57] The Act deletes language specifying the steps the Commissioner must take to secure the premiums due and replaces

46. O.C.G.A. § 33-23-4(g) (1996).
47. *Id.* § 33-23-18(e).
48. Harbin Interview, *supra* note 1.
49. O.C.G.A. § 33-23-4(g) (1996); Harbin Interview, *supra* note 1.
50. *Compare* O.C.G.A. § 33-23-5(a)(1) (1996) *with* 1992 Ga. Laws 2830, § 1, at 2837 (formerly found at O.C.G.A. § 33-23-5(a)(1) (Supp. 1995)).
51. O.C.G.A. § 33-24-45(o) (1996).
52. 1991 Ga. Laws 1608, § 1.11, at 1621 (formerly found at O.C.G.A. § 33-24-45(o) (Supp. 1995)).
53. *Id.*
54. O.C.G.A. § 33-24-45(o) (1996).
55. *Id.*
56. Lord Interview, *supra* note 10.
57. *Id.*

HeinOnline -- 13 Ga. St. U. L. Rev. 188 1996-1997

: INSURANCE Department of Commissioner of Insurance: Require Insur

it with general language allowing the Commissioner to secure the payment of premiums due by specifying a method in a rule or regulation.[58] Furthermore, the Act changes a provision that allowed the Commissioner to investigate the insurer's action and to order such remedies and penalties "as he deems appropriate," to general language allowing "action as authorized by [title 33]."[59]

Potential Increased Insurer Liability

The Act amends subsection (c) of Code section 33-24-47, which describes the penalty for insurers who fail to comply with the requirements of this Code section.[60] When the insurer fails to meet proper notice requirements of cancellation, the insured is entitled to thirty days of additional coverage.[61] The new language provides that when the Commissioner finds that such violative conduct is common by an insurer, it shall constitute a "general business practice by the insurer" and subject the insurer to increased penalties.[62]

Medicare Supplement Insurance

The Act amends the definitions applicable to medicare supplement insurance[63] and specifies that the provisions of chapter 43 of title 33 shall apply to all medicare supplement policies delivered or issued for delivery as of April 28, 1996.[64]

Mike Arnold

58. *Compare* 1991 ga. Laws 1608, § 1.11, at 1621 (formerly found at O.C.G.A. § 33-24-45(o) (Supp. 1995)) *with* O.C.G.A. § 33-24-45(o) (1996).
59. *Compare* O.C.G.A. § 33-24-45(o) (1996) *with* 1991 Ga. Laws 1608, § 1.11, at 1621 (formerly found at O.C.G.A. 33-24-45(o) (Supp. 1995)).
60. O.C.G.A. § 33-24-47(c) (1996).
61. *Id.*
62. *Id.*
63. *Id.* § 33-43-1.
64. *Id.* § 33-43-2.

Published by ScholarWorks @ Georgia State University, 1996

HeinOnline -- 13 Ga. St. U. L. Rev. 189 1996-1997