

House Bill 234 (AS PASSED HOUSE AND SENATE)

By: Representatives Hawkins of the 27th, Lott of the 122nd, Smyre of the 135th, Gunter of the 8th, Newton of the 123rd, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 33 of the Official Code of Georgia Annotated, relating to insurance, so as to
2 provide an option for self-funded healthcare plans, exempt from state regulation under
3 federal law, to opt in to Georgia's Surprise Billing Consumer Protection Act; to provide for
4 definitions; to provide for a short title; to provide for legislative findings; to provide for an
5 effective date; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 This Act shall be known and may be cited as the "Self-funded Healthcare Plan Opt-in to the
9 Surprise Billing Consumer Protection Act."

10 **SECTION 2.**

11 The General Assembly finds:

12 (1) Georgia's Surprise Billing Consumer Protection Act requires insurers offering
13 nonexempt healthcare plans in this state to comply with the provisions of such Act;

14 (2) Those provisions include a requirement that such insurers participate in an arbitration
15 process established by such Act in the event that an out-of-network provider or an

16 out-of-network facility concludes that payment received from such insurer is insufficient
17 given the complexity and circumstances of the services provided and initiates a request
18 for arbitration with the Insurance Commissioner;

19 (3) Georgia does not have the legal authority to require self-funded healthcare plans,
20 subject to the exclusive jurisdiction of the Employee Retirement Income Security Act
21 of 1974, to comply with the Surprise Billing Consumer Protection Act, including such
22 arbitration provisions; and

23 (4) At present, this state is not prohibited, however, from enacting legislation which
24 would allow such healthcare plans to voluntarily agree to comply with the provisions of
25 the Surprise Billing Consumer Protection Act, including the arbitration process described
26 in such Act.

27 **SECTION 3.**

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

30 "CHAPTER 20F

31 33-20F-1.

32 As used in this chapter, the term:

33 (1) 'ERISA' means the Employee Retirement Income Security Act of 1974, 29 U.S.C.
34 Section 1001, et seq.

35 (2) 'Insurer' means an entity subject to the insurance laws and regulations of this state,
36 or subject to the jurisdiction of the Commissioner, that contracts, offers to contract, or
37 enters into an agreement to provide, deliver, arrange for, pay for, or reimburse any of the
38 costs of healthcare services, including those of an accident and sickness insurance
39 company, a health maintenance organization, a healthcare plan, a managed care plan, or

40 any other entity providing a health insurance plan, a health benefit plan, or healthcare
41 services.

42 (3) 'Self-funded healthcare plan' means an arrangement whereby an employer assumes
43 the financial risk for providing healthcare benefits to its employees and such arrangement
44 is subject to the exclusive jurisdiction of ERISA.

45 33-20F-2.

46 (a) Notwithstanding any provision of law in Chapter 20E of this title, the 'Surprise Billing
47 Consumer Protection Act,' a self-funded healthcare plan may elect on an annual basis to
48 participate in and be bound by such Act.

49 (b) A self-funded healthcare plan that elects to participate in the Surprise Billing
50 Consumer Protection Act shall provide notice to the Commissioner of its election decision
51 on a form prescribed by the Commissioner. The completed form shall include an
52 attestation that the self-funded healthcare plan has elected to participate in and be bound
53 by the Surprise Billing Consumer Protection Act to the extent that insurers are similarly
54 bound. Such form shall be posted on the Commissioner's website for use by self-funded
55 healthcare plans choosing to opt in.

56 (c) A self-funded healthcare plan may elect to initiate its participation on either January 1
57 of any year or on the first day of the self-funded healthcare plan's plan year of any year.

58 (d) On its election form, the plan must indicate whether it chooses to affirmatively renew
59 its election on an annual basis or whether it should be presumed to have renewed on an
60 annual basis until the Commissioner receives advance notice from the plan that it is
61 terminating its election as of either December 31 of a calendar year or the last day of its
62 plan year. Notices under this subsection shall be submitted to the Commissioner at least 30
63 days in advance of the effective date of the election to initiate participation and 30 days in
64 advance of the effective date of the termination of participation.

65 (e) Self-funded healthcare plans opting in shall develop processes to address employee
66 notifications or other responsibilities under ERISA that may arise from electing to
67 participate in the Surprise Billing Consumer Protection Act.

68 33-20F-3.

69 The department shall maintain on its website a list of all self-funded healthcare plans that
70 have chosen to participate in and comply with the Surprise Billing Consumer Protection
71 Act.

72 33-20F-4.

73 Nothing in this chapter shall be applicable to healthcare plans which are subject to the
74 exclusive jurisdiction of ERISA, unless such plan elects to participate in and agrees to
75 comply with the Surprise Billing Consumer Protection Act.

76 33-20F-5.

77 Notwithstanding any provision of law in the Surprise Billing Consumer Protection Act, in
78 the event that a self-funded healthcare plan has chosen to participate in and comply with
79 such Act, the Commissioner shall allow such participation. The Commissioner shall retain
80 the authority, however, to remove or refuse to readmit such participant if the Commissioner
81 determines that the self-funded healthcare plan is failing or previously failed to comply
82 with the Surprise Billing Consumer Protection Act. Any self-funded healthcare plan shall
83 have the opportunity to request a hearing pursuant to Code Section 33-2-17 prior to the
84 effective date of such removal or denial."

85 **SECTION 4.**

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

88

SECTION 5.

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