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SB 18 - Direct Primary Care

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INSURANCE

Kinds of Insurance; Limits of Risks; Reinsurance: Amend Chapter 7 of Title 33 of the Official Code of Georgia Annotated, Relating to Kinds of Insurance, Limits of Risks, and Reinsurance, so as to Provide Definitions; Provide that Direct Primary Care Agreements are not Insurance; Exempt Such Agreements from Regulation as Insurance; Provide for Discontinuance of Services Under Certain Circumstances; Provide a Short Title; Provide for Related Matters; Repeal Conflicting Laws; and for Other Purposes

CODE SECTIONS:	O.C.G.A. § 33-7-2.1 (amended)
BILL NUMBER:	SB 18
ACT NUMBER:	47
GEORGIA LAWS:	2019 Ga. Laws 217
SUMMARY:	This legislation allows physicians to offer specified care for a specific time pursuant to a fixed fee. The physician cannot require more than one year's payment upfront, and the agreement has to be terminable by either party with thirty days' notice. Physicians do not have to provide care if the fee has not been paid or the patient has committed fraud, failed to adhere to treatment, or is in emotional or physical danger.
EFFECTIVE DATE:	July 1, 2019

History

In 2017, Georgia had the fourth-highest uninsured rate in the nation, with many of its citizens unable to pay the high premiums.¹

1. Andy Miller, *Georgia's Uninsured Rate Climbs, Fourth-Highest in Nation*, ALBANY HERALD (Sept. 16, 2018), https://www.albanyherald.com/news/local/georgia-s-uninsured-rate-climbs-fourth-highest-in-nation/article_03b53a75-580d-5559-a4a5-d8f81b37a8fb.html [https://perma.cc/8T8D-EBTG].

According to the United States Department of Health and Human Services (HHS), over 3.2 million Georgians live in areas facing a severe physician shortage.² Sixty-three counties have zero pediatric physicians and nine counties lack any physicians of any kind.³ Consequently, Georgia's system is overburdened; patients can expect long wait times and increasingly less face-to-face time with doctors.⁴

In an attempt to address this issue, Georgia passed Senate Bill (SB) 18, the Direct Primary Care Act. The goal of this bill is to give patients another choice when deciding on their medical care and allow physicians to spend more time with their patients by cutting out the time spent dealing with patients' insurance.⁵ The Direct Primary Care Act allows patients to work directly with physicians, cutting out the insurance companies as the middlemen.⁶ Physicians contract directly with patients for specified in-office services at a set monthly rate.⁷ Senator Kay Kirkpatrick (R-32nd) explained:

It is a way for people who can't afford high dollar plans to get the majority of their care handled for a reasonable and predictable amount of money and is also a way for people to keep their primary care doctor if they change plans or if their doctor is not in their insurance network.⁸

A version of the bill passed the Senate in 2018 but died in the House.⁹ Senator Kirkpatrick reintroduced the bill in 2019.¹⁰ The new version addressed the concerns of the Chairperson of the House Insurance Committee, Representative Richard Smith (R-134th), who did not support the 2018 bill because of concerns that the bill would

2. Video Recording of Senate Health and Human Services Committee Meeting at 43 min., 20 sec. (Feb. 13, 2019) (remarks by Mr. Tony West, Deputy State Dir., Ams. for Prosperity of Ga.), <https://livestream.com/accounts/26021522/events/8751687/videos/194234374> [hereinafter Senate HHS Committee Video].

3. *Id.*

4. *Id.* at 51 min., 55 sec. (remarks by Erinn Harris, Physician, Direct Primary Care All.).

5. *Id.* at 39 min., 10 sec. (remarks by Sen. Kay Kirkpatrick (R-32nd)).

6. *Id.*

7. *Id.*

8. Senate HHS Committee Video, *supra* note 2, at 39 min., 22 sec. (remarks by Sen. Kay Kirkpatrick (R-32nd)).

9. *Id.*

10. Georgia General Assembly, SB 18, Bill Tracking, <http://www.legis.ga.gov/Legislation/en-US/display/20192020/SB/18> [hereinafter SB 18, Bill Tracking].

confuse patients by making them think they could apply the monthly fee of their direct primary care plan to their deductible.¹¹ Senator Kirkpatrick addressed these concerns by making the bill more well-defined, clarifying that direct primary care is not insurance.¹²

Twenty-four states currently have primary care laws, and patients were already entering direct primary care arrangements with physicians throughout the State of Georgia before passage of the bill.¹³ Because there was no law addressing the issue, physicians feared that “all of [the] sudden, some agency, the Department of Insurance, for example, would say, [physicians] can’t do this anymore.”¹⁴ So, although the bill did not change how direct primary care providers were conducting their business, it gave providers the peace of mind to continue working with their patients without fear of being regulated under insurance laws.¹⁵ The bill provides “legal clarity” for those practicing under this model by reinforcing that there will be no oversight by Georgia’s Insurance Commissioner.¹⁶

The bill garnered support from doctors, activists, and even insurance underwriters who attended the Georgia Senate Committee on Health and Human Services meeting on SB 18.¹⁷ The Georgia Association of Health Underwriters, a 500-member organization of insurance agents in Georgia, supported the bill because it helped fill the gap for those who do not have access to insurance and those who do not have access to a primary care physician.¹⁸ Tony West, the Deputy State Director for Americans for Prosperity of Georgia (AFP Georgia), spoke in support of the bill, citing the severe physician shortage in Georgia as one of the main issues the bill can address.¹⁹

11. Interview with Sen. Kay Kirkpatrick (R-32nd), Chairperson, Senate Ethics Committee (May 20, 2019) (on file with the Georgia State University Law Review) [hereinafter Kirkpatrick Interview].

12. *Id.*

13. Senate HHS Committee Video, *supra* note 2, at 39 min., 10 sec. (remarks by Sen. Kay Kirkpatrick (R-32nd)).

14. Kirkpatrick Interview, *supra* note 11.

15. Senate HHS Committee Video, *supra* note 2, at 1 hr., 3 min., 4 sec. (remarks by Sen. Greg Kirk (R-13th)).

16. *Id.* at 54 min., 7 sec. (remarks by Melissa Black, Physician, Direct Primary Care All.).

17. *See generally* Senate HHS Committee Video, *supra* note 2.

18. *Id.* at 49 min., 2 sec. (remarks by Mr. Mychal Walker, President, Ga. Ass’n of Health Underwriters).

19. *Id.* at 42 min., 40 sec. (remarks by Mr. Tony West, Deputy State Dir., Ams. for Prosperity of Ga.).

AFP Georgia supported the bill as a way to relieve physicians of the burden that the third-party insurance system imposes on doctors.²⁰

Doctors can spend over half of their workday billing and negotiating with insurance companies, leaving less time to care for patients.²¹ This model was supported by doctors, especially direct primary care doctors, who were also present at the committee meeting. Dr. Erinn Harris, representing the Direct Primary Care Alliance, presented the benefits of working under this model.²² Before the direct primary care model, she only spent about five to seven minutes with her patients at a time because of all the time she spent dealing with insurance issues.²³ This model has allowed Dr. Harris and her colleagues to spend more time with their patients and form the doctor-patient relationship that Dr. Harris felt had been lost.²⁴ Governor Brian Kemp (R) ultimately signed SB 18 into law, giving physicians and their patients the peace of mind needed to continue entering into direct primary care agreements.²⁵

Bill Tracking of SB 18

Consideration and Passage by the Senate

SB 18 was introduced by Senators Kay Kirkpatrick (R-32nd), Burt Jones (R-25th), Ben Watson (R-1st), Dean Burke (R-11th), Ed Harbison (D-15th), and Chuck Hufstetler (R-52nd).²⁶ The Senate read the bill for the first time on January 17, 2019, and Lieutenant Governor Geoff Duncan (R) committed the bill to the Senate Health and Human Services Committee on the same day.²⁷ On February 14, 2019, the Committee amended the bill in part and favorably reported the bill by Committee substitute.²⁸ The Committee substitute added a single section requiring a prorata refund for any unearned fees upon

20. *Id.*

21. *Id.*

22. *Id.* at 51 min., 10 sec. (remarks by Erinn Harris, Physician, Direct Primary Care Alliance).

23. Senate HHS Committee Video, *supra* note 2 at 51 min., 58 sec. (remarks by Erinn Harris, Physician, Direct Primary Care All.).

24. *Id.*

25. State of Georgia Final Composite Status Sheet, SB 18, May 22, 2019.

26. SB 18, Bill Tracking, *supra* note 10.

27. State of Georgia Final Composite Status Sheet, SB 18, May 22, 2019.

28. SB 18, Bill Tracking, *supra* note 10.

cancellation of a direct primary care agreement.²⁹ The Committee introduced these changes after Senator Bill Cowsert (R-46th) and others expressed concerns that the bill, as written, was not clear as to the consequences of early termination.³⁰

On February 20, 2019, the bill was recommitted to the Senate Rules Committee.³¹ On February, 21, 2019, the Rules Committee amended the bill in part and favorably reported the bill by substitute.³² The Rules Committee added clarifying language ensuring that the physician must give the patient at least thirty days' notice of termination to allow the patient time to find another healthcare provider.³³ Similarly, the patient would be required to give the physician notice of no more than thirty days.³⁴ The Senate read the bill for the third time on February 26, 2019.³⁵ The Senate then passed the Rules Committee substitute on February 26, 2019, by a vote of 55 to 0.³⁶

Consideration and Passage by the House

Representative Lee Hawkins (R-27th) sponsored SB 18 in the House.³⁷ SB 18 was assigned to the House Committee on Insurance.³⁸ The Committee reviewed the bill for the first time on March 13, 2019.³⁹ The Committee did not make any amendments to the bill, mentioning that there was no real opposition to this bill.⁴⁰

The House read the bill for the third time and passed it on March 14, 2019, by a vote of 155 to 4.⁴¹ The House passed the bill with no

29. Compare SB 18, as introduced, 2019 Ga. Gen. Assemb., with SB 18 (SCS), 2019 Ga. Gen. Assemb.

30. Senate HHS Committee Video, *supra* note 2, at 1 hr., 26 min. (remarks by Sen. Kay Kirkpatrick (R-32nd) and discussion with other Committee members).

31. State of Georgia Final Composite Status Sheet, SB 18, May 22, 2019.

32. *Id.*

33. Compare SB 18 (SCS), 2019 Ga. Gen. Assemb., with SB 18 (SRCS), 2019 Ga. Gen. Assemb.

34. *Id.*

35. State of Georgia Final Composite Status Sheet, SB 18, May 22, 2019.

36. Georgia Senate Voting Record, SB 18, #61 (Feb. 26, 2019).

37. SB 18, Bill Tracking, *supra* note 10.

38. *Id.*

39. State of Georgia Final Composite Status Sheet, SB 18, May 22, 2019.

40. Video Recording of House Insurance Committee Meeting at 12 min., 5 sec. (Mar. 13, 2019) (remarks by Sen. Kay Kirkpatrick (R-32nd)), <https://www.youtube.com/watch?v=kFPzjd06Ao>.

41. State of Georgia Final Composite Status Sheet, SB 18, May 22, 2019; Georgia House of Representatives Voting Record, SB 18, #237 (Mar. 14, 2019).

amendments to the Senate’s version.⁴² The Senate sent the bill to Governor Brian Kemp (R) on April 5, 2019.⁴³ The Governor signed the bill into law on April 25, 2019.⁴⁴ The bill became effective on July 1, 2019.⁴⁵

The Act

The Act amends Chapter 7 of Title 33 of the Official Code of Georgia Annotated, relating to kinds of insurance, limits of risks, and reinsurance.⁴⁶ The overall purpose of the Act is to provide definitions, to provide that primary care agreements are not insurance, to exempt such agreements from regulation as insurance, and to provide for discontinuance of direct primary care services under specific circumstances.⁴⁷

Section 1

Section 1 designates that the Act shall be known as the “Direct Primary Care Act.”⁴⁸

Section 2

Section 2 amends Chapter 7 of Title 33 of the Official Code of Georgia Annotated by adding a new Code section 33-7-2.1.⁴⁹

Definitions

The Act defines a “direct primary care agreement” as a contract between a physician and patient to provide healthcare services for an agreed upon fee and period of time.⁵⁰ The Act further defines a direct

42. SB 18, Bill Tracking, *supra* note 10.

43. State of Georgia Final Composite Status Sheet, SB 18, May 22, 2019.

44. *Id.*

45. O.C.G.A. § 33-7-2.1 (Supp. 2019).

46. 2019 Ga. Laws 217.

47. *Id.*

48. 2019 Ga. Laws 217, § 1, at 218.

49. 2019 Ga. Laws 217, § 2, at 218.

50. *Id.*

primary care practice as a medical practice that charges a periodic fee for services, does not bill any third parties, and has a per visit charge that is less than the monthly equivalent of the periodic fee.⁵¹ Most importantly, the Act clarifies that a direct primary care agreement is not insurance.⁵²

The Agreement

The Act sets out certain requirements for direct primary care agreements. First, the agreement must prominently state in writing that it is not health insurance.⁵³ The agreement must also be in writing and signed by the physician and the individual patient, or their respective representatives.⁵⁴ The agreement must also describe the scope of healthcare services and specify the duration of the agreement and any automatic renewal periods.⁵⁵ Further, the bill requires that the agreement specify the periodic fees and additional fees while dictating that no more than twelve months of the periodic fee can be paid in advance.⁵⁶ Finally, the contract must allow either party to terminate the agreement upon written notice, provided that the physician gives at least thirty days' of notice, while the patient is not required to give more than thirty days' notice.⁵⁷

Declining or Terminating the Agreement

The Act also gives direct primary care providers discretion to decline potential patients when providers are unable to provide the appropriate level and type of health care services.⁵⁸ The physician may also choose to discontinue care if:

- (1) The patient fails to pay the periodic fee or any additional fees specified by the agreement;

51. *Id.*

52. *Id.*

53. *Id.* at 219 (codified at O.C.G.A. § 33-7-2.1(d) (Supp. 2019)).

54. *Id.* at 218.

55. 2019 Ga. Laws 217, § 2, at 218 (codified at O.C.G.A. § 33-7-2.1(d)).

56. *Id.*

57. *Id.*

58. *Id.* at 219.

- (2) The patient has performed an act of fraud;
- (3) The patient repeatedly fails to adhere to the recommended treatment plan;
- (4) The patient is abusive and presents an emotional or physical danger to the staff or other patients of the direct primary care practice; or
- (5) The physician or the physician's medical practice discontinues operations as a direct primary care practice.⁵⁹

Finally, the Act dictates that when a contract is terminated any unearned portion of any paid fees should be refunded to the patient within thirty days.⁶⁰

Section 3

Section 3 states that all laws and parts of laws in conflict with this Act are repealed.⁶¹

Analysis

With the passage of this Act, physicians and patients may now enter into direct primary care agreements certain that they will not be misconstrued as insurance agreements.⁶² This classification has significant ramifications because, if these agreements were to be considered insurance, they would fall under the regulation of the Department of Insurance and the purview of the Affordable Care Act (ACA).⁶³ Therefore, these agreements cannot be limited by ACA regulations, such as minimum essential coverage.⁶⁴ This is in line with the legislative goal to allow patients more options in choosing their healthcare providers free of government intervention.⁶⁵

59. *Id.* (codified at O.C.G.A. § 33-7-2.1(e)).

60. *Id.* (codified at O.C.G.A. § 33-7-2.1(f)).

61. 2019 Ga. Laws 217, § 3, at 219.

62. Interview with Travis Klavohn, Managing Partner, Klavohn Emp. Benefits (June 12, 2019) (on file with the Georgia State University Law Review) [hereinafter Klavohn Interview].

63. *Id.*

64. *Id.*

65. Kirkpatrick Interview, *supra* note 11.

Proponents of the Act see it as the first step to more comprehensive healthcare reform in Georgia.⁶⁶ They see the next step as being preferential tax treatment for patients who enter into these agreements; this would require adjustments in both local and federal tax regulations.⁶⁷ The idea is to allow patients that enter into direct primary care agreements to have the freedom to use their Healthcare Savings Account funds to pay for these services.⁶⁸

Although direct primary care is already well established in Georgia, proponents hope that the Act will encourage the practice and help lower the cost of healthcare in Georgia.⁶⁹ Direct primary care reduces the overhead associated with insurance and billing by greatly simplifying the process and lowering costs.⁷⁰ An audit of the fee schedules shows that direct primary care offices charge a third less than traditional physicians for routine care.⁷¹ Direct primary care also allows patients to stay with their physician even if they change insurance providers or move out of network.⁷² Finally, allowing Georgia physicians and their clients to use this low-cost alternative is particularly attractive given the news that Georgia's new plan for the Medicaid waiver is in serious danger.⁷³

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66. See Klavohn Interview, *supra* note 62; see also Kirkpatrick Interview, *supra* note 11.

67. Klavohn Interview, *supra* note 62.

68. *Id.*

69. Kirkpatrick Interview, *supra* note 11.

70. Klavohn Interview, *supra* note 62.

71. *Id.*

72. Kirkpatrick Interview, *supra* note 11.

73. Ariel Hart, *Georgia Gets Bad News on Medicaid Waiver Funding*, ATLANTA J.-CONST. (July 31, 2019), <https://www.ajc.com/news/state—regional-govt—politics/georgia-gets-bad-news-medicaid-waiver-funding/rcP80rp82dQtbqMxLmnaRI/> [<https://perma.cc/9M26-3UJ6>].