

House Bill 362

By: Representatives Mathiak of the 74th, Gunter of the 8th, Greene of the 154th, Ehrhart of the 36th, and Taylor of the 173rd

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 24 of Title 33 of the Official Code of Georgia Annotated, relating to
2 insurance generally, so as to provide for a benefit provider to disclose certain payments to
3 a treating healthcare provider; to provide for a definition; to provide for related matters; to
4 repeal conflicting laws; to provide for an effective date; and for other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

6 **SECTION 1.**

7 Chapter 24 of Title 33 of the Official Code of Georgia Annotated, relating to insurance
8 generally, is amended by revising Code Section 33-24-56.1, relating to reimbursement of
9 medical expense or disability benefit providers in personal injury cases, subrogation
10 prohibited, and notice, as follows:

11 "33-24-56.1.

12 (a) As used in this Code section, the term:

13 (1) 'Benefit provider' means any insurer, health maintenance organization, health benefit
14 plan, preferred provider organization, employee benefit plan, or other entity which
15 provides for payment or reimbursement of ~~health care~~ healthcare expenses, ~~health care~~

healthcare services, disability payments, lost wage payments, or any other benefits under a policy of insurance or contract with an individual or group.

(2) 'Injured party' means a person who alleges that he or she has been injured by the acts or omissions of a third party and who has received benefits from a benefit provider. This term also includes the personal representative of the estate of such person.

(3) 'Treating healthcare provider' means a person duly licensed or legally authorized to provide healthcare services and that has provided such services to an injured party.

(b) In the event of recovery for personal injury from a third party by or on behalf of a person for whom any benefit provider has paid medical expenses or disability benefits, the benefit provider for the person injured may require reimbursement from the injured party of benefits it has paid on account of the injury, up to the amount allocated to those categories of damages in the settlement documents or judgment, if:

(1) The amount of the recovery exceeds the sum of all economic and noneconomic losses incurred as a result of the injury, exclusive of losses for which reimbursement may be sought under this Code section; and

(2) The amount of the reimbursement claim is reduced by the pro rata amount of the attorney's fees and expenses of litigation incurred by the injured party in bringing the claim.

(c) In the settlement of any claim for personal injury, under circumstances where it is claimed that the amount of the recovery does not exceed the sum of all economic and noneconomic losses incurred as a result of the injury, a benefit provider which has paid benefits to or on behalf of the injured person may seek a declaratory judgment pursuant to Code Section 9-4-2 as to what extent it may equitably share in said settlement. If the court determines said settlement does not fully and completely compensate the injured party, the benefit provider has no right of reimbursement.

(d) In the trial of any case for personal injury submitted to a court or jury, the trier of fact may allocate the amounts paid among the categories of damages actually sought by the

43 plaintiff at trial, and it shall be conclusively presumed that such allocation by the trier of
44 fact is reasonable.

45 (e) Subrogation for medical expenses and disability payments by a benefit provider against
46 a person at fault for injury is prohibited and no defendant or liability insurance carrier shall
47 include any insurer seeking reimbursement under subsection (b) of this Code section as a
48 copayee on any check or draft in payment of a settlement or judgment.

49 (f) No benefit provider shall be entitled to reduce the amount for which it is liable under
50 an insured party's coverage for liability, uninsured motorist, disability, medical payments,
51 or other benefits as a setoff against any claim for reimbursement under subsection (b) of
52 this Code section, nor shall any benefit provider be entitled to withhold or set off insurance
53 benefits as a means of enforcing a claim for reimbursement. Nothing in this subsection
54 shall be deemed to prohibit the coordination of benefits between or among benefit
55 providers.

56 (g) When a recovery for personal injury is sought from a third party by or on behalf of a
57 person for whom any benefit provider has paid medical expenses or disability benefits, the
58 person asserting the claim for recovery against the third party shall provide notice of the
59 existence of the claim, by certified mail or statutory overnight delivery unless some other
60 form of notice is agreed to by the designated recipient of the notice, to any benefit provider
61 which the person asserting the claim has reason to believe has paid benefits relating to the
62 injury for which the injured party seeks a recovery. This notice shall be provided no later
63 than ten days prior to the consummation of any settlement or commencement of any trial
64 unless a shorter notice period is agreed to by the designated recipient of the notice and shall
65 include a request for information regarding the existence of any claim by a benefit provider
66 and an itemization of payments for which the benefit provider seeks reimbursement
67 including the names of payees, the dates of service or payment or both, and the amounts
68 thereof.

(h) If the notice required in subsection (g) of this Code section is provided, a claim for reimbursement under subsection (b) of this Code section is enforceable against an injured party only to the extent that such person has actual notice prior to the consummation of a settlement or commencement of trial, by certified mail or statutory overnight delivery or other form of notice if agreed to by the designated recipient of the notice, of the claim of the benefit provider for reimbursement including a specific itemization of payments for which the benefit provider seeks reimbursement, including the names of payees, the dates of service or payment or both, and the amounts thereof. Nothing contained in this subsection shall prohibit the supplementation of a claim prior to the consummation of a settlement or judgment, except that any supplemental claims shall be subject to the notice requirements contained in this subsection.

(i) If the notice required in subsection (g) of this Code section is not provided, then subsection (h) of this Code section shall not apply, and a claim for reimbursement under subsection (b) of this Code section is enforceable subject to the other provisions of this Code section.

(j) No benefit provider contracts or policies containing or incorporating provisions in conflict with this Code section may be issued in this state, and no policy or contract provisions for subrogation or reimbursement in conflict with this Code section may be enforced by a benefit provider with regard to claims or injuries.

(k) Any settlement which is subject to this Code section that contains a confidentiality provision as to any terms of the settlement which are necessary to a proceeding under this Code section shall be unenforceable as to the disclosure of such required information.

(l) This Code section shall not apply to the rights of the Department of Community Health to recover under Article 7 of Chapter 4 of Title 49, nor shall it affect the subrogation rights and obligations provided in Code Section 34-9-11.1.

(m) A benefit provider, upon written request from a treating healthcare provider, shall provide, within 30 days of such request, to the treating healthcare provider a written

96 accounting of any and all payments and reimbursements for such provider's healthcare
97 services."

98 **SECTION 2.**

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

101 **SECTION 3.**

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