

Senate Bill 352

By: Senators Unterman of the 45th, Burke of the 11th, Hufstetler of the 52nd, Kirkpatrick of the 32nd, Sims of the 12th and others

AS PASSED SENATE

**A BILL TO BE ENTITLED
AN ACT**

1 To amend Article 1 of Chapter 1 of Title 31 of the Official Code of Georgia Annotated,
2 relating to general provisions relative to health, so as to prohibit patient brokering; to provide
3 for definitions; to provide for exceptions; to provide for penalties; to create an executive
4 director of substance abuse, addiction, and related disorders; to provide for appointment; to
5 provide for qualifications; to establish the Commission on Substance Abuse and Recovery;
6 to provide for membership; to provide for duties; to amend Chapter 1 of Title 33 of the
7 Official Code of Georgia Annotated, relating to general provisions relative to insurance, so
8 as to provide for a fraudulent insurance act for the excessive, high-tech, or fraudulent drug
9 testing of certain individuals; to provide for investigation by the Commissioner; to provide
10 for penalties; to provide for related matters; to repeal conflicting laws; and for other
11 purposes.

12 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

13 **SECTION 1.**

14 Article 1 of Chapter 1 of Title 31 of the Official Code of Georgia Annotated, relating to
15 general provisions relative to health, is amended by adding a new Code section to read as
16 follows:

17 "31-1-16.

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

19 (1) 'Health care provider or health care facility' means:

20 (A) Any person licensed under Chapter 9, 10A, 11, 11A, 26, 28, 30, 33, 34, 35, 39,
21 or 44 of Title 43 or any hospital, nursing home, home health agency, institution, or
22 medical facility licensed or defined under Chapter 7 of Title 31. The term shall also
23 include any corporation, professional corporation, partnership, limited liability
24 company, limited liability partnership, authority, or other entity composed of such
25 health care providers;

26 (B) Any state owned or state operated hospital, community mental health center, or
 27 other facility utilized for the diagnosis, care, treatment, or hospitalization of persons
 28 who are alcoholics, drug dependent individuals, or drug abusers and any other hospital
 29 or facility within the State of Georgia approved for such purposes by the Department
 30 of Behavioral Health and Developmental Disabilities;

31 (C) Community mental health center as defined in Code Section 37-7-1;

32 (D) Any Medicaid provider as defined in Code Section 49-4-146.1;

33 (E) A state or local health department;

34 (F) Any community service provider contracting with any state entity to furnish
 35 alcohol, drug abuse, or mental health services; and

36 (G) Any substance abuse service provider licensed under Chapter 5 of Title 26.

37 (2) 'Health care provider network entity' means a corporation, partnership, or limited
 38 liability company owned or operated by two or more health care providers or health care
 39 facilities and organized for the purpose of entering into agreements with health insurers,
 40 health care purchasing groups, or Medicaid or medicare.

41 (3) 'Health insurer' means an accident and sickness insurer, health care corporation,
 42 health maintenance organization, provider sponsored health care corporation, or any
 43 similar entity regulated by the Commissioner of Insurance.

44 (b) It shall be unlawful for any person, including any health care provider or health care
 45 facility, to:

46 (1) Offer to pay a commission, benefit, bonus, rebate, kickback, or bribe, directly or
 47 indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form, to
 48 induce the referral of a patient or patronage to or from a health care provider or health
 49 care facility;

50 (2) Solicit or receive a commission, benefit, bonus, rebate, kickback, or bribe, directly
 51 or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form, in
 52 return for the referral of a patient or patronage to or from a health care provider or health
 53 care facility;

54 (3) Solicit or receive a commission, benefit, bonus, rebate, kickback, or bribe, directly
 55 or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form, in
 56 return for the acceptance or acknowledgment of treatment from a health care provider or
 57 health care facility; or

58 (4) Aid, abet, advise, or otherwise participate in the conduct prohibited by this
 59 subsection.

60 (c) This Code section shall not apply to:

- 61 (1) Any discount, payment, waiver of payment, or payment practice not prohibited by 42
62 U.S.C. Section 1320a-7b(b) or any fraternal benefit society providing health benefits to
63 its members as authorized pursuant to Chapter 15 of Title 33;
- 64 (2) Any payment, compensation, or financial arrangement within a group practice as
65 defined in Code Section 43-1B-3, provided such payment, compensation, or arrangement
66 is not to or from persons who are not members of the group practice;
- 67 (3) Payments to a health care provider or health care facility for professional consultation
68 services;
- 69 (4) Commissions, fees, or other remuneration lawfully paid to insurance agents as
70 provided under Title 33;
- 71 (5) Payments by a health insurer who reimburses, provides, offers to provide, or
72 administers health, mental health, or substance abuse goods or services under a health
73 benefit plan;
- 74 (6) Payments to or by a health care provider or health care facility or a health care
75 provider network entity that has contracted with a health insurer, a health care purchasing
76 group, or the medicare or Medicaid program to provide health, mental health, or
77 substance abuse goods or services under a health benefit plan when such payments are
78 for goods or services under the plan. However, nothing in this Code section affects
79 whether a health care provider network entity is an insurer required to be licensed under
80 Title 33;
- 81 (7) Insurance advertising gifts lawfully permitted under Code Section 33-6-4; or
- 82 (8) Payments by a health care provider or health care facility to a health, mental health,
83 or substance abuse information service that provides information upon request and
84 without charge to consumers about providers of health care goods or services to enable
85 consumers to select appropriate providers or facilities, provided that such information
86 service:
- 87 (A) Does not attempt through its standard questions for solicitation of consumer
88 criteria or through any other means to steer or lead a consumer to select or consider
89 selection of a particular health care provider or health care facility;
- 90 (B) Does not provide or represent itself as providing diagnostic or counseling services
91 or assessments of illness or injury and does not make any promises of cure or
92 guarantees of treatment;
- 93 (C) Does not provide or arrange for transportation of a consumer to or from the
94 location of a health care provider or health care facility; and
- 95 (D) Charges and collects fees from a health care provider or health care facility
96 participating in its services that are set in advance, are consistent with the fair market
97 value for those information services, and are not based on the potential value of a

98 patient or patients to a health care provider or health care facility or of the goods or
 99 services provided by the health care provider or health care facility.

100 (d)(1) Any person, including an officer, partner, agent, attorney, or other representative
 101 of a firm, joint venture, partnership, business trust, syndicate, corporation, or other
 102 business entity, who violates any provision of this Code section, when the prohibited
 103 conduct involves less than ten patients, commits a felony and, upon conviction thereof,
 104 shall be punished by imprisonment for not more than five years and by a fine of
 105 \$50,000.00 per violation.

106 (2) Any person, including an officer, partner, agent, attorney, or other representative of
 107 a firm, joint venture, partnership, business trust, syndicate, corporation, or other business
 108 entity, who violates any provision of this Code section, when the prohibited conduct
 109 involves ten or more patients but fewer than 20, commits a felony and, upon conviction
 110 thereof, shall be punished by imprisonment for not more than ten years and by a fine of
 111 not more than \$100,000.00 per violation.

112 (3) Any person, including an officer, partner, agent, attorney, or other representative of
 113 a firm, joint venture, partnership, business trust, syndicate, corporation, or other business
 114 entity, who violates any provision of this Code section, when the prohibited conduct
 115 involves 20 or more patients, commits a felony and, upon conviction thereof, shall be
 116 punished by imprisonment for 20 years and by a fine of not more than \$500,000.00 per
 117 violation.

118 (e) Notwithstanding any other law to the contrary, the Attorney General or district attorney
 119 of the judicial circuit in which any part of the violation occurred may maintain an action
 120 for injunctive relief or other process to enforce the provisions of this Code section.

121 (f) The party bringing an action under this Code section may recover reasonable expenses
 122 in obtaining injunctive relief, including, but not limited to, investigative costs, court costs,
 123 reasonable attorney's fees, witness costs, and deposition expenses.

124 (g) The provisions of this Code section are in addition to any other civil, administrative,
 125 or criminal actions provided by law and may be imposed against both corporate and
 126 individual defendants."

127 **SECTION 2.**

128 Said article is further amended by adding a new Code section to read as follows:

129 "31-1-17.

130 (a) The Governor shall appoint an executive director of substance abuse, addiction, and
 131 related disorders who shall serve at the pleasure of the Governor. The executive director
 132 shall be an employee of the Governor's Office of Planning and Budget and shall report
 133 directly to the Governor.

134 (b) The executive director shall have a college degree and at least one of the following
 135 qualifications:

136 (1) Educational background or work experience involving vulnerable populations
 137 relative to substance abuse, addiction, and related disorders with the ability to assess the
 138 impact of untreated mental illness and substance abuse disorders on state budgets,
 139 hospitals, emergency rooms, jails, prisons, law enforcement agencies, educational
 140 institutions, and related institutions and services;

141 (2) Work experience in a setting dealing with treatment and delivery of services for the
 142 safety or well-being of children and adults affected by substance abuse, addiction, and
 143 related disorders; or

144 (3) Experience working in or managing a complex, multidisciplinary business or
 145 government agency.

146 (c)(1) There is established the Commission on Substance Abuse and Recovery. The
 147 purpose of the commission is to create a coordinated and unified effort among state and
 148 local agencies to confront the state-wide addiction and substance abuse crisis.

149 (2) The executive director shall oversee the commission and be a voting member thereof.

150 (3) The commission shall consist of 15 members as follows:

151 (A) The commissioner of behavioral health and developmental disabilities;

152 (B) The commissioner of public health;

153 (C) The commissioner of community health;

154 (D) The commissioner of human services;

155 (E) The State School Superintendent;

156 (F) The commissioner of public safety;

157 (G) The Commissioner of Insurance;

158 (H) The Attorney General;

159 (I) The director of the Georgia Bureau of Investigation;

160 (J) The commissioner of community supervision;

161 (K) One representative of the judicial branch representing the accountability courts to
 162 be appointed by the Governor;

163 (L) Two representatives from the advocacy community to be appointed by the
 164 Governor;

165 (M) One member from the House of Representative to be appointed by the Speaker of
 166 the House of Representatives; and

167 (N) One member from the Senate to be appointed by the Lieutenant Governor.

168 (4) The executive director shall be the chairperson of the commission. The commission
 169 may elect such other officers and establish committees as it deems appropriate.

170 (5) Meetings of the commission shall be held quarterly, or more frequently, on the call
171 of the chairperson. Meetings of the commission shall be held with not less than five days'
172 public notice for regular meetings and with such notice as the bylaws may prescribe for
173 special meetings. Each member shall be given written notice of all meetings. All
174 meetings of the commission shall be subject to the provisions of Chapter 14 of Title 50.
175 Minutes or transcripts shall be kept of all meetings of the commission and shall include
176 a record of the votes of each member, specifying the yea or nay vote or the absence of
177 each member, on all questions and matters coming before the commission. No member
178 may abstain from a vote other than for reasons constituting disqualification to the
179 satisfaction of a majority of a quorum of the commission on a recorded vote. No member
180 of the commission shall be represented by a delegate or agent.

181 (6) Members shall serve without compensation, although each member of the
182 commission shall be reimbursed for actual expenses incurred in the performance of his
183 or her duties from funds available to the commission; provided, however, that any
184 legislative member shall receive the allowances authorized by law for legislative
185 members of interim legislative committees and any members who are state employees
186 shall be reimbursed for expenses incurred by them in the same manner as they are
187 reimbursed for expenses in their capacities as state employees.

188 (d) The commission shall be vested with the following functions and authority:

189 (1) To coordinate overdose data and statistics between the prescription drug monitoring
190 program data base, the Georgia Bureau of Investigation, the Federal Bureau of
191 Investigation, and local governments;

192 (2) To consult on the implementation of the department's strategic plan on the opioid
193 crisis;

194 (3) To consult with the Attorney General's task force on the opioid crisis;

195 (4) To work with advocacy groups to coordinate public education forums with the
196 department and the Department of Behavioral Health and Developmental Disabilities;

197 (5) To consult with and provide recommendations to the Governor on a potential
198 Medicaid waiver related to opioid abuse;

199 (6) To create a block grant program based on sliding scale needs that is strategically
200 based on statistics and the needs of communities. The commission shall be responsible
201 for accepting, reviewing, and making recommendations to the department on applicant
202 awards;

203 (7) To consult with the Board of Education and the Department of Education to
204 formulate strategies for a uniform state-wide network of education and substance abuse
205 and addiction prevention pursuant to subsection (c) of Code Section 20-2-142;

- 206 (8) To develop a prevention education plan and to increase funding for local-level
 207 substance misuse prevention services in public schools, for law enforcement agencies,
 208 and for community organizations; and
 209 (9) To expand access to appropriate prevention, treatment, and recovery support
 210 services."

211 **SECTION 3.**

212 Chapter 1 of Title 33 of the Official Code of Georgia Annotated, relating to general
 213 provisions relative to insurance, is amended by adding a new Code section to read as follows:
 214 "33-1-16.1.

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

216 (1) 'High-tech drug testing' means when billing for drug tests is not limited and tests are
 217 ordered for a number of different substances whereby the health benefit plan is billed
 218 separately for each substance tested.

219 (2) 'Person' means an individual, any person who provides coverage under Code
 220 Section 33-1-14, and any owner, manager, medical practitioner, employee, or any other
 221 party involved in the fraudulent act.

222 (b)(1) For purposes of this Code section, a person commits a 'fraudulent insurance act'
 223 if he or she knowingly and with intent to defraud presents, causes to be presented, or
 224 prepares with knowledge or belief that it will be presented, to or by an insurer, broker,
 225 or any agent thereof, or directly or indirectly to an insured or uninsured patient a bill for
 226 excessive, high-tech, or fraudulent drug testing in the treatment of the elderly, the
 227 disabled, or any individual affected by pain, substance abuse, addiction, or any related
 228 disorder. Such person shall include, but shall not be limited to, any person who provides
 229 coverage in this state under subsection (a) of Code Section 33-1-14.

230 (2) Such drug testing shall include, but shall not be limited to:

231 (A) Upcoding that results in billing for more expensive services or procedures than
 232 were actually provided or performed;

233 (B) Unbundling of such billing whereby drug tests from a single blood sample that
 234 detect a variety of narcotics is separated into multiple tests and billed separately;

235 (C) Billing an individual for multiple co-pay amounts;

236 (D) Billing an individual for services that are covered by such individual's health
 237 benefit plan;

238 (E) Billing for drug testing that was not performed; or

239 (F) Billing for excessive numbers of drug tests that are found to be medically
 240 unnecessary for the treatment pursuant to this Code section.

241 (c) If, by his or her own inquiries or as a result of information received, the Commissioner
242 has reason to believe that a person has engaged in or is engaging in a fraudulent insurance
243 act under this Code section, the Commissioner shall have all the powers and duties
244 pursuant to Code Section 33-1-16 to investigate such matter.

245 (d) A natural person convicted of a violation of this Code section shall be guilty of a
246 felony and shall be punished by imprisonment for not less than ten years nor more than 20
247 years, or by a fine of not more than \$25,000.00 per violation, or both.

248 (e) This Code section shall not supersede any investigation audit which involves fraud,
249 willful misrepresentation, or abuse under Article 7 of Chapter 4 of Title 49 or any other
250 statutory provisions which authorize investigation relating to insurance."

251 **SECTION 4.**

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