

SENATE SUBSTITUTE TO HB 782:

AS PASSED SENATE

A BILL TO BE ENTITLED

AN ACT

1 To amend Code Section 16-13-60 of the Official Code of Georgia Annotated, relating to
 2 privacy and confidentiality, use of data, and security program for the prescription drug
 3 monitoring program data base, so as to revise provisions relating to permissible users with
 4 access to the data base; to amend Article 1 of Chapter 1 of Title 31 of the Official Code of
 5 Georgia Annotated, relating to general provisions relative to health, so as to prohibit patient
 6 brokering; to provide for definitions; to provide for exceptions; to provide for penalties; to
 7 create an executive director of substance abuse, addiction, and related disorders; to provide
 8 for appointment; to provide for qualifications; to establish the Commission on Substance
 9 Abuse and Recovery; to provide for membership; to provide for duties; to amend Chapter 1
 10 of Title 33 of the Official Code of Georgia Annotated, relating to general provisions relative
 11 to insurance, so as to provide for a fraudulent insurance act for the excessive, high-tech, or
 12 fraudulent drug testing of certain individuals; to provide for investigation by the
 13 Commissioner; to provide for penalties; to provide for related matters; to repeal conflicting
 14 laws; and for other purposes.

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

16 **SECTION 1.**

17 Code Section 16-13-60 of the Official Code of Georgia Annotated, relating to privacy and
 18 confidentiality, use of data, and security program for the prescription drug monitoring
 19 program data base, is amended by revising subsection (c) as follows:

20 "(c) The department shall be authorized to provide requested prescription information
 21 collected pursuant to this part only as follows:

22 (1) To persons authorized to prescribe or dispense controlled substances for the sole
 23 purpose of providing medical or pharmaceutical care to a specific patient;

24 (2) Upon the request of a patient, prescriber, or dispenser about whom the prescription
 25 information requested concerns or upon the request on his or her behalf of his or her
 26 attorney;

27 (3) To local or state law enforcement or prosecutorial officials pursuant to the issuance
 28 of a search warrant from an appropriate court or official in the county in which the office
 29 of such law enforcement or prosecutorial officials are located ~~pursuant to Article 2 of~~
 30 ~~Chapter 5 of Title 17~~ or to federal law enforcement or prosecutorial officials pursuant to
 31 the issuance of a search warrant pursuant to 21 U.S.C. or a grand jury subpoena pursuant
 32 to 18 U.S.C.;

33 (4) To the agency, the Georgia Composite Medical Board or any other state regulatory
 34 board governing prescribers or dispensers in this state, or the Department of Community
 35 Health for purposes of the state Medicaid program, for health oversight purposes, or upon
 36 the issuance of a subpoena by such agency, board, or Department of Community Health
 37 pursuant to their existing subpoena power or to the federal Centers for Medicare and
 38 Medicaid Services upon the issuance of a subpoena by the federal government pursuant
 39 to its existing subpoena ~~powers~~ power;

40 (5)(A) To not more than two individuals who are members per shift or rotation of the
 41 prescriber's or dispenser's staff ~~or employed at the health care facility in which the~~
 42 ~~prescriber is practicing, provided that such individuals:~~

43 ~~(i) Are licensed under Chapter 11, 30, 34, or 35 of Title 43;~~

44 ~~(ii) Are registered under Title 26;~~

45 ~~(iii) Are licensed under Chapter 26 of Title 43 and submit to the annual registration~~
 46 ~~process required by subsection (a) of Code Section 16-13-35, and for purposes of this~~
 47 ~~Code section, such individuals shall not be deemed exempted from registration as set~~
 48 ~~forth in subsection (g) of Code Section 16-13-35; or~~

49 ~~(iv) Submit to the annual registration process required by subsection (a) of Code~~
 50 ~~Section 16-13-35, and for purposes of this Code section, such individuals shall not be~~
 51 ~~deemed exempted from registration as set forth in subsection (g) of Code Section~~
 52 ~~16-13-35;~~

53 (B) Such individuals may retrieve and review such information strictly for the purpose
 54 of:

55 (i) Providing medical or pharmaceutical care to a specific patient; or

56 (ii) Informing the prescriber or dispenser of a patient's potential use, misuse, abuse,
 57 or underutilization of prescribed medication;

58 (C) All information retrieved and reviewed by such individuals shall be maintained in
 59 a secure and confidential manner in accordance with the requirements of subsection (f)
 60 of this Code section; and

61 (D) The delegating prescriber or dispenser may be held civilly liable and criminally
 62 responsible for the misuse of the prescription information obtained by such individuals;

63 (6) To not more than two individuals, per shift or rotation, who are employed or
 64 contracted by the health care facility in which the prescriber is practicing so long as the
 65 medical director of such health care facility has authorized the particular individuals for
 66 such access; ~~and~~

67 (7) In any hospital which provides emergency services, each prescriber may designate
 68 two individuals, per shift or rotation, who are employed or contracted by such hospital
 69 so long as the medical director of such hospital has authorized the particular individuals
 70 for such access; and

71 (8) To a prescription drug monitoring program operated by a government entity in
 72 another state or an electronic medical records system operated by a prescriber or health
 73 care facility, provided the program or system, as determined by the department, contains
 74 legal, administrative, technical, and physical safeguards that meet or exceed the security
 75 measures of the department for the operation of the PDMP pursuant to this part."

76 **SECTION 2.**

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

80 "31-1-16.

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

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

83 (A) Any person licensed under Chapter 9, 10A, 11, 11A, 26, 28, 30, 33, 34, 35, 39,
 84 or 44 of Title 43 or any hospital, nursing home, home health agency, institution, or
 85 medical facility licensed or defined under Chapter 7 of this title. The term shall also
 86 include any corporation, professional corporation, partnership, limited liability
 87 company, limited liability partnership, authority, or other entity composed of such
 88 health care providers;

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

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

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

96 (E) A state or local health department;

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

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

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

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

107 (b) It shall be unlawful for any person, including any health care provider or health care
 108 facility, to knowingly and willfully:

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

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

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

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

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

124 (1) Any health care provider or facility actively enrolled in the Medicare or Medicaid
 125 program or any fraternal benefit society providing health benefits to its members as
 126 authorized pursuant to Chapter 15 of Title 33;

127 (2) Any amount paid by an employer to an employee (who has a bona fide employment
 128 relationship with such employer) for employment or any payment, compensation, or
 129 financial arrangement within a group practice as defined in Code Section 43-1B-3,
 130 provided such payment, compensation, or arrangement is not to or from persons who are
 131 not members of the group practice;

132 (3) Payments to a health care provider or health care facility for professional consultation
 133 services;

134 (4) Commissions, fees, or other remuneration lawfully paid to insurance agents as
 135 provided under Title 33;

136 (5) Payments by a health insurer who reimburses, provides, offers to provide, or
137 administers health, mental health, or substance abuse goods or services under a health
138 benefit plan;

139 (6) Payments to or by a health care provider or health care facility or a health care
140 provider network entity that has contracted with a health insurer, a health care purchasing
141 group, or the medicare or Medicaid program to provide health, mental health, or
142 substance abuse goods or services under a health benefit plan when such payments are
143 for goods or services under the plan. However, nothing in this Code section affects
144 whether a health care provider network entity is an insurer required to be licensed under
145 Title 33;

146 (7) Insurance advertising gifts lawfully permitted under Code Section 33-6-4;

147 (8) Payments by a health care provider or health care facility to a health, mental health,
148 or substance abuse information service that provides information upon request and
149 without charge to consumers about providers of health care goods or services to enable
150 consumers to select appropriate providers or facilities, provided that such information
151 service:

152 (A) Does not attempt through its standard questions for solicitation of consumer
153 criteria or through any other means to steer or lead a consumer to select or consider
154 selection of a particular health care provider or health care facility;

155 (B) Does not provide or represent itself as providing diagnostic or counseling services
156 or assessments of illness or injury and does not make any promises of cure or
157 guarantees of treatment;

158 (C) Does not provide or arrange for transportation of a consumer to or from the
159 location of a health care provider or health care facility; and

160 (D) Charges and collects fees from a health care provider or health care facility
161 participating in its services that are set in advance, are consistent with the fair market
162 value for those information services, and are not based on the potential value of a
163 patient or patients to a health care provider or health care facility or of the goods or
164 services provided by the health care provider or health care facility; or

165 (9) Payments by an intermediate care home, private home care provider, assisted living
166 community, personal care home, or other long-term care facility or provider to a referral
167 service that provides information, consultation, or referrals at no cost to consumers to
168 assist them in finding appropriate care or housing options for elderly persons or disabled
169 adults who are not Medicaid recipients.

170 (d)(1) Any person who violates any provision of this Code section, when the prohibited
171 conduct involves less than ten patients, commits a felony and, upon conviction thereof,

172 shall be punished by imprisonment for not more than five years and by a fine of
 173 \$50,000.00 per violation.

174 (2) Any person who violates any provision of this Code section, when the prohibited
 175 conduct involves ten or more patients but fewer than 20, commits a felony and, upon
 176 conviction thereof, shall be punished by imprisonment for not more than ten years and
 177 by a fine of not more than \$100,000.00 per violation.

178 (3) Any person who violates any provision of this Code section, when the prohibited
 179 conduct involves 20 or more patients, commits a felony and, upon conviction thereof,
 180 shall be punished by imprisonment for 20 years and by a fine of not more than
 181 \$500,000.00 per violation.

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

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

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

191 **SECTION 3.**

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

193 "31-1-17.

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

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

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

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

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

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

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

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

215 (A) The commissioner of behavioral health and developmental disabilities;
 216 (B) The commissioner of public health;
 217 (C) The commissioner of community health;
 218 (D) The commissioner of human services;
 219 (E) The State School Superintendent;
 220 (F) The commissioner of public safety;
 221 (G) The Commissioner of Insurance;
 222 (H) The Attorney General;
 223 (I) The director of the Georgia Bureau of Investigation;
 224 (J) The commissioner of community supervision;
 225 (K) One representative of the judicial branch representing the accountability courts to
 226 be appointed by the Governor;
 227 (L) Two representatives from the advocacy community to be appointed by the
 228 Governor;
 229 (M) One member from the House of Representative to be appointed by the Speaker of
 230 the House of Representatives; and
 231 (N) One member from the Senate to be appointed by the Lieutenant Governor.

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

234 (5) Meetings of the commission shall be held quarterly, or more frequently, on the call
 235 of the chairperson. Meetings of the commission shall be held with not less than five days'
 236 public notice for regular meetings and with such notice as the bylaws may prescribe for
 237 special meetings. Each member shall be given written notice of all meetings. All
 238 meetings of the commission shall be subject to the provisions of Chapter 14 of Title 50.
 239 Minutes or transcripts shall be kept of all meetings of the commission and shall include
 240 a record of the votes of each member, specifying the yea or nay vote or the absence of
 241 each member, on all questions and matters coming before the commission. No member
 242 may abstain from a vote other than for reasons constituting disqualification to the
 243 satisfaction of a majority of a quorum of the commission on a recorded vote. No member
 244 of the commission shall be represented by a delegate or agent.

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

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

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

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

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

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

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

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

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

270 (8) To develop a prevention education plan and to increase funding for local-level
 271 substance misuse prevention services in public schools, for law enforcement agencies,
 272 and for community organizations; and

273 (9) To expand access to appropriate prevention, treatment, and recovery support
 274 services."

275 **SECTION 4.**

276 Chapter 1 of Title 33 of the Official Code of Georgia Annotated, relating to general
 277 provisions relative to insurance, is amended by adding a new Code section to read as follows:

278 "33-1-16.1.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

315

SECTION 5.

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