Senate Bill 311
By: Senators Kirkpatrick of the 32nd, Unterman of the 45th, Robertson of the 29th, Burke of the 11th and Rhett of the 33rd

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 1 of Title 31 of the Official Code of Georgia Annotated, relating to general provisions regarding health, so as to prohibit patient brokering; to provide for definitions; to provide for exceptions; to provide for penalties; to amend Chapter 1 of Title 33 of the Official Code of Georgia Annotated, relating to general provisions regarding insurance, so as to provide that excessive, fraudulent, or high-tech drug testing of certain individuals is considered a fraudulent insurance act; to provide for investigation by the Commissioner of Insurance; to provide for penalties; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.
Chapter 1 of Title 31 of the Official Code of Georgia Annotated, relating to general provisions regarding health, is amended by adding a new Code section to read as follows:

"31-1-18.
(a) As used in this Code section, the term:

(1) 'Health care provider' means:

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

(B) Any state owned or state operated hospital, community mental health center, or other facility utilized for the diagnosis, care, treatment, or hospitalization of persons who are alcoholics, drug dependent individuals, or drug abusers and any other hospital or facility within the State of Georgia approved for such purposes by the Department of Behavioral Health and Developmental Disabilities;
(C) Any community mental health center as defined in Code Section 37-7-1;
(D) Any Medicaid provider which meets the definition in paragraph (6) of Code
Section 49-4-141;
(E) A state or local health department;
(F) Any community service provider contracting with any state or local entity to
furnish mental health, developmental disability, and addictive disease services; and
(G) Any drug abuse treatment and education program and narcotic treatment program
licensed under Chapter 5 of Title 26.

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

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

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

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

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

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

(4) Aid, abet, advise, or otherwise participate in the conduct prohibited by paragraphs (1)
through (3) of this subsection.

c) This Code section shall not apply to:

(1) Any discount, payment, waiver of payment, or payment practice not prohibited by
42 U.S.C. Section 1320a-7b(b) or any fraternal benefit society providing health benefits
to its members as authorized pursuant to Chapter 15 of Title 33;

(2) Any payment, compensation, or financial arrangement within a group practice as
defined in Code Section 43-1B-3, provided that such payment, compensation, or
arrangement is not to or from persons who are not members of the group practice;

(3) Payments to a health care provider for professional consultation services;
(4) Commissions, fees, or other remuneration lawfully paid to insurance agents as provided under Title 33;
(5) Payments by a health insurer who reimburses, provides, offers to provide, or administers health, mental health, or substance abuse goods or services under a health benefit plan;
(6) Payments to or by a health care provider or a health care provider network entity that has contracted with a health insurer, a health care purchasing group, or the Medicare or Medicaid program to provide health care, mental health, or substance abuse goods or services under a health benefit plan when such payments are for goods or services under the plan; provided, however, that nothing in this paragraph shall be construed to affect whether a health care provider network entity is an insurer required to be licensed under Title 33;
(7) Insurance advertising gifts lawfully permitted under Code Section 33-6-4; or
(8) Payments by a health care provider to a health care, mental health, or substance abuse information service that provides information upon request and without charge to consumers about providers of health care goods or services to enable consumers to select appropriate health care providers, provided that such information service:
   (A) Does not attempt through its standard questions for solicitation of consumer criteria or through any other means to steer or lead a consumer to select or consider selection of a particular health care provider;
   (B) Does not provide or represent itself as providing diagnostic or counseling services or assessments of illness or injury and does not make any promises of cure or guarantees of treatment;
   (C) Does not provide or arrange for transportation of a consumer to or from the location of a health care provider; and
   (D) Charges and collects fees from a health care provider participating in its services that are set in advance, are consistent with the fair market value for those information services, and are not based on the potential value of a patient or patients to a health care provider or of the goods or services provided by the health care provider.
(d)(1) Any person, including an officer, partner, agent, attorney, or other representative of a firm, joint venture, partnership, business trust, syndicate, corporation, or other business entity, who violates any provision of this Code section, when the prohibited conduct involves fewer than ten patients, commits a misdemeanor and, upon conviction thereof, shall be punished by imprisonment for not more than 12 months and by a fine of not more than $1,000.00 per violation.
(2) Any person, including an officer, partner, agent, attorney, or other representative of a firm, joint venture, partnership, business trust, syndicate, corporation, or other business entity, who violates any provision of this Code section, when the prohibited conduct involves ten or more patients, commits a misdemeanor and, upon conviction thereof, shall be punished by imprisonment for not more than 12 months and by a fine of not more than $1,000.00 per violation.
entity, who violates any provision of this Code section, when the prohibited conduct involves ten or more patients but fewer than 20 patients, commits a felony and, upon conviction thereof, shall be punished by imprisonment for not more than five years and by a fine of not more than $100,000.00 per violation.

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

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

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

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

SECTION 2.

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

33-1-16.1.

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

(1) 'High-tech drug testing' means testing an individual's specimen for a number of different substances and billing and receiving payment separately for each substance tested.

(2) 'Person' means an individual, any person who provides coverage under Code Section 33-1-14, and any owner, manager, medical practitioner, employee, or other party involved in a fraudulent insurance act as provided for in this Code section.

(b) For purposes of this Code section, a person commits a fraudulent insurance act if he or she knowingly and with intent to defraud presents, causes to be presented, or prepares with knowledge or belief that it will be presented, any bill for excessive, fraudulent, or high-tech drug testing in the treatment of the elderly, the disabled, or any individual affected by pain, substance abuse, addiction, or any related disorder, to or by
an insurer, broker, or any agent thereof, or directly or indirectly to an insured or uninsured patient.

(2) Such billing as provided for in paragraph (1) of this subsection shall include but shall not be limited to:

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

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

(C) Billing an individual for multiple copayment amounts;

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

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

(F) Billing for an excessive number of drug tests that are found to be medically unnecessary for the treatment.

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

(d) A natural person convicted of a violation of this Code section shall be guilty of a misdemeanor and shall be punished by imprisonment for not more than 12 months, by a fine of not more than $1,000.00 per violation, or both.

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

SECTION 3.

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