

The Senate Committee on Health and Human Services offered the following substitute to SB 311:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 5 of Title 26 of the Official Code of Georgia Annotated, relating to drug  
2 abuse treatment and education programs, so as to prohibit patient brokering; to provide for  
3 definitions; to provide for exceptions; to provide for penalties; to provide for venue; to  
4 amend Chapter 1 of Title 33 of the Official Code of Georgia Annotated, relating to general  
5 provisions regarding insurance, so as to provide that excessive, fraudulent, or high-tech drug  
6 testing of certain individuals is considered a fraudulent insurance act; to provide for  
7 investigation by the Commissioner of Insurance; to provide for penalties; to provide for  
8 related matters; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

11 Chapter 5 of Title 26 of the Official Code of Georgia Annotated, relating to drug abuse  
12 treatment and education programs, is amended by adding a new article to read as follows:

13 "ARTICLE 3

14 26-5-80.

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

16 (1) 'Health care provider' means:

17 (A) Any person licensed under Chapter 9, 10A, 11, 11A, 26, 28, 30, 33, 34, 35, 39, or  
18 44 of Title 43 or any hospital, nursing home, home health agency, institution, or  
19 medical facility licensed or defined under Chapter 7 of Title 31. The term shall also  
20 include any corporation, professional corporation, partnership, limited liability  
21 company, limited liability partnership, authority, or other entity composed of such  
22 health care providers; and

23 (B) A substance abuse provider.

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

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

31 (4) 'Recovery residence' means a residential dwelling unit, or other form of group  
 32 housing, that is offered or advertised through any means, including oral, written,  
 33 electronic, or printed means, by any person or entity as a residence that provides a  
 34 peer-supported, alcohol-free, and drug-free living environment.

35 (5) 'Substance abuse provider' means:

36 (A) Any state owned or state operated hospital, community mental health center, or  
 37 other facility utilized for the diagnosis, care, treatment, or hospitalization of persons  
 38 who are alcoholics, drug dependent individuals, or drug abusers and any other hospital  
 39 or facility within the State of Georgia approved for such purposes by the Department  
 40 of Behavioral Health and Developmental Disabilities;

41 (B) Any community service provider contracting with any state or local entity to  
 42 furnish mental health, developmental disability, and addictive disease services;

43 (C) Any drug abuse treatment and education program and narcotic treatment program  
 44 licensed under this chapter; and

45 (D) Any recovery residence.

46 (b) It shall be unlawful for any person, including any substance abuse provider, to:

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

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 substance abuse provider;

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

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

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

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

96 (d)(1) Any person, including an officer, partner, agent, attorney, or other representative  
 97 of a firm, joint venture, partnership, business trust, syndicate, corporation, or other  
 98 business entity, who violates any provision of this Code section, when the prohibited  
 99 conduct involves fewer than ten patients, commits a misdemeanor and, upon conviction  
 100 thereof, shall be punished by imprisonment for not more than 12 months and by a fine of  
 101 not more than \$1,000.00 per violation.

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

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

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

117 (f) For prosecutions under this Code section, venue shall be proper in any county in this  
 118 state where any act was committed in furtherance of the unlawful conduct.

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

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

125 **SECTION 2.**

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

128 "33-1-16.1.

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

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

133 (2) 'Person' means an individual, any person who provides coverage under Code Section  
134 33-1-14, and any owner, manager, medical practitioner, employee, or other party  
135 involved in a fraudulent insurance act as provided for in this Code section.

136 (b)(1) For purposes of this Code section, a person commits a fraudulent insurance act if  
137 he or she knowingly and with intent to defraud presents, causes to be presented, or  
138 prepares with knowledge or belief that it will be presented, any bill for excessive,  
139 fraudulent, or high-tech drug testing in the treatment of the elderly, the disabled, or any  
140 individual affected by pain, substance abuse, addiction, or any related disorder, to or by  
141 an insurer, broker, or any agent thereof, or directly or indirectly to an insured or  
142 uninsured patient.

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

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

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

149 (C) Billing an individual for multiple copayment amounts;

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

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

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

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

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

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

165

**SECTION 3.**

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