

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

AS PASSED SENATE

**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 any remuneration, including, but not limited to, a commission,
 48 benefit, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or
 49 engage in any split-fee arrangement, in any form, to induce the referral of a patient or
 50 patronage to or from a substance abuse provider;

51 (2) Solicit or receive any remuneration, including, but not limited to, a commission,
 52 benefit, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or
 53 engage in any split-fee arrangement, in any form, in return for the referral of a patient or
 54 patronage to or from a substance abuse provider;

55 (3) Solicit or receive any remuneration, including, but not limited to, a commission,
 56 benefit, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or
 57 engage in any split-fee arrangement, in any form, in return for the acceptance or
 58 acknowledgment of treatment from a substance abuse provider; or

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

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

62 (1) Any discount, payment, waiver of payment, or payment practice not prohibited by
63 42 U.S.C. Section 1320a-7b(b) or any fraternal benefit society providing health benefits
64 to its members as authorized pursuant to Chapter 15 of Title 33;

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

68 (3) Payments to a health care provider for professional 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 a health care provider network entity that
75 has contracted with a health insurer, a health care purchasing group, or the Medicare or
76 Medicaid program to provide health care, mental health, or substance abuse goods or
77 services under a health benefit plan when such payments are for goods or services under
78 the plan; provided, however, that nothing in this paragraph shall be construed to affect
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 substance abuse provider to a health care, mental health, or substance
83 abuse information service that provides information upon request and without charge to
84 consumers about providers of health care goods or services to enable consumers to select
85 appropriate health care providers, provided that such information service:

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

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

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

94 (D) Charges and collects fees from a health care provider participating in its services
95 that are set in advance, are consistent with the fair market value for those information
96 services, and are not based on the potential value of a patient or patients to a health care
97 provider or of the goods or services provided by the health care provider.

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

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

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

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

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

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

130 "33-1-16.1.

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

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

135 (2) 'Person' means an individual, any person who provides coverage under Code Section
136 33-1-14, and any owner, manager, medical practitioner, employee, or other party
137 involved in a fraudulent insurance act as provided for in this Code section.

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

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

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

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

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

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

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

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

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

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

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

167

SECTION 3.

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