

Senate Bill 4

By: Senators Kirkpatrick of the 32nd, Robertson of the 29th, Rhett of the 33rd, Burke of the 11th and Watson of the 1st

AS PASSED

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 enforcement;
4 to provide for venue; to provide for reasonable expenses; to provide for cumulative actions;
5 to amend Chapter 1 of Title 33 of the Official Code of Georgia Annotated, relating to general
6 provisions regarding insurance, so as to provide that excessive, fraudulent, or high-tech drug
7 testing of certain individuals is considered a fraudulent insurance act; to provide for
8 investigation by the Commissioner of Insurance; to provide for penalties; to provide for
9 related matters; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

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

14

"ARTICLE 315 26-5-80.16 (a) As used in this Code section, the term:17 (1) 'Health care provider' means:

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

24 (B) A substance abuse provider.

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

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

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

37 (5) 'Substance abuse provider' means:

38 (A) Any state owned or state operated hospital, community mental health center, or
39 other facility utilized for the diagnosis, care, treatment, or hospitalization of persons

40 who are alcoholics, drug dependent individuals, or drug abusers, and any other hospital
41 or facility within the State of Georgia approved for such purposes by the Department
42 of Behavioral Health and Developmental Disabilities;

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

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

47 (D) Any recovery residence.

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

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

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

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

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

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

64 (1) Any discount, payment, waiver of payment, or payment practice not prohibited by 42
65 U.S.C. Section 1320a-7b(b) or its corresponding federal regulations regardless as to
66 whether such discount, payment, waiver of payment, or payment practice involves a

- 67 federal healthcare program; or any fraternal benefit society providing health benefits to
68 its members as authorized pursuant to Chapter 15 of Title 33;
- 69 (2) Any payment, compensation, or financial arrangement within a group practice as
70 defined in Code Section 43-1B-3, provided that such payment, compensation, or
71 arrangement is not to or from persons who are not members of the group practice;
- 72 (3) Payments to a health care provider for professional services;
- 73 (4) Commissions, fees, or other remuneration lawfully paid to insurance agents as
74 provided under Title 33;
- 75 (5) Payments by a health insurer that reimburses, provides, offers to provide, or
76 administers health, mental health, or substance abuse goods or services under a health
77 benefit plan;
- 78 (6) Payments to or by a health care provider or a health care provider network entity that
79 has contracted with a health insurer, a health care purchasing group, or the Medicare or
80 Medicaid program to provide health care, mental health, or substance abuse goods or
81 services under a health benefit plan when such payments are for goods or services under
82 the plan; provided, however, that nothing in this paragraph shall be construed to affect
83 whether a health care provider network entity is an insurer required to be licensed under
84 Title 33;
- 85 (7) Insurance advertising gifts lawfully permitted under Code Section 33-6-4; or
- 86 (8) Payments by a substance abuse provider to a health care, mental health, or substance
87 abuse information service that provides information upon request and without charge to
88 consumers about providers of health care goods or services to enable consumers to select
89 appropriate health care providers, provided that such information service:
- 90 (A) Does not attempt through its standard questions for solicitation of consumer
91 criteria or through any other means to steer or lead a consumer to select or consider
92 selection of a particular health care provider;

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

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

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

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

108 (2) 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 ten or more patients but fewer than 20 patients, commits a felony and, upon
112 conviction thereof, shall be punished by imprisonment for not more than five years and
113 by a fine of not more than \$100,000.00 per violation.

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

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

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

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

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

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SECTION 2.

132 Chapter 1 of Title 33 of the Official Code of Georgia Annotated, relating to general
133 provisions regarding insurance, is amended by adding a new Code section to read as follows:
134 "33-1-16.1.

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

136 (1) 'High-tech drug testing' means testing an individual's specimen for more than one
137 substance and billing and receiving payment separately for each substance tested.

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

141 (b)(1) For purposes of this Code section, a person commits a fraudulent insurance act if
142 he or she knowingly and with intent to defraud, presents, causes to be presented, or
143 prepares with knowledge or belief that it will be presented, any billing for excessive
144 testing, fraudulent testing, or high-tech drug testing in the treatment of the elderly, the
145 disabled, or any individual affected by pain, substance abuse, addiction, or any related

146 disorder, to or by an insurer, broker, or any agent thereof, or directly or indirectly to an
147 insured or uninsured patient.

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

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

152 (B) For patients undergoing drug abuse treatment, unbundling of such billing whereby
153 a drug test from a single sample that detects a variety of narcotics is separated into
154 multiple tests and billed separately;

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

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

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

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

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

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

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SECTION 3.

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