Senate Bill 56

By: Senator McKoon of the 29th

A BILL TO BE ENTITLED

AN ACT

To amend Title 33 of the Official Code of Georgia Annotated, relating to insurance, so as to provide for physician profiling programs; to provide a short title; to provide definitions; to provide profiling program standards; to establish criteria for programs that evaluate a physician's cost of care; to provide for certain disclosures to patients; to provide that the Commissioner shall contract with an independent oversight entity; to provide for violations and 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.

Title 33 of the Official Code of Georgia Annotated, relating to insurance, is amended by adding a new chapter to read as follows:

"CHAPTER 20E

33-20E-1.

(a) This chapter shall be known and may be cited as the 'Accuracy and Transparency in Physician/Provider Profiling Act.'

(b) As used in this chapter, the term:

(1) 'Economic criteria' means measures used to determine physician resource utilization or costs of care for health care services.

(2) 'Profiling program' means a system that compares, rates, ranks, measures, tiers, or classifies a physician's or physician group's performance, quality, or cost of care against objective or subjective standards or the practice of other physicians, including without limitation quality improvement programs, pay-for-performance programs, public reporting on physician performance or ratings, and the use of tiered or narrowed networks.

(3) 'Quality criteria' are measures used to determine the degree to which health services for individuals and populations increase the likelihood of the desired health outcomes, consistent with current professional knowledge.

33-20E-2.

(a) Profiling programs to be disclosed to the public or used for network or reimbursement purposes shall be governed by the provisions of this chapter.

(b) Profiling programs shall not be based on cost of services alone.

(c) A profiling program developed pursuant to the provisions of this chapter shall:

(1) Use evaluation criteria developed in collaboration with practicing physicians and their professional organizations;

(2) Use standardized quality and cost measures;

(3) Reduce the administrative burden on physician practices; and

(4) Consider quality measures, including professional standards of care, and the resulting mortality, morbidity, productivity, and quality of life.

33-20E-3.

(a) Physician profiling programs that evaluate a physician's quality of care shall:

(1) Use measures based on specialty-appropriate, nationally recognized, evidence based medical guidelines or nationally recognized, consensus based guidelines endorsed by the American Medical Association, the National Quality Forum, or the AQA alliance, or their successors, and developed by the Physician Consortium for Performance Improvement or other entities whose work in the area of physician quality performance is generally accepted within the health care industry;

(2) Use a statistically valid number of disease states or specialty and subspecialty cases to produce accurate and reliable measurements and profiling information;

(3) Ensure that statistically valid risk adjustment is used to account for the characteristics of the physician's or physician group's patient population, including case mix, severity of patients' conditions, comorbidities, outlier episodes, and other factors. With respect to process measures, such factors shall be considered in evaluating patient compliance rates and whether compliance with a measure is indicated, contraindicated, or rejected by the patient;

(4) Determine which physician or physicians in a physician group shall be held reasonably accountable for a patient's care;

(5) Ensure that patient preferences are respected and that physician ratings are not adversely affected by patient noncompliance with a physician's referral, treatment recommendation, or plan of care;

(6) Ensure that the quality measurement system in no way discourages physicians from providing preventive care or from treating sicker, economically underprivileged, or minority patients; and

(7) Publicly report or otherwise use quality rankings at the physician group practice level rather than at the individual physician level when the individual physician is practicing as part of a medical group and clearly identify such ranking as a group score.

(b) Professional certification or accreditation may be used in determining physician quality of care, but shall not be solely relied upon as the determinant of physician quality.

33-20E-4.

(a) Physician profiling programs that evaluate a physician's cost of care shall:

(1) Compare physicians within the same specialty or, if applicable, subspecialty within the same geographical market;

(2) Utilize a statistically valid number of patient episodes of care;

(3) Ensure that statistically valid risk adjustment is used to account for the characteristics of a physician's patient population, including case mix, severity of patients' conditions, comorbidities, outlier episodes, and other factors;

(4) Determine appropriate rules for attribution for cost efficiency, subject to review and approval of the independent oversight entity;

(5) Ensure that patient preferences are respected and that physician ratings are not adversely affected by patient noncompliance with a physician's referral, treatment recommendation, or plan of care;

(6) Ensure that the cost efficiency measurement system in no way discourages physicians from providing preventive care or from treating sicker, economically underprivileged, or minority patients; and

(7) Publicly report or otherwise use cost efficiency rankings at the physician group practice level rather than at the individual physician level when the individual physician is practicing as part of a medical group and clearly identify such ranking as a group score.

(b) Physician profiling programs shall ensure that data relied upon are:

(1) Accurate, including consideration of whether medical record verification is appropriate and necessary; and

(2) Current, considering the necessity to attain adequate sample size.

(c) To the extent available, physician profiling programs shall use aggregated data rather than the data specific to a particular health insurer or other payor.

33-20E-5.

Physician profiling programs shall conspicuously disclose to patients the following information on the Internet and in other relevant materials:

(1) Accurate and concise information explaining the physician rating system, including the basis upon which physician performance is measured and the statistical likelihood the rating is accurate;

(2) Limitations of the data used to measure physician performance;

(3) How the ratings affect the physician, including, but not limited to, a physician's inclusion into or exclusion from a network;

(4) The quality and economic criteria used in the rating system, including the measurements for each criterion and its relative weight in the overall evaluation; and

(5) A conspicuous written disclaimer stating the following:

'Physician performance ratings should only be used as a guide to choosing a physician. You should talk to your doctor before making a health care decision based on the rating. Ratings may be wrong and should not be used as the sole basis for selecting a doctor.'

33-20E-6.

(a) Physician profiling programs shall disclose to all profiled physicians the methodologies, criteria, data, and analysis used to evaluate physicians' quality performance and cost efficiency, including, but not limited to, the statistical difference between each rating and the statistical confidence level of each rating at least 180 days before implementing or making any material change to any physician profiling program.

(b) Physician profiling programs shall disclose a physician's profile to the physician, including the patient-specific data and analysis used to create the profile, and make recommendations on how the physician can improve his or her physician's score at least 120 days prior to its public disclosure or other use.

(c) Any profiled physician may submit a written appeal to the profiling program within the 120 day period provided for by subsection (b) of this Code section, which shall result in a suspension of the public disclosure or other use of the original or modified profile during the pendency of such appeal. Such appeal may request correction of errors, submit additional information for consideration, seek review of data and performance ratings, or challenge the conformity of the profiling program to the requirements of this chapter. A copy of such appeal shall be provided by the profiling program to the Commissioner, who may undertake independent investigation of the grounds of the appeal.

(d) The profiling program shall grant or deny any appeal within 120 days of receipt, with notice in writing to the affected physician. Notice of denial of an appeal shall set forth in

reasonable detail the grounds for denial and notify the affected physician of further appeal rights provided for by this Code section.

(e) Within 30 days of receipt of a written notice of denial of an appeal, a physician may appeal such denial to the Commissioner for determination by an administrative law judge pursuant to the procedures of Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' Such appeal shall be deemed a continuation of the appeal provided for by subsection (c) of this Code section.

33-20E-6.

(a) Where the Commissioner determines that there has been a willful and knowing refusal by a physician profiling program to completely disclose the profiling data or methodology to a physician at least 120 days prior to the publication or other use for network or reimbursement purposes of any initial or subsequent profiling determination or to provide the appeal rights required by this chapter, or where it is established that a false or misleading designation has been published to a third party, the Commissioner shall impose a fine of $500.00 for each violation and $500.00 for each day such violation continues. An Internet posting shall be deemed to be a disclosure to each person who has access to the physician network affected by the physician profiling program, and each such disclosure shall be deemed a separate violation of this Code section. Any profiling determinations published by a physician profiling program that are not approved pursuant to the terms of this chapter or awaiting approval pursuant to the provisions of Code Section 33-20E-6 shall be a violation of the provisions of this Code section.

(b) Nothing in this chapter shall prohibit or limit any claim or private right of action for a claim that any claimant has against any person or entity for any act or omission constituting a violation of the provisions of this chapter.

(c) In addition to any other liability which may apply, any person who publicly discloses or otherwise uses for network or reimbursement purposes any profiling results in violation of this chapter shall be liable to the affected physician or physician group for treble damages, reasonable attorneys' fees, and any other appropriate relief, including injunctive relief.″

SECTION 2.

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