

SENATE SUBSTITUTE TO HB 161:

AS PASSED SENATE

A BILL TO BE ENTITLED

AN ACT

1 To amend Code Section 16-13-32 of the Official Code of Georgia Annotated, relating to
 2 transactions in drug related objects, so as to provide that employees and agents of syringe
 3 services programs are not subject to certain offenses relating to hypodermic needles; to
 4 provide for a definition; to provide for rules and regulations; to amend Article 1 of Chapter 1
 5 of Title 31 of the Official Code of Georgia Annotated, relating to general provisions relative
 6 to health, so as to prohibit patient brokering; to provide for definitions; to provide for
 7 exceptions; to provide for penalties; to create an executive director of substance abuse,
 8 addiction, and related disorders; to provide for appointment; to provide for qualifications; to
 9 establish the Commission on Substance Abuse and Recovery; to provide for membership;
 10 to provide for duties; to amend Chapter 1 of Title 33 of the Official Code of Georgia
 11 Annotated, relating to general provisions relative to insurance, so as to provide for a
 12 fraudulent insurance act for the excessive, high-tech, or fraudulent drug testing of certain
 13 individuals; to provide for investigation by the Commissioner; to provide for penalties; to
 14 provide for related matters; to provide for effective dates; to repeal conflicting laws; and for
 15 other purposes.

16 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

SECTION 1.

17 Code Section 16-13-32 of the Official Code of Georgia Annotated, relating to transactions
 18 in drug related objects, is amended by revising subsections (b) and (c) and by adding a new
 19 subsection to read as follows:
 20

21 "(b) Except as authorized in subsection (c) of this Code section with regard to hypodermic
 22 syringes and needles, it ~~It~~ shall be unlawful for any person or corporation, knowing the
 23 drug related nature of the object, to sell, lend, rent, lease, give, exchange, or otherwise
 24 distribute to any person any drug related object. It shall also be unlawful for any person
 25 or corporation, knowing the drug related nature of the object, to display for sale, or possess
 26 with the intent to distribute any drug related object. Unless stated within the body of the

27 advertisement or notice that the object that is advertised or about which information is
 28 disseminated is not available for distribution of any sort in this state, it shall be unlawful
 29 for any person or corporation, knowing the drug related nature of the object, to distribute
 30 or disseminate in any manner to any person any advertisement of any kind or notice of any
 31 kind which gives information, directly or indirectly, on where, how, from whom, or by
 32 what means any drug related object may be obtained or made.

33 (c) It shall be unlawful for any person or corporation, other than a licensed pharmacist, a
 34 pharmacy intern or pharmacy extern as defined in Code Section 26-4-5, ~~or~~ a practitioner
 35 licensed to dispense dangerous drugs, or a person employed by or an agent of a registered
 36 syringe services program, to sell, lend, rent, lease, give, exchange, or otherwise distribute
 37 to any person a hypodermic syringe or needle designed or marketed primarily for human
 38 use. It shall be an affirmative defense that the hypodermic syringe or needle was marketed
 39 for a legitimate medical purpose. As used in this subsection, the term 'syringe services
 40 program' means a nonprofit organization which provides substance abuse and harm
 41 reduction counseling, education, and referral services for substance use disorder treatment;
 42 training and provision of naloxone to reverse opioid overdoses; screening for HIV, viral
 43 hepatitis, sexually transmitted diseases, and tuberculosis; referrals and linkage to HIV, viral
 44 hepatitis, sexually transmitted diseases, and tuberculosis prevention, treatment, and care
 45 service; safer injection supplies; and evidence based interventions to reduce negative
 46 consequences of drug related behaviors. The Department of Public Health shall be
 47 authorized to promulgate rules and regulations for the purpose of supervising the activities
 48 of registered syringe services programs, including provisions for the registration of such
 49 programs.

50 (d) A person employed by or acting as an agent of a registered syringe exchange program
 51 shall be immune from civil and criminal liability arising from the possession, distribution,
 52 or exchange of hypodermic syringes or needles and related supplies as part of such syringe
 53 exchange program."

54 SECTION 2.

55 Article 1 of Chapter 1 of Title 31 of the Official Code of Georgia Annotated, relating to
 56 general provisions relative to health, is amended by adding a new Code section to read as
 57 follows:

58 "31-1-16.

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

60 (1) 'Health care provider or health care facility' means:

61 (A) Any person licensed under Chapter 9, 10A, 11, 11A, 26, 28, 30, 33, 34, 35, 39,
 62 or 44 of Title 43 or any hospital, nursing home, home health agency, institution, or

63 medical facility licensed or defined under Chapter 7 of this title. The term shall also
 64 include any corporation, professional corporation, partnership, limited liability
 65 company, limited liability partnership, authority, or other entity composed of such
 66 health care providers;

67 (B) Any state owned or state operated hospital, community mental health center, or
 68 other facility utilized for the diagnosis, care, treatment, or hospitalization of persons
 69 who are alcoholics, drug dependent individuals, or drug abusers and any other hospital
 70 or facility within the State of Georgia approved for such purposes by the Department
 71 of Behavioral Health and Developmental Disabilities;

72 (C) Community mental health center as defined in Code Section 37-7-1;

73 (D) Any Medicaid provider as defined in Code Section 49-4-146.1;

74 (E) A state or local health department;

75 (F) Any community service provider contracting with any state entity to furnish
 76 alcohol, drug abuse, or mental health services; and

77 (G) Any substance abuse service provider licensed under Chapter 5 of Title 26.

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

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

85 (b) It shall be unlawful for any person, including any health care provider or health care
 86 facility, to knowingly and willfully:

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

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

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

99 (4) Aid, abet, advise, or otherwise participate in the conduct prohibited by this
100 subsection.

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

102 (1) Any health care provider or facility actively enrolled in the Medicare or Medicaid
103 program or any fraternal benefit society providing health benefits to its members as
104 authorized pursuant to Chapter 15 of Title 33;

105 (2) Any amount paid by an employer to an employee (who has a bona fide employment
106 relationship with such employer) for employment or any payment, compensation, or
107 financial arrangement within a group practice as defined in Code Section 43-1B-3,
108 provided such payment, compensation, or arrangement is not to or from persons who are
109 not members of the group practice;

110 (3) Payments to a health care provider or health care facility for professional consultation
111 services;

112 (4) Commissions, fees, or other remuneration lawfully paid to insurance agents as
113 provided under Title 33;

114 (5) Payments by a health insurer who reimburses, provides, offers to provide, or
115 administers health, mental health, or substance abuse goods or services under a health
116 benefit plan;

117 (6) Payments to or by a health care provider or health care facility or a health care
118 provider network entity that has contracted with a health insurer, a health care purchasing
119 group, or the medicare or Medicaid program to provide health, mental health, or
120 substance abuse goods or services under a health benefit plan when such payments are
121 for goods or services under the plan. However, nothing in this Code section affects
122 whether a health care provider network entity is an insurer required to be licensed under
123 Title 33;

124 (7) Insurance advertising gifts lawfully permitted under Code Section 33-6-4;

125 (8) Payments by a health care provider or health care facility to a health, mental health,
126 or substance abuse information service that provides information upon request and
127 without charge to consumers about providers of health care goods or services to enable
128 consumers to select appropriate providers or facilities, provided that such information
129 service:

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

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

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

138 (D) Charges and collects fees from a health care provider or health care facility
139 participating in its services that are set in advance, are consistent with the fair market
140 value for those information services, and are not based on the potential value of a
141 patient or patients to a health care provider or health care facility or of the goods or
142 services provided by the health care provider or health care facility; or

143 (9) Payments by an intermediate care home, private home care provider, assisted living
144 community, personal care home, or other long-term care facility or provider to a referral
145 service that provides information, consultation, or referrals at no cost to consumers to
146 assist them in finding appropriate care or housing options for elderly persons or disabled
147 adults who are not Medicaid recipients.

148 (d)(1) Any person who violates any provision of this Code section, when the prohibited
149 conduct involves less than ten patients, commits a felony and, upon conviction thereof, shall
150 be punished by imprisonment for not more than five years and by a fine of \$50,000.00 per
151 violation.

152 (2) Any person who violates any provision of this Code section, when the prohibited
153 conduct involves ten or more patients but fewer than 20, commits a felony and, upon
154 conviction thereof, shall be punished by imprisonment for not more than ten years and
155 by a fine of not more than \$100,000.00 per violation.

156 (3) Any person who violates any provision of this Code section, when the prohibited
157 conduct involves 20 or more patients, commits a felony and, upon conviction thereof,
158 shall be punished by imprisonment for 20 years and by a fine of not more than
159 \$500,000.00 per violation.

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

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

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

SECTION 3.

Said article is further amended by adding a new Code section to read as follows:

"31-1-17.

(a) The Governor shall appoint an executive director of substance abuse, addiction, and related disorders who shall serve at the pleasure of the Governor. The executive director shall be an employee of the Governor's Office of Planning and Budget and shall report directly to the Governor.

(b) The executive director shall have a college degree and at least one of the following qualifications:

(1) Educational background or work experience involving vulnerable populations relative to substance abuse, addiction, and related disorders with the ability to assess the impact of untreated mental illness and substance abuse disorders on state budgets, hospitals, emergency rooms, jails, prisons, law enforcement agencies, educational institutions, and related institutions and services;

(2) Work experience in a setting dealing with treatment and delivery of services for the safety or well-being of children and adults affected by substance abuse, addiction, and related disorders; or

(3) Experience working in or managing a complex, multidisciplinary business or government agency.

(c)(1) There is established the Commission on Substance Abuse and Recovery. The purpose of the commission is to create a coordinated and unified effort among state and local agencies to confront the state-wide addiction and substance abuse crisis.

(2) The executive director shall oversee the commission and be a voting member thereof.

(3) The commission shall consist of 15 members as follows:

(A) The commissioner of behavioral health and developmental disabilities;

(B) The commissioner of public health;

(C) The commissioner of community health;

(D) The commissioner of human services;

(E) The State School Superintendent;

(F) The commissioner of public safety;

(G) The Commissioner of Insurance;

(H) The Attorney General;

(I) The director of the Georgia Bureau of Investigation;

(J) The commissioner of community supervision;

(K) One representative of the judicial branch representing the accountability courts to be appointed by the Governor;

- 205 (L) Two representatives from the advocacy community to be appointed by the
 206 Governor;
- 207 (M) One member from the House of Representative to be appointed by the Speaker of
 208 the House of Representatives; and
- 209 (N) One member from the Senate to be appointed by the Lieutenant Governor.
- 210 (4) The executive director shall be the chairperson of the commission. The commission
 211 may elect such other officers and establish committees as it deems appropriate.
- 212 (5) Meetings of the commission shall be held quarterly, or more frequently, on the call
 213 of the chairperson. Meetings of the commission shall be held with not less than five days'
 214 public notice for regular meetings and with such notice as the bylaws may prescribe for
 215 special meetings. Each member shall be given written notice of all meetings. All
 216 meetings of the commission shall be subject to the provisions of Chapter 14 of Title 50.
 217 Minutes or transcripts shall be kept of all meetings of the commission and shall include
 218 a record of the votes of each member, specifying the yea or nay vote or the absence of
 219 each member, on all questions and matters coming before the commission. No member
 220 may abstain from a vote other than for reasons constituting disqualification to the
 221 satisfaction of a majority of a quorum of the commission on a recorded vote. No member
 222 of the commission shall be represented by a delegate or agent.
- 223 (6) Members shall serve without compensation, although each member of the
 224 commission shall be reimbursed for actual expenses incurred in the performance of his
 225 or her duties from funds available to the commission; provided, however, that any
 226 legislative member shall receive the allowances authorized by law for legislative
 227 members of interim legislative committees and any members who are state employees
 228 shall be reimbursed for expenses incurred by them in the same manner as they are
 229 reimbursed for expenses in their capacities as state employees.
- 230 (d) The commission shall be vested with the following functions and authority:
- 231 (1) To coordinate overdose data and statistics between the prescription drug monitoring
 232 program data base, the Georgia Bureau of Investigation, the Federal Bureau of
 233 Investigation, and local governments;
- 234 (2) To consult on the implementation of the department's strategic plan on the opioid
 235 crisis;
- 236 (3) To consult with the Attorney General's task force on the opioid crisis;
- 237 (4) To work with advocacy groups to coordinate public education forums with the
 238 department and the Department of Behavioral Health and Developmental Disabilities;
- 239 (5) To consult with and provide recommendations to the Governor on a potential
 240 Medicaid waiver related to opioid abuse;

241 (6) To create a block grant program based on sliding scale needs that is strategically
 242 based on statistics and the needs of communities. The commission shall be responsible
 243 for accepting, reviewing, and making recommendations to the department on applicant
 244 awards;

245 (7) To consult with the Board of Education and the Department of Education to
 246 formulate strategies for a uniform state-wide network of education and substance abuse
 247 and addiction prevention pursuant to subsection (c) of Code Section 20-2-142;

248 (8) To develop a prevention education plan and to increase funding for local-level
 249 substance misuse prevention services in public schools, for law enforcement agencies,
 250 and for community organizations; and

251 (9) To expand access to appropriate prevention, treatment, and recovery support
 252 services."

253 **SECTION 4.**

254 Chapter 1 of Title 33 of the Official Code of Georgia Annotated, relating to general
 255 provisions relative to insurance, is amended by adding a new Code section to read as follows:
 256 "33-1-16.1.

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

258 (1) 'High-tech drug testing' means when billing for drug tests is not limited and tests are
 259 ordered for a number of different substances whereby the health benefit plan is billed
 260 separately for each substance tested.

261 (2) 'Person' means an individual, any person who provides coverage under Code
 262 Section 33-1-14, and any owner, manager, medical practitioner, employee, or any other
 263 party involved in the fraudulent act.

264 (b)(1) For purposes of this Code section, a person commits a 'fraudulent insurance act'
 265 if he or she knowingly and with intent to defraud presents, causes to be presented, or
 266 prepares with knowledge or belief that it will be presented, to or by an insurer, broker,
 267 or any agent thereof, or directly or indirectly to an insured or uninsured patient a bill for
 268 excessive, high-tech, or fraudulent drug testing in the treatment of the elderly, the
 269 disabled, or any individual affected by pain, substance abuse, addiction, or any related
 270 disorder. Such person shall include, but shall not be limited to, any person who provides
 271 coverage in this state under subsection (a) of Code Section 33-1-14.

272 (2) Such drug testing shall include, but shall not be limited to:

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

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

- 277 (C) Billing an individual for multiple co-pay amounts;
 278 (D) Billing an individual for services that are covered by such individual's health
 279 benefit plan;
 280 (E) Billing for drug testing that was not performed; or
 281 (F) Billing for excessive numbers of drug tests that are found to be medically
 282 unnecessary for the treatment pursuant to this Code section.
- 283 (c) If, by his or her own inquiries or as a result of information received, the Commissioner
 284 has reason to believe that a person has engaged in or is engaging in a fraudulent insurance
 285 act under this Code section, the Commissioner shall have all the powers and duties
 286 pursuant to Code Section 33-1-16 to investigate such matter.
- 287 (d) A natural person convicted of a violation of this Code section shall be guilty of a
 288 felony and shall be punished by imprisonment for not less than ten years nor more than 20
 289 years, or by a fine of not more than \$25,000.00 per violation, or both.
- 290 (e) This Code section shall not supersede any investigation audit which involves fraud,
 291 willful misrepresentation, or abuse under Article 7 of Chapter 4 of Title 49 or any other
 292 statutory provisions which authorize investigation relating to insurance."

293 **SECTION 5.**

- 294 (a) Section 1 of this Act shall become effective upon its approval by the Governor or upon
 295 its becoming law without such approval for the purposes of promulgating rules and
 296 regulations and shall become effective on January 1, 2019, for all other purposes.
- 297 (b) Sections 2, 3, and 4 of this Act shall become effective upon its approval by the Governor
 298 or upon its becoming law without such approval.

299 **SECTION 6.**

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