

House Bill 233

By: Representatives Knight of the 130th, England of the 116th, Hatchett of the 150th, Cooper of the 43rd, Powell of the 32nd, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 6 of Chapter 4 of Title 26 of the Official Code of Georgia Annotated,
2 relating to pharmacies, so as to enact the "Pharmacy Anti-Steering and Transparency Act";
3 to provide for legislative findings; to provide for definitions; to prohibit pharmacies from
4 engaging in certain practices; to require pharmacies to file an annual disclosure statement;
5 to provide for violations; to provide for limited liability; to provide for statutory construction;
6 to provide for related matters; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Article 6 of Chapter 4 of Title 26 of the Official Code of Georgia Annotated, relating to
10 pharmacies, is amended by adding a new Code section to read as follows:

11 "26-4-119.

12 (a) This Code section shall be known and may be cited as the 'Pharmacy Anti-Steering and
13 Transparency Act.'

14 (b) The General Assembly finds that:

15 (1) The referral of a patient to a pharmacy by an affiliate for pharmacy care represents
16 a potential conflict of interest; and

17 (2) These referral practices may limit or eliminate competitive alternatives in the health
18 care services market, may result in overutilization of health care services, may increase
19 costs to the health care system, may adversely affect the quality of health care, may
20 disproportionately harm patients in rural and medically underserved areas of Georgia, and
21 shall be against the public policy of this state.

22 (c) As used in this Code section, the term:

23 (1) 'Affiliate' means a person licensed under Title 33 which, either directly or indirectly
24 through one or more intermediaries:

25 (A) Has an investment or ownership interest in a pharmacy licensed in or holding a
26 nonresident pharmacy permit in Georgia;

27 (B) Shares common ownership with a pharmacy licensed in or holding a nonresident
 28 pharmacy permit in Georgia; or

29 (C) Has as an investor or ownership interest holder a pharmacy licensed in or holding
 30 a nonresident pharmacy permit in Georgia.

31 (2) 'Referral' means any referral of a patient to a pharmacy for the filling of a prescription
 32 or provision of pharmacy care by an affiliate, including, without limitation:

33 (A) The forwarding of a patient to a pharmacy by an affiliate either orally or in writing,
 34 including online messaging;

35 (B) Offering or implementing plan designs that require patients to utilize affiliate
 36 owned pharmacies or steering patients to affiliate owned pharmacies through the
 37 offering of incentives; or

38 (C) The advertising, marketing, or promotion of a pharmacy by an affiliate.

39 Notwithstanding the foregoing, this term shall not include a pharmacy's inclusion by an
 40 affiliate in communications to patients regarding network pharmacies and prices,
 41 provided that the affiliate includes information regarding eligible nonaffiliate pharmacies
 42 in such communications and the information provided is accurate.

43 (d) A pharmacy licensed in or holding a nonresident pharmacy permit in Georgia shall be
 44 proscribed from:

45 (1) Transferring or sharing records relative to prescription information containing
 46 patient-identifiable and prescriber-identifiable data to or from an affiliate for any
 47 commercial purpose, including, but not limited to, advertising, marketing, promotion, or
 48 any activity that could be used to influence sales or market share; provided, however, that
 49 nothing shall be construed to prohibit the exchange of prescription information between
 50 a pharmacy and its affiliate for the limited purposes of pharmacy reimbursement;
 51 formulary compliance; pharmacy care; or utilization review by a health care provider;

52 (2) Presenting a claim for payment to any individual, third-party payor, affiliate, or other
 53 entity for a service furnished pursuant to a referral from an affiliate; or

54 (3) Mailing a prescription to a patient when the patient's prescriber has indicated that the
 55 patient needs an in-person consultation at the time the original or refill prescription is
 56 dispensed.

57 (e) This Code section shall not be construed to prohibit a pharmacy from entering into an
 58 agreement with an affiliate to provide pharmacy care to patients, provided that the
 59 pharmacy does not receive prohibited referrals and the pharmacy provides the disclosures
 60 required in subsection (f) of this Code section.

61 (f) A pharmacy licensed or holding a nonresident pharmacy permit in this state shall
 62 annually file with the board a disclosure statement identifying all affiliates and shall notify

63 patients in writing of all affiliates prior to providing pharmacy care for the first time and
64 annually thereafter.

65 (g) In addition to any other remedy provided by law, a violation of this Code section by
66 a pharmacy shall be considered an unfair or deceptive trade practice under Georgia's Fair
67 Business Practices Act and, subject to notice and opportunity for hearing, the Attorney
68 General may issue a cease and desist order prohibiting any future violations; impose a civil
69 penalty up to a maximum of \$2,000.00 per violation; and suspend the license of a
70 pharmacy found to be in violation of a cease and desist order.

71 (h) A pharmacist who fills a prescription based on an unlawful referral under this Code
72 section shall not be liable under this Code section.

73 (i) This Code section shall not apply to any licensed group model health maintenance
74 organization with an exclusive medical group contract which operates its own pharmacies
75 licensed under Code Section 26-4-110.1."

76 **SECTION 2.**

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