

House Bill 233 (COMMITTEE SUBSTITUTE)

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 the ordering or directing of a patient to a pharmacy for the filling of
 32 a prescription or provision of pharmacy care by an affiliate, including, without limitation:

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

35 (B) Offering or implementing plan designs that require patients to utilize affiliate
 36 owned pharmacies; or

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

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

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

46 (1) Transferring or sharing records relative to prescription information containing patient
 47 identifiable and prescriber identifiable data to or from an affiliate for any commercial
 48 purpose; provided, however, that nothing shall be construed to prohibit the exchange of
 49 prescription information between a pharmacy and its affiliate for the limited purposes of
 50 pharmacy reimbursement; formulary compliance; pharmacy care; or utilization review
 51 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; provided, however, that a patient may voluntarily waive the in-person
 57 consultation and elect to receive the medication via mail order.

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

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

64 (g) In addition to any other remedy provided by law, a violation of this Code section by
65 a pharmacy shall be grounds for disciplinary action by the board pursuant to its authority
66 granted in this chapter.

67 (h) A pharmacist who fills a prescription that violates subsection (d) of this Code section
68 shall not be liable under this Code section.

69 (i) This Code section shall not apply to:

70 (A) Any licensed group model health maintenance organization with an exclusive
71 medical group contract which operates its own pharmacies licensed under Code Section
72 26-4-110.1; or

73 (B) Any hospital or related institution."

74 **SECTION 2.**

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