Senate Bill 173
By: Senator McKoon of the 29th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 33 of the Official Code of Georgia Annotated, relating to insurance, so as to
2 provide for a physician profiling program; to provide a short title; to provide definitions; to
3 provide profiling program standards; to establish criteria for programs that evaluate a
4 physician's cost of care; to provide for certain disclosures to patients; to provide that the
5 Commissioner shall contract with an independent oversight entity; to provide for violations
6 and penalties; to provide for related matters; to repeal conflicting laws; and for other
7 purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

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

12 "CHAPTER 20C

13 33-20C-1.
14 (a) This chapter shall be known and may be cited as the 'Accuracy and Transparency in
15 Physician/Provider Profiling Act.'
16 (b) As used in this chapter, the term:
17 (1) 'Economic criteria' means measures used to determine physician resource utilization
18 or costs of care for health care services.
19 (2) 'Profiling program' means a system that compares, rates, ranks, measures, tiers, or
20 classifies a physician's or physician group's performance, quality, or cost of care against
21 objective or subjective standards or the practice of other physicians, including without
22 limitation quality improvement programs, pay-for-performance programs, public
23 reporting on physician performance or ratings, and the use of tiered or narrowed
24 networks.

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

28 33-20C-2.
29 (a) Profiling programs to be disclosed to the public or used for network or reimbursement
30 purposes shall be governed by the provisions of this chapter.
31 (b) Profiling programs shall not be based on cost of services alone.
32 (c) A profiling program developed pursuant to the provisions of this chapter shall:
33 (1) Use evaluation criteria developed in collaboration with practicing physicians and
34 their professional organizations;
35 (2) Use standardized quality and cost measures;
36 (3) Reduce the administrative burden on physician practices; and
37 (4) Consider quality measures, including professional standards of care, and the resulting
38 mortality, morbidity, productivity, and quality of life.
39 (d) In evaluating quality of care, a profiling program shall:
40 (1) Use measures based on specialty-appropriate, nationally recognized, evidence based
41 medical guidelines or nationally recognized, consensus based guidelines endorsed by the
42 American Medical Association, the National Quality Forum, or the AQA alliance, or their
43 successors, and developed by the Physician Consortium for Performance Improvement
44 or other entities whose work in the area of physician quality performance is generally
45 accepted within the health care industry;
46 (2) Use a statistically valid number of disease state or specialty and subspecialty cases,
47 to produce accurate and reliable measurements and profiling information;
48 (3) Ensure that statistically valid risk adjustment is used to account for the characteristics
49 of the physician's or physician group's patient population, including case mix, severity
50 of patients' conditions, comorbidities, outlier episodes, and other factors. With respect
51 to process measures, these factors shall be considered in evaluating patient compliance
52 rates and whether compliance with a measure is indicated, contraindicated, or rejected by
53 the patient;
54 (4) Determine which physicians shall be held reasonably accountable for a patient's care;
55 (5) Ensure that patient preferences are respected, and that physician ratings are not
56 adversely affected by patient noncompliance with a physician's referral, treatment
57 recommendation, or plan of care;
58 (6) Ensure that the quality measurement system in no way discourages physicians from
59 providing preventive care or from treating sicker, economically underprivileged, or
60 minority patients; and

61 (7) Publicly report or otherwise use quality rankings at the physician group practice level
62 rather than at the individual physician level when the individual physician is practicing
63 as part of a medical group and clearly identify such ranking as a group score.
64 (e) Professional certification or accreditation may be used in determining physician quality
65 of care, but shall not be solely relied upon as the determinant of physician quality.

66 33-20C-3.
67 (a) Physician profiling programs that evaluate a physician's cost of care shall:
68 (1) Compare physicians within the same specialty, or if applicable, subspecialty within
69 the same geographical market;
70 (2) Utilize a statistically valid number of patient episodes of care;
71 (3) Ensure that statistically valid risk adjustment is used to account for the characteristics
72 of a physician's patient population, including case mix, severity of patients' conditions,
73 comorbidities, outlier episodes, and other factors;
74 (4) Determine appropriate rules for attribution for cost efficiency, subject to review and
75 approval of the independent oversight entity;
76 (5) Ensure that patient preferences are respected and that physician ratings are not
77 adversely affected by patient noncompliance with a physician's referral, treatment
78 recommendation, or plan of care;
79 (6) Ensure that the cost efficiency measurement system in no way discourages physicians
80 from providing preventive care, or from treating sicker, economically underprivileged,
81 or minority patients; and
82 (7) Publicly report or otherwise use cost efficiency rankings at the physician group
83 practice level rather than at the individual physician level when the individual physician
84 is practicing as part of a medical group and clearly identify such ranking as a group score.
85 (b) Physician profiling programs shall ensure that data relied upon is:
86 (1) Accurate, including consideration of whether medical record verification is
87 appropriate and necessary; and
88 (2) Current, considering the necessity to attain adequate sample size.
89 (c) To the extent available, physician profiling programs shall use aggregated data rather
90 than the data specific to a particular health insurer or other payer.

91 33-20C-4.
92 Physician profiling programs shall conspicuously disclose to patients the following
93 information on the Internet and in other relevant materials:

94 (1) Accurate and concise information explaining the physician rating system, including
95 the basis upon which physician performance is measured and the statistical likelihood the
96 rating is accurate;
97 (2) Limitations of the data used to measure physician performance;
98 (3) How the ratings affect the physician, including, but not limited to a physician's
99 inclusion into or exclusion from a network;
100 (4) The quality and economic criteria used in the rating system, including the
101 measurements for each criterion and its relative weight in the overall evaluation; and
102 (5) A conspicuous written disclaimer stating the following:
103 'Physician performance ratings should only be used as a guide to choosing a physician.
104 You should talk to your doctor before making a health care decision based on the
105 rating. Ratings may be wrong and should not be used as the sole basis for selecting a
106 doctor.'

107 33-20C-5.
108 (a) Physician profiling programs shall disclose to all profiled physicians the
109 methodologies, criteria, data, and analysis used to evaluate physicians' quality performance
110 and cost efficiency, including, but not limited to the statistical difference between each
111 rating and the statistical confidence level of each rating at least 180 days before
112 implementing or making any material change to any physician profiling program.
113 (b) Physician profiling programs shall disclose a physician's profile to the physician,
114 including the patient-specific data and analysis used to create the profile, and make
115 recommendations on how the physician can improve his or her physician's score at least
116 120 days prior to its public disclosure or other use.
117 (c) Any profiled physician may submit a written appeal to the profiling program within the
118 120 day period provided for by subsection (a) of this Code section, which shall result in a
119 suspension of the public disclosure or other use of the original or modified profile during
120 the pendency of such appeal. Such appeal may request correction of errors, submit
121 additional information for consideration, seek review of data and performance ratings, or
122 challenge the conformity of the profiling program to the requirements of this chapter. A
123 copy of such appeal shall be provided by the profiling program to the Commissioner, who
124 may undertake independent investigation of the grounds of the appeal.
125 (d) The profiling program shall grant or deny any appeal within 120 days of receipt, with
126 notice in writing to the affected physician. Notice of denial of an appeal shall set forth in
127 reasonable detail the grounds for denial and notify the affected physician of further appeal
128 rights provided for by this Code section.

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

134 33-20C-6.

135 (a) Where the Commissioner determines that there has been a willful and knowing refusal
136 by a physician profiling program to completely disclose the profiling data or methodology
137 to a physician at least 120 days prior to the publication or other use for network or
138 reimbursement purposes of any initial or subsequent profiling determination or to provide
139 the appeal rights required by this chapter, or where it is established that a false or
140 misleading designation has been published to a third party, the Commissioner shall impose
141 a fine of $500.00 for each violation, and $500.00 for each day such violation continues.
142 An Internet posting shall be deemed to be a disclosure to each person who has access to the
143 physician network affected by the physician profiling program, and each such disclosure
144 shall be deemed a separate violation of this Code section. Any profiling determinations
145 published by a physician profiling program that is not approved pursuant to the terms of
146 this chapter or awaiting approval pursuant to the provisions of paragraph (3) of subsection
147 (b) of Code Section 33-20C-5 shall be a violation of the provisions of this Code section.
148 (b) Nothing in this chapter shall prohibit or limit any claim or private right of action for
149 a claim that any claimant has against any person or entity for any act or omission
150 constituting a violation of the provisions of this chapter.
151 (c) In addition to any other liability which may apply, any person who publicly discloses
152 or otherwise uses for network or reimbursement purposes any profiling results in violation
153 of this chapter shall be liable to the affected physician or physician group for treble
154 damages, reasonable attorneys' fees, and any other appropriate relief, including injunctive
155 relief."

156 **SECTION 2.**

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