

The Senate Committee on Health and Human Services offered the following substitute to HB 233:

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 provide an effective date; to repeal conflicting laws; and for
7 other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

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

12 "26-4-119.

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

15 (b) The General Assembly finds that:

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

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

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

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

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

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

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

32 (2) 'Referral' means:

33 (A) Ordering 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 affiliated
36 pharmacies; or

37 (C) Patient or prospective patient specific advertising, marketing, or promotion of a
38 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; public health activities
51 otherwise authorized by law; or utilization review by a health care provider; or

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; provided, however,
54 that this shall not apply to referrals from an affiliate for limited distribution prescription
55 drugs requiring special handling and not commonly carried at retail pharmacies or
56 oncology clinics or practices.

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 referrals in violation of subsection (d) of this Code section and
60 the pharmacy provides the disclosures required in subsection (f) of this Code section.

61 (f) If a pharmacy licensed or holding a nonresident pharmacy permit in this state has an
62 affiliate, it shall annually file with the board a disclosure statement identifying all such
63 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;

73 (B) Any hospital or related institution;

74 (C) Any referrals by an affiliate for pharmacy services and prescriptions to patients in
75 skilled nursing facilities, intermediate care facilities, continuing care retirement
76 communities, home health agencies, or hospices; or

77 (D) Any care management organization, as defined in Chapter 21A of Title 33."

78 **SECTION 2.**

79 This Act shall become effective on January 1, 2020.

80 **SECTION 3.**

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