

THE PATIENT BROKERING ACT

W. Va. Code §16-62-1 et seq.

SUMMARY

Patient brokering is an illegal practice used by some rehabilitation facilities to pay a third party to procure patients. When at their most vulnerable, people with substance use disorder and their families believe the facility is acting in their best interests, when in reality, they may only be motivated by financial gain.

What it prohibits:

A person, including a health care provider or health care facility cannot offer, pay, solicit, or receive any incentive to encourage the referral, acceptance, or acknowledgement of treatment of a patient to or from a health care provider or health care facility.

What are the exceptions?

- Payments, compensation, or financial arrangements within a group practice, so long as it is not to or from a third party.
- Payments for professional consultation services.
- Commissions, fees, or other payment lawfully paid to insurance agents.
- Payments by a health insurer, a health care purchasing group, or the Medicare or Medicaid program to provide health, mental health, or substance abuse goods or services under a health benefit plan.
- Insurance advertising and promotional gifts.
- Commissions or fees paid to a person or entity providing a referral service to nurses who provide health care services.
- Payments by a health care provider or health care facility to a health, mental health, or substance abuse information service that provides information upon request and without charge to consumers about providers (i.e., HELP4WV).
- Payments made by an assisted living facility to an individual employed by the assisted living facility, or with whom the facility contracts to provide marketing services for the facility.
- Payments made to a resident of an assisted living facility who refers a friend, family members, or other individuals with whom the resident has a personal relationship.
- Payment practices authorized by 42 U.S.C. §1320a-7b(b)(3).

What are the penalties for violating the Act?

- Less than 10 patients:
 - *Imprisoned one to five years*
 - *Fined up to \$50,000*
- More than 10 patients:
 - *Imprisoned two to five years*
 - *Fined up to \$100,000*

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