

CHAPTER 202
FORMERLY
SENATE BILL NO. 32
AS AMENDED BY
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE RELATING PATIENT BROKERING.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

WHEREAS, patient brokering is when patient brokers are paid a fee to place insured people in treatment centers, which receive thousands of dollars in claims for each patient; and

WHEREAS, there has been an increase in the practice involving fraudulent enrollments, with Pennsylvania and Delaware being 2 of the states where Blue Cross has been hardest hit with fraudulent enrollments; and

WHEREAS, patient brokering has been targeting individuals struggling with addiction; and

WHEREAS, individuals are told that they are receiving treatment under a scholarship or anonymous donor but are actually being enrolled in health insurance plans without their knowledge, often using a fake address; and

WHEREAS, health insurance plans that offer low deductible plans with out-of-network treatment benefits are targeted for fraudulent enrollments; and

WHEREAS, individuals who are admitted for treatment based upon fraudulent enrollment in a health insurance plan are discharged, with no services or housing, when the health insurance policy is terminated for non-payment of premiums or identified by health payers as fraudulent; and

WHEREAS, Arizona, California, Florida, Illinois, Tennessee, and Utah have enacted laws prohibiting patient brokering; and

WHEREAS, legislation prohibiting patient brokering has been introduced in Georgia, New York, and Rhode Island; and

WHEREAS, patient brokering harms individuals seeking medical treatment, especially individuals suffering from addiction, as well as insurance carriers.

NOW, THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Chapter 25E. Patient Brokering.

§ 2501E. Definitions.

For purposes of this chapter:

(1) "Carrier" means any entity that provides health insurance in this State. "Carrier" includes an insurance company, health service corporation, health maintenance organization, and any other entity providing a plan of health insurance or health benefits subject to state insurance regulation. "Carrier" also includes any third-

party administrator or other entity that adjusts, administers, or settles claims in connection with health benefit plans.

(2) "Health benefit plan" means any hospital or medical policy or certificate, major medical expense insurance, health service corporation subscriber contract, or health maintenance organization subscriber contract.

(3) "Health-care facility" means an institution, facility, or agency licensed, certified, or otherwise authorized or permitted by law to provide health care in the ordinary course of business.

(4) "Health-care provider" means an individual licensed, certified, or otherwise authorized or permitted by law to provide health care in the ordinary course of business or practice of a profession.

§ 2502E. Patient brokering prohibited.

(a) A person may not engage in patient brokering.

(b) A person engages in patient brokering by doing any of the following:

(1) Offering or paying a commission, benefit, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engaging in any form of split-fee arrangement, to induce the referral of a patient or patronage to or from a health-care provider or health-care facility.

(2) Soliciting or receiving a commission, benefit, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engaging in any form of split-fee arrangement, in return for referring a patient or patronage to or from a health-care provider or health-care facility.

(3) Soliciting or receiving a commission, benefit, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engaging in any form of a split-fee arrangement, in return for the acceptance or acknowledgement of treatment from a health-care provider or health-care facility.

(4) Aid, abet, advise, or otherwise participate in the conduct prohibited under this section.

§ 2503E. Application.

This section does not apply to any of the following:

(1)a. Any discount, payment, remuneration, waiver of payment, or payment practice not prohibited by § 1128B of the Social Security Act, 42 U.S.C. § 1320a-7b, and its implementing regulations, 42 C.F.R. § 1001.

b. This paragraph (1) of this section includes a patient, claim, or benefit under a Federal health care program, as defined under § 1128B(f) the Social Security Act, 42 U.S.C. § 1320a-7b(f), or a health benefit plan.

(2) Any payment, compensation, or financial arrangement within a group practice, if the payment, compensation, or arrangement is not to or from a person who is not a member of the group practice.

(3) Payments to a health-care provider or health-care facility for professional consultation services.

(4) Commissions, fees, or other remuneration lawfully paid to insurance agents as provided under Title

18.

(5) Payments by a carrier who reimburses, provides, offers to provide, or administers health, mental health, or substance abuse goods or services under a health benefit plan.

(6) Payments to or by a health-care provider or health-care facility, or a health-care provider network entity, that has contracted with a carrier, a health-care purchasing group, Medicare, or Medicaid to provide health, mental health, or substance abuse goods or services under a health benefit plan when such payments are for goods or services under the plan.

(7) 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 of health-care goods or services to enable consumers to select appropriate providers or facilities, provided that the information service meets all of the following criteria:

a. Does not attempt through its standard questions for solicitation of consumer criteria or through any other means to steer or lead a consumer to select or consider selection of a particular health-care provider or health-care facility.

b. Does not provide or represent itself as providing diagnostic or counseling services or assessments of illness or injury and does not make any promises of cure or guarantees of treatment.

c. Does not provide or arrange for transportation of a consumer to or from the location of a health-care provider or health-care facility.

d. Charges and collects fees from a health-care provider or health-care facility participating in its services that are set in advance, are consistent with the fair market value for those information services, and are not based on the potential value of a patient or patients to a health-care provider or health-care facility or of the goods or services provided by the health-care provider or health-care facility.

(8) An individual employed by the assisted living facility, or with whom the facility contracts to provide marketing services for the facility, if the individual clearly indicates that they work with or for the facility.

(9) Payments by an assisted living facility to a referral service that provides information, consultation, or referrals to consumers to assist them in finding appropriate care or housing options for seniors or disabled adults if the referred consumers are not Medicaid recipients.

(10) A resident of an assisted living facility who refers a friend, family member, or other individual with whom the resident has a personal relationship to the assisted living facility, in which case the assisted living facility may provide a monetary reward to the resident for making such referral.

(11) Payments to a health-care provider or health-care facility under the requirements of a contract with the State to provide assistance to individuals with mental health conditions or substance use disorders in identifying and obtaining resources to pay for treatment, including clinical and related services for an individual with a mental health condition or substance use disorder.

§ 2504E. Enforcement.

(a) The Attorney General has the same authority to enforce and carry out this chapter as under Chapter 25 of Title 29 and by §§ 2511 through 2527 and 2531 through 2536 of this title.

(b) A violation of this chapter shall be deemed an unlawful practice under § 2513 of this title and a violation of Subchapter II of Chapter 25 of this title.

(c) Nothing in this chapter modifies requirements under mental health parity laws, including § 3343, § 3571T, or § 3578 of Title 18 or the federal Mental Health Parity and Addiction Equity Act of 2008 (29 U.S.C. § 1185a).

§ 2505E. Penalties.

(a) A person who violates this chapter is subject to a civil penalty, in addition to all costs, of not more than \$10,000 per violation.

(b) If the violation is against an elder person or person with a disability, a person who violates this chapter is subject to an additional civil penalty of not more than \$10,000 per violation under § 2581 of this title.

(c) Each day that a wilful violation continues is considered a separate violation.

(d) For the purpose of this chapter, a wilful violation occurs when the person committing the violation knew or should have known that the person's conduct was prohibited under this chapter.

§2506E. Remedies and penalties not exclusive.

The remedies and penalties under this chapter are not exclusive and are in addition to any other procedures, rights, or remedies which exist with respect to any other provisions of law including Subchapter II and Subchapter III of Chapter 25 of this title, actions brought by private parties, or state or federal criminal prosecutions.

Approved August 14, 2019