



SPONSOR: Sen. Brown & Rep. Bentz & Rep. Minor-Brown
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Sturgeon, Townsend; Reps. Baumbach, Bennett, Bolden,
Chukwuocha, Heffernan, Q. Johnson, Kowalko, Osienski,
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DELAWARE STATE SENATE
150th GENERAL ASSEMBLY

SENATE BILL NO. 32

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

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

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

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

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

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

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

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

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

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

19 NOW, THEREFORE:

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

21 Section 1. Amend Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as
22 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) Any discount, payment, waiver of payment, or payment practice not prohibited by 42 U.S.C. § 1320a-7b(b).

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

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

56 (4) Commissions, fees, or other remuneration lawfully paid to insurance agents as provided under Title 18.

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

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

63 (7) Payments by a health-care provider or health-care facility to a health, mental health, or substance abuse
64 information service that provides information upon request and without charge to consumers about providers of health-
65 care goods or services to enable consumers to select appropriate providers or facilities, provided that the information
66 service meets all of the following criteria:

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

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

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

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

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

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

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

86 § 2504E. Enforcement.

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

89 § 2505E. Penalties.

90 (a) A person who violates this chapter is subject to a civil penalty, in addition to all costs, of not more than
91 \$10,000 per violation.

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

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

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

97 §2506E. Remedies and penalties not exclusive.

98 The remedies and penalties under this chapter are not exclusive and are in addition to any other procedures, rights,
99 or remedies which exist with respect to any other provisions of law including Subchapter II and Subchapter III of Chapter
100 25 of this title, actions brought by private parties, or state or federal criminal prosecutions.

SYNOPSIS

This Act prohibits the practice known as patient brokering, which is the practice where patient brokers are paid a fee to place insured people in treatment centers so that the treatment centers receive thousands of dollars in insurance claim payments for each patient. Increasingly, patient brokers fraudulently enroll patients in low-deductible health plans with out-of-network treatment benefits. Patient brokers target individuals with substance use disorders, who are told that they are receiving their treatment through a scholarship. Not only does this perpetrate fraud against insurers, when insurance plans are terminated for nonpayment of the premium, individuals are discharged from the treatment program with no services or housing and often in a state that is far from home.

Author: Senator Brown