

# STATE OF NEW YORK

7689

2017-2018 Regular Sessions

## IN ASSEMBLY

May 9, 2017

Introduced by M. of A. ROSENTHAL -- (at request of the Office of Alcoholism and Substance Abuse Services) -- read once and referred to the Committee on Alcoholism and Drug Abuse

AN ACT to amend the mental hygiene law and the penal law, in relation to prohibiting deceptive acts and practices for substance use disorder treatment

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The mental hygiene law is amended by adding a new section  
2 32.06 to read as follows:

3 § 32.06 Prohibition on deceptive acts and practices.

4 (a) Definitions. As used in this section, the following terms shall  
5 have the following meanings, unless the context clearly requires other-  
6 wise:

7 (1) "Addiction professional" shall mean a professional who, within the  
8 scope of their license issued pursuant to title eight of the education  
9 law or credential issued pursuant to section 19.07 of the mental hygiene  
10 law, if working in an individual capacity, provides substance abuse and  
11 prevention services.

12 (2) "Credentialed professional" shall include any person who is in the  
13 process of applying for a credential issued by the commissioner pursuant  
14 to section 19.07 of the mental hygiene law, or who has a valid creden-  
15 tial, or who is eligible for credential renewal;

16 (3) "Health care provider" shall mean a practitioner in an individual  
17 practice, group practice, partnership, professional corporation or other  
18 authorized form of association, a hospital or other health care institu-  
19 tion issued an operating certificate pursuant to article twenty-eight of  
20 the public health law or article thirty-one or thirty-two of the mental  
21 hygiene law, and any other purveyor of health or health related items or  
22 services.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1     (4) "Potential service recipient" shall mean a person who is a  
2 substance abuser, substance dependent, in need of services to avoid  
3 becoming a substance abuser, or substance dependent.

4     (5) "Substance abuse program" shall mean any public or private person,  
5 corporation, partnership, agency, either profit or non-profit, or state  
6 or municipal government which provides, or holds itself out as provid-  
7 ing, substance abuse services, in either a residential or ambulatory  
8 setting, to persons who are substance abusers, substance dependent, in  
9 need of services to avoid becoming substance abusers, substance depend-  
10 ent or to significant others.

11     (6) "Substance abuse services" shall include services to inhibit the  
12 onset of substance abuse or substance dependence; to address the social  
13 dysfunction, medical problems and other disabilities associated with  
14 substance abuse or substance dependence, and to rehabilitate persons  
15 suffering from substance abuse or dependence.

16     (b) It is unlawful for any person, including any individual, addiction  
17 professional, credentialed professional, health care provider, health  
18 care facility or substance abuse program to:

19     (1) Promote, offer, give, solicit or pay any commission, bonus,  
20 rebate, kickback, or bribe, directly or indirectly, in cash or in kind,  
21 or engage in any split-fee arrangement, to induce the referral of a  
22 potential service recipient or in connection with the performance of a  
23 substance abuse service;

24     (2) Solicit, agree to receive or receive any commission, bonus,  
25 rebate, kickback, or bribe, directly or indirectly, in cash or in kind,  
26 or engage in any split-fee arrangement, in any form whatsoever, in  
27 return for referring a potential service recipient or in connection with  
28 the performance of a substance abuse service; or

29     (3) Aid, abet, advise, or otherwise participate in the conduct prohib-  
30 ited under paragraph one or paragraph two of this subdivision.

31     (c) This section shall not apply to:

32     (1) Any discount, payment, waiver of payment, or payment practice not  
33 prohibited by 42 U.S.C. § 1320a-7b(b) or regulations promulgated there-  
34 under.

35     (2) Payments to an addiction professional, health care provider,  
36 health care facility or substance abuse program for professional consul-  
37 tation services.

38     (3) Commissions, fees, or other remuneration lawfully paid to insur-  
39 ance agents as provided under the insurance law.

40     (4) Payments by a health insurer who reimburses, provides, offers to  
41 provide, or administers health, mental health, or substance abuse  
42 services under a health benefit plan.

43     (5) Payments to or by an addiction professional, health care provider,  
44 health care facility, a health care provider network entity, or a  
45 substance abuse program, that has contracted with a health insurer, a  
46 health care purchasing group, or the Medicare or Medicaid program to  
47 provide health, mental health, or substance abuse services under a  
48 health benefit plan when such payments are for services under the plan.

49     (6) Payments by an addiction professional, health care provider,  
50 health care facility or substance abuse program to a health, mental  
51 health, or substance abuse information service that provides information  
52 upon request and without charge to consumers about providers of  
53 substance abuse services to enable consumers to select appropriate  
54 substance abuse programs, provided that such information service:

55     i. Does not attempt through its standard questions for solicitation of  
56 consumer criteria or through any other means to steer or lead a consumer

1 to select or consider selection of a particular addiction professional,  
2 substance abuse services or substance abuse program;

3 ii. Does not provide or represent itself as providing diagnostic or  
4 counseling services or assessments of an individual's need for substance  
5 abuse services and does not make any promises of cure or guarantees of  
6 treatment;

7 iii. Does not provide or arrange for transportation of a consumer to  
8 or from the location of a substance abuse service or program; and

9 iv. Charges and collects fees from an addiction professional, health  
10 care provider, health care facility or substance abuse program partic-  
11 ipating in its services that are set in advance, are consistent with the  
12 fair market value for those information services, and are not based on  
13 the potential value of a potential service recipient or recipients to a  
14 substance abuse program or of the goods or services provided by the  
15 substance abuse program.

16 (d) Any individual, including an officer, partner, agent, attorney, or  
17 other representative of a partnership, association, corporation, limited  
18 liability company or partnership, public or private agency or any part  
19 thereof who knowingly fails to comply with the provisions of this  
20 section shall be guilty of a misdemeanor as defined in the penal law,  
21 punishable in accordance with section 177.05 of the penal law.

22 (e) If the commissioner has reason to believe that there is an indi-  
23 vidual, partnership, association, corporation, limited liability company  
24 or partnership, public or private agency or any part thereof violating  
25 subdivision (b) of this section, he or she shall proceed pursuant to  
26 applicable sections of this chapter including but not limited to  
27 sections 32.3, 32.15, 32.19 and 32.27 of this article.

28 (f) The party bringing an action under this section may recover  
29 reasonable expenses in obtaining injunctive relief, including, but not  
30 limited to, investigative costs, court costs, reasonable attorney's  
31 fees, witness costs, and deposition expenses.

32 (g) The provisions of this section are in addition to any other civil,  
33 administrative, or criminal actions provided by law and may be imposed  
34 against both corporate and individual defendants.

35 § 2. Section 177.05 of the penal law, as added by chapter 442 of the  
36 laws of 2006, is amended to read as follows:

37 § 177.05 Health care fraud in the fifth degree.

38 A person is guilty of health care fraud in the fifth degree when[7]:

39 1. with intent to defraud a health plan, he or she knowingly and will-  
40 fully provides materially false information or omits material informa-  
41 tion for the purpose of requesting payment from a health plan for a  
42 health care item or service and, as a result of such information or  
43 omission, he or she or another person receives payment in an amount that  
44 he, she or such other person is not entitled to under the circumstances;  
45 or

46 2. he or she knowingly and willfully directly or indirectly promotes,  
47 offers, gives, solicits or receives, or agrees to receive, any fee, or  
48 other consideration to or from a third party for the referral of a  
49 potential service recipient in connection with the performance of  
50 substance abuse services in violation of section 32.06 of the mental  
51 hygiene law.

52 Health care fraud in the fifth degree is a class A misdemeanor.

53 § 3. This act shall take effect immediately.