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:

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

§ 32.06 Prohibition on deceptive acts and practices.

(a) Definitions. As used in this section, the following terms shall have the following meanings, unless the context clearly requires otherwise:

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

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

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

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

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

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

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

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

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

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

(3) Aid, abet, advise, or otherwise participate in the conduct prohibited under paragraph one or paragraph two of this subdivision.

(c) This section shall not apply to:

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

(2) Payments to an addiction professional, health care provider, health care facility or substance abuse program for professional consultation services.

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

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

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

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

i. 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 addiction professional, substance abuse services or substance abuse program;

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

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

iv. Charges and collects fees from an addiction professional, health care provider, health care facility or substance abuse program 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 potential service recipient or recipients to a substance abuse program or of the goods or services provided by the substance abuse program.

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

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

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

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

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

§ 177.05 Health care fraud in the fifth degree.

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

1. with intent to defraud a health plan, he or she knowingly and willfully provides materially false information or omits material information for the purpose of requesting payment from a health plan for a health care item or service and, as a result of such information or omission, he or she or another person receives payment in an amount that he, she or such other person is not entitled to under the circumstances; or

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

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

§ 3. This act shall take effect immediately.