

# STATE OF NEW YORK

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6544--B

Cal. No. 251

2017-2018 Regular Sessions

## IN SENATE

June 1, 2017

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Introduced by Sens. AKSHAR, CARLUCCI, FUNKE, HELMING, JACOBS, KAMINSKY, MARCHIONE, MURPHY, O'MARA, PHILLIPS, RANZENHOFER, RITCHIE -- (at request of the Office of Alcoholism and Substance Abuse Services) -- read twice and ordered printed, and when printed to be committed to the Committee on Alcoholism and Drug Abuse -- recommitted to the Committee on Alcoholism and Drug Abuse in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading -- passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the mental hygiene law, in relation to prohibited practices by providers of substance use disorder services

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 Prohibited practices by providers of substance use disorder  
4 services.

5 1. For purposes of this section, unless the context clearly requires  
6 otherwise, "provider" shall mean any person, firm, partnership, group,  
7 practice association, fiduciary, employer, representative thereof or any  
8 other entity who is providing or purporting to provide substance use  
9 disorder services. Provided, however, that "provider" shall not include  
10 a person receiving substance use disorder services from the provider.

11 2. No provider shall intentionally solicit, receive, accept or agree  
12 to receive or accept any payment, benefit or other consideration in any  
13 form to the extent such payment, benefit or other consideration is given  
14 for the referral of a person as a potential patient for substance use  
15 disorder services.

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

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1 3. No provider providing or purporting to provide substance use disorder  
2 services pursuant to this chapter, shall intentionally make, offer,  
3 give, or agree to make, offer, or give any payment, benefit or other  
4 consideration in any form to the extent such payment, benefit or other  
5 consideration is given for the referral of a person as a potential  
6 patient for substance use disorder services.

7 4. This section shall not apply to any:

8 (a) lawful payments by a health maintenance organization or health  
9 insurer, operating in accordance with article thirty-two or forty-three  
10 of the insurance law or article forty-four of the public health law on  
11 behalf of their enrollees for such substance use disorder services or  
12 other benefits required to be provided;

13 (b) lawful payments to or by a provider to a health maintenance organ-  
14 ization or health insurer operating in accordance with article thirty-  
15 two or forty-three of the insurance law or article forty-four of the  
16 public health law, as payment for services provided, a refund for an  
17 overpayment, a participating provider fee, or any similar remuneration;

18 (c) provider for an activity that, at the time of such activity, would  
19 have been lawful as specifically exempt, or otherwise not prohibited,  
20 under any federal statute or regulations, including but not limited to  
21 42 U.S.C. § 1320a-7b (b) or the regulations promulgated thereunder, if  
22 conducted by a person, firm, partnership, group, practice, association,  
23 fiduciary, employer representative thereof or any other entity providing  
24 substance use disorder services;

25 (d) any employee or representative of a provider who is conducting  
26 marketing activities, where the employee or representative identifies  
27 the provider represented or for whom or which the employee or represen-  
28 tative works, identifies that the employee or representative is a mark-  
29 eter and not a clinician or other individual who can provide diagnostic,  
30 counseling or assessment services, and such marketing activities are  
31 limited to educating the potential patient about the program with no  
32 effort to steer or lead the potential patient to select or consider  
33 selection of the substance use disorder services provider represented or  
34 for whom or which the employee or representative works; or

35 (e) commissions, fees or other remuneration lawfully paid to insurance  
36 agents as provided under the insurance law.

37 5. Any provider who intentionally violates the provisions of subdivi-  
38 sion two or three of this section shall be guilty of a misdemeanor as  
39 defined in the penal law.

40 6. If the commissioner has reason to believe a provider has violated  
41 subdivision two or three of this section, the commissioner may proceed  
42 to investigate and institute enforcement actions, as may be authorized  
43 pursuant to the applicable provisions of this article.

44 7. The provisions of this section are in addition to any other civil,  
45 administrative or criminal enforcement actions provided by law. Penal-  
46 ties authorized under this section may be imposed against corporate  
47 providers and individual providers.

48 8. The commissioner shall adopt and may amend rules and regulations to  
49 effectuate the provisions of this section.

50 § 2. This act shall take effect on the sixtieth day after it shall  
51 have become a law.