

# STATE OF NEW YORK

7689--A

2017-2018 Regular Sessions

## IN ASSEMBLY

May 9, 2017

Introduced by M. of A. L. ROSENTHAL, D'URSO, THIELE, SKOUFIS, CUSICK -- read once and referred to the Committee on Alcoholism and Drug Abuse -- reported and referred to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

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

§ 32.06 Prohibited practices by providers of substance use disorder services.

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

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

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

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

1     4. This section shall not apply to any:

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

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

12     (c) provider for an activity that, at the time of such activity, would  
13 have been lawful as specifically exempt, or otherwise not prohibited,  
14 under any federal statute or regulations, including but not limited to  
15 42 U.S.C. § 1320a-7b (b) or the regulations promulgated thereunder, if  
16 conducted by a person, firm, partnership, group, practice, association,  
17 fiduciary, employer representative thereof or any other entity providing  
18 substance use disorder services;

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

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

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

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

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

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

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