§ 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 or operating or purporting to operate a certified recovery residence. 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 or as a resident at a certified recovery residence.

3. No provider providing or purporting to provide substance use disorder services or operating or purporting to operate a certified recovery residence 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.

4. This section shall not apply to any:

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

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

(c) provider for an activity that, at the time of such activity, would

have been lawful as specifically exempt, or otherwise not prohibited, under any federal statute or regulations, including but not limited to 42 U.S.C. § 1320a-7b (b) or the regulations promulgated thereunder, if conducted by a person, firm, partnership, group, practice, association, fiduciary, employer representative thereof or any other entity providing substance use disorder services;

(d) any employee or representative of a provider who is conducting marketing activities, where the employee or representative identifies the provider represented or for whom or which the employee or representative works, identifies that the employee or representative is a marketer and not a clinician or other individual who can provide diagnostic, counseling or assessment services, and such marketing activities are limited to educating the potential patient about the program with no effort to steer or lead the potential patient to select or consider selection of the substance use disorder services provider represented or for whom or which the employee or representative works; or

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

5. Any provider who intentionally violates the provisions of subdivision two or three of this section shall be guilty of a misdemeanor as defined in the penal law.

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

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

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