AN ACT

Amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, in forgery and fraudulent practices, providing for patient brokering.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Title 18 of the Pennsylvania Consolidated Statutes is amended by adding a section to read:

§ 4122. Patient brokering.

(a) Offense defined.--A person commits the offense of patient brokering if the person does any of the following:

(1) Offers or pays a commission, benefit, bonus, rebate, kickback or bribe, directly or indirectly, in cash or in kind, or engages in a split-fee arrangement, in any form, to induce the referral of a patient or patronage to or from a health care provider, health care facility, drug and alcohol treatment facility, drug and alcohol recovery house or assisted living residence.

(2) Solicits or receives a commission, benefit, bonus,
rebate, kickback or bribe, directly or indirectly, in cash or in kind, or engages in a split-fee arrangement, in any form, in return for referring a patient or patronage to or from a health care provider, health care facility, drug and alcohol treatment facility, drug and alcohol recovery house or assisted living residence.

(3) Solicits or receives a commission, benefit, bonus, rebate, kickback or bribe, directly or indirectly, in cash or in kind, or engages in a split-fee arrangement, in any form, in return for the acceptance or acknowledgment of treatment or care from a health care provider, health care facility, drug and alcohol treatment facility, drug and alcohol recovery house or assisted living residence.

(4) Aids, abets, advises or otherwise participates in the conduct prohibited under paragraph (1), (2) or (3).

(b) Exceptions.--This section does not apply to:

(1) A discount, payment, waiver of payment or payment practice not prohibited by section 1128B of the Social Security Act (49 Stat. 620, 42 U.S.C. § 301 et seq.) or regulations promulgated thereunder.

(2) A payment, compensation or financial arrangement within a group practice provided that the payment, compensation or financial arrangement is not to or from a person who is not a member of the group practice.

(3) A payment to a health care provider, health care facility, drug and alcohol treatment facility or drug and alcohol recovery house for professional consultation services.

(4) A payment by a health care insurer that reimburses, provides, offers to provide or administers health, mental
health or substance abuse services under a health insurance policy.

(5) A payment to or by a health care provider, health care facility or a health care provider network that is contracted with a health care insurer, a health care purchasing group or the Medicare or Medicaid programs to provide health, mental health or substance abuse services under a health insurance policy when the payments are for services under the health insurance policy.

(6) Insurance advertising gifts to individuals that have a value of not more than $25.

(7) An individual employed by an assisted living residence, or with whom the assisted living residence contracts to provide marketing services, if it is clearly indicated that the individual works with or for the assisted living residence.

(8) A payment by an assisted living residence to a referral service that provides information, consultation or referrals to consumers to assist consumers in finding appropriate care or housing options for seniors or disabled adults if the referred consumers are not Medicaid recipients.

(9) An assisted living residence that provides a monetary reward to a resident of an assisted living residence who refers a friend, family member or other individual with whom the resident has a personal relationship to the assisted living residence.

(c) Penalties.--

(1) Any person who violates this section, where the prohibited conduct involves less than 10 patients, commits a felony of the third degree.
(2) Any person who violates this section, where the prohibited conduct involves 10 or more patients but fewer than 20 patients, commits a felony of the second degree.

(3) Any person who violates this section, where the prohibited conduct involves 20 or more patients, commits a felony of the first degree.

(d) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:


"Drug and alcohol recovery house." As defined and licensed or certified under Article XXIII-A of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.

"Drug and alcohol treatment facility." A facility licensed, funded or controlled by the Department of Drug and Alcohol Programs or its agents that provides or makes provision for full-time or part-time treatment or rehabilitative services for drug and alcohol abuse and dependence of patients.

"Group practice." A group of two or more health care providers organized as a partnership, professional corporation or similar association in which:

(1) Each health care provider who is a member of the group provides substantially the full range of services which the health care provider routinely provides, including medical care, consultation, diagnosis or treatment through the joint use of shared office space, facilities, equipment and personnel.

(2) Substantially all of the services of the health care
providers in the group are provided through the group, are
billed in the name of the group and payments received are
treated as receipts of the group.

(3) The overhead expenses of and the income from the
group are distributed in accordance with methods previously
determined by members of the group.

"Health care facility." As defined under section 802.1 of
the act of July 19, 1979 (P.L.130, No.48), known as the Health
Care Facilities Act.

"Health care insurer." A person that offers administrative,
indemnity or payment services for health care in exchange for a
premium or service charge under a health insurance policy,
including, but not limited to, an insurance company, association
or exchange issuing health insurance policies in this
Commonwealth, hospital plan corporation as defined in 40 Pa.C.S.
Ch. 61 (relating to hospital plan corporations), professional
health services plan corporation as defined in 40 Pa.C.S. Ch. 63
(relating to professional health services plan corporations),
health maintenance organization, preferred provider
organization, fraternal benefit society, beneficial society and
third-party administrator.

"Health care provider." As defined under 23 Pa.C.S. § 6303
(relating to definitions).

"Health care provider network." A corporation, partnership
or limited liability company owned or operated by two or more
health care providers and organized for the purpose of entering
into agreements with health care insurers, health care
purchasing groups or the Medicare or Medicaid programs.

"Health insurance policy." As defined in section 631.1(f) of
the act of May 17, 1921 (P.L.682, No.284), known as The
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- 5 -
Insurance Company Law of 1921.

"Person." A health care provider, health care facility, drug and alcohol treatment facility, drug and alcohol recovery house or assisted living residence.

Section 2. This act shall take effect in 60 days.