

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 713 Session of 2019

INTRODUCED BY SANTARSIERO, FONTANA, BREWSTER, TARTAGLIONE,
HUGHES AND COSTA, JUNE 6, 2019

REFERRED TO JUDICIARY, JUNE 6, 2019

AN ACT

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

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

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

8 § 4122. Patient brokering.

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

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

18 (2) Solicits or receives a commission, benefit, bonus,

1 rebate, kickback or bribe, directly or indirectly, in cash or
2 in kind, or engages in a split-fee arrangement, in any form,
3 in return for referring a patient or patronage to or from a
4 health care provider, health care facility, drug and alcohol
5 treatment facility, drug and alcohol recovery house or
6 assisted living residence.

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

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

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

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

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

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

29 (4) A payment by a health care insurer that reimburses,
30 provides, offers to provide or administers health, mental

1 health or substance abuse services under a health insurance
2 policy.

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

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

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

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

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

27 (c) Penalties.--

28 (1) Any person who violates this section, where the
29 prohibited conduct involves less than 10 patients, commits a
30 felony of the third degree.

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

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

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

10 "Assisted living residence." As defined under section 1001
11 of the act of June 13, 1967 (P.L.31, No.21), known as the Human
12 Services Code.

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

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

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

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

30 (2) Substantially all of the services of the health care

1 providers in the group are provided through the group, are
2 billed in the name of the group and payments received are
3 treated as receipts of the group.

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

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

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

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

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

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

1 Insurance Company Law of 1921.

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

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