WEST VIRGINIA CODE CHAPTER 16 ARTICLE 62

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§16-62-1. Definitions.

For the purposes of this article:

"Department" means the Department of Human Services.

"Health care provider or health care facility" means any person or entity licensed, certified, or authorized by law to provide professional health care service in this state to a patient during that patient's medical, remedial, or behavioral health care, treatment, or confinement.

"Health care provider network entity" means 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 insurers, health care purchasing groups, or the Medicare or Medicaid program.

"Health insurer" means any insurance company authorized to transact health insurance in the state, any insurance company authorized to transact health insurance or casualty insurance in the state that is offering a minimum premium plan or stop-loss coverage for any person or entity providing health care benefits, any self-insurance plan, any health maintenance organization, any prepaid health clinic, any prepaid limited health service organization, any multiple-employer welfare arrangement, or any fraternal benefit society providing health benefits to its members.

"Recovery residence" has the same meaning as set forth in §16-59-1 of this code.

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§16-62-2. Patient brokering prohibited.

(a) It is unlawful for any person, including any health care provider, health care facility, or recovery residence to:

(1) Offer or pay a commission, benefit, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, to induce the referral of a patient or patronage to or from a health care provider, health care facility or recovery residence;

(2) Solicit or receive a commission, benefit, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, in return for referring a patient or patronage to or from a health care provider, health care facility, or recovery residence;

(3) Solicit or receive a commission, benefit, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, in return for the acceptance or acknowledgment of treatment from a health care provider, health care facility, or recovery residence;

(4) Aid, abet, advise, or otherwise participate in the conduct prohibited under this subsection; or

(5) Engage in any of the unlawful acts provided for in this subsection in regard to a recovery residence as defined in §16-59-1 of this code;

(b) Penalties –

(1) Any person who violates the provisions of subsection (a) of this section is guilty of a felony and, upon conviction thereof, shall be fined not more than $50,000, or imprisoned in a state correctional facility for not less than one year nor more than five years, or both fined and imprisoned.

(2) Notwithstanding the provisions of subdivision (1) of this section, any person who violates subsection (a) of this section, where the prohibited conduct involves 10 or more patients, is guilty of a felony and, upon conviction thereof, shall be fined not more than $100,000, or imprisoned in a state correctional facility not less than two years nor more than five years, or both fined and imprisoned.

(c) The Office of the Inspector General shall develop a tool that facilitates the submission of complaints. The Office of the Inspector General shall investigate complaints, review data for violations of this article, and shall refer matters to state, or local law-enforcement authorities to coordinate, investigate, or prosecute violations of this article.

(d) Law enforcement shall investigate each referral upon receipt for violation this article.

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(e) The Office of the Inspector General shall receive data from the department related to recovery residences based upon intervals determined by the department, but not less than annually. This data may contain personally identifiable health information. It shall be transmitted and stored in conformity with applicable Health Insurance and Portability and Accountability Act standards.

(f) The Office of the Inspector General and the certifying agency set forth in §16-59-2 *et seq*. of this code may coordinate investigations as further set forth in legislative rule.

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§16-62-3. Exceptions.

This article does not apply to the following payment practices:

(1) Any discount, payment, waiver of payment, or payment practice expressly authorized by 42 U.S.C. §1320a-7b(b)(3) or regulations adopted thereunder;

(2) Any payment, compensation, or financial arrangement within a group practice provided the payment, compensation, or arrangement is not to or from persons who are not members of the group practice;

(3) Payments to a health care provider or health care facility for professional consultation services;

(4) Commissions, fees, or other remuneration lawfully paid to insurance agents;

(5) Payments by a health insurer who reimburses, provides, offers to provide, or administers health, mental health, or substance abuse goods or services under a health benefit plan;

(6) Payments to or by a health care provider or health care facility, or a health care provider network entity, that has contracted with a health insurer, a health care purchasing group, or the Medicare or Medicaid program to provide health, mental health, or substance abuse goods or services under a health benefit plan when the payments are for goods or services under the plan;

(7) Insurance advertising and promotional gifts;

(8) Commissions or fees paid to a person or entity providing a referral service to nurses which provide health care services;

(9) Payments by a health care provider or health care facility to a health, mental health, or substance abuse information service that provides information upon request and without charge to consumers about providers of health care goods or services to enable consumers to select appropriate providers or facilities, provided that the information service:

(A) Does not attempt through its standard questions for solicitation of consumer criteria or through any other means to steer or lead a consumer to select or consider selection of a particular health care provider or health care facility;

(B) Does not provide or represent itself as providing diagnostic or counseling services or assessments of illness or injury and does not make any promises of cure or guarantees of treatment;

(C) Does not provide or arrange for transportation of a consumer to or from the location of a health care provider or health care facility; and

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(D) Charges and collects fees from a health care provider or health care facility participating in its services that are set in advance, are consistent with the fair market value for those information services, and are not based on the potential value of a patient or patients to a health care provider or health care facility or of the goods or services provided by the health care provider or health care facility.

(10) Payments made by an assisted living facility to an individual employed by the assisted living facility, or with whom the facility contracts to provide marketing services for the facility, if the individual clearly indicates that he or she works with or for the facility; and

(11) Payments made to a resident of an assisted living facility who refers a friend, family members, or other individuals with whom the resident has a personal relationship to the assisted living facility, in which case the assisted living facility may provide a monetary reward to the resident for making the referral.

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