

**SUBSTANCE ABUSE TREATMENT FACILITY PATIENT
BROKERING**

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Eric K. Hutchings

Senate Sponsor: Gene Davis

LONG TITLE

Committee Note:

The Health Reform Task Force recommended this bill.

General Description:

This bill makes remuneration for the referral of an individual for substance use disorder treatment an unlawful act.

Highlighted Provisions:

This bill:

- ▶ makes remuneration for the referral of an individual for substance use disorder treatment a ~~§~~ **→ [third-degree felony]** class A misdemeanor ~~←§~~ ;
- ▶ specifies permissible exceptions;
- ▶ defines terms; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

26-36a-103, as last amended by Laws of Utah 2013, Chapter 32



369 per violation, in:

370 (a) a judicial civil proceeding; or

371 (b) an administrative action in accordance with Title 63G, Chapter 4, Administrative
372 Procedures Act.

373 (3) Assessment of a judicial penalty or an administrative penalty does not preclude the
374 office from:

375 (a) seeking criminal penalties;

376 (b) denying, placing conditions on, suspending, or revoking a license; or

377 (c) seeking injunctive or equitable relief.

378 (4) The office may assess the human services program the cost incurred by the office in
379 placing a monitor.

380 (5) Notwithstanding Subsection (1)(a) and subject to Subsections (1)(b) and (2), an

381 individual is guilty of a ~~S~~ ~~→~~ [third-degree felony] class A misdemeanor ~~←~~ ~~S~~ ~~→~~ [and, upon
381a conviction, ~~H~~ ~~→~~ [shall] may ~~←~~ ~~H~~ be

381a imprisoned for not

382 more than five years] ~~←~~ ~~H~~ if the individual knowingly and willfully offers, pays, promises to pay,

383 solicits, or receives any remuneration, including any commission, bonus, kickback, bribe, or

384 rebate, directly or indirectly, overtly or covertly, in cash or in kind, or engages in any split-fee

385 arrangement in return for:

386 (a) referring an individual to a person for the furnishing or arranging for the furnishing
387 of any item or service for the treatment of a substance use disorder; or

388 (b) receiving a referred individual for the furnishing or arranging for the furnishing of
389 any item or service for the treatment of a substance use disorder.

390 (6) Subsection (5) does not prohibit:

391 (a) any discount, payment, waiver of payment, or payment practice not prohibited by

392 42 U.S.C. Sec. 1320a-7(b) or regulations made under 42 U.S.C. Sec. 1320a-7(b);

393 (b) patient referrals within a practice group;

394 (c) payments by a health insurer who reimburses, provides, offers to provide, or
395 administers health, mental health, or substance use disorder goods or services under a health
396 benefit plan;

397 (d) payments to or by a health care provider, practice group, or substance use disorder
398 treatment program that has contracted with a ~~H~~ ~~→~~ local mental health authority, a local substance
398a abuse authority, a ~~←~~ ~~H~~ health insurer, a health care purchasing group, or
399 the Medicare or Medicaid program to provide health, mental health, or substance use disorder

400 goods or services under a health benefit plan when the payments are for goods or services
 401 under the plan; or

402 (e) payments by a health care provider, practice group, or substance use disorder
 403 treatment program to a health, mental health, or substance use disorder information service that
 404 provides information upon request and without charge to consumers about providers of health
 405 care goods or services to enable consumers to select appropriate providers or facilities, if the
 406 information service:

407 (i) does not attempt through standard questions for solicitation of consumer criteria or
 408 through any other means to steer or lead a consumer to select or consider selection of a
 409 particular health care provider, practice group, or substance use disorder treatment program;

410 (ii) does not provide or represent that the information service provides diagnostic or
 411 counseling services or assessments of illness or injury and does not make any promises of cure
 412 or guarantees of treatment; ~~H~~→ and

413 ~~[(iii) does not provide or arrange for transportation of a patient to or from the location~~
 414 ~~of a health care provider, practice group, or substance use disorder treatment program; and~~

415 ——(iv)] (iii) ←~~H~~ charges and collects fees from a health care provider, practice group, or
 415a substance
 416 use disorder treatment program participating in information services that are set in advance, are
 417 consistent with the fair market value for those information services, and are not based on the
 418 potential value of a patient or patients to a health care provider, practice group, or substance
 419 use disorder treatment program of the goods or services provided by the health care provider,
 420 practice group, or substance use disorder treatment program.

421 Section 5. Section **63G-2-305** is amended to read:

422 **63G-2-305. Protected records.**

423 The following records are protected if properly classified by a governmental entity:

424 (1) trade secrets as defined in Section **13-24-2** if the person submitting the trade secret
 425 has provided the governmental entity with the information specified in Section **63G-2-309**;

426 (2) commercial information or nonindividual financial information obtained from a
 427 person if:

428 (a) disclosure of the information could reasonably be expected to result in unfair
 429 competitive injury to the person submitting the information or would impair the ability of the
 430 governmental entity to obtain necessary information in the future;