

TOXICOLOGY AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gene Davis

House Sponsor: Eric K. Hutchings

LONG TITLE

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, including an individual's clinical sample, for substance use disorder treatment a ~~§~~ → **[third degree felony] class A**

misdemeanor ← ~~§~~ ;

▶ specifies permissible exceptions; and

▶ coordinates with H.B. 14, Substance Abuse Treatment Facility Patient Brokering.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a coordination clause.

Utah Code Sections Affected:

AMENDS:

62A-2-116, as last amended by Laws of Utah 2016, Chapter 211

Utah Code Sections Affected by Coordination Clause:

62A-2-116, as last amended by Laws of Utah 2016, Chapter 211

Be it enacted by the Legislature of the state of Utah:



28 Section 1. Section **62A-2-116** is amended to read:

29 **62A-2-116. Violation -- Criminal penalties.**

30 (1) (a) A person who owns, establishes, conducts, maintains, manages, or operates a
31 human services program in violation of this chapter is guilty of a class A misdemeanor if the
32 violation endangers or harms the health, welfare, or safety of persons participating in that
33 program.

34 (b) Conviction in a criminal proceeding does not preclude the office from:

35 (i) assessing a civil penalty or an administrative penalty;

36 (ii) denying, placing conditions on, suspending, or revoking a license; or

37 (iii) seeking injunctive or equitable relief.

38 (2) Any person that violates a provision of this chapter, lawful orders of the office, or
39 rules adopted under this chapter may be assessed a penalty not to exceed the sum of \$10,000
40 per violation, in:

41 (a) a judicial civil proceeding; or

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

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

46 (a) seeking criminal penalties;

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

48 (c) seeking injunctive or equitable relief.

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

51 (5) Notwithstanding Subsection (1)(a) and subject to Subsections (1)(b) and (2), an
52 individual is guilty of a ~~§~~→ [third degree felony] class A misdemeanor ←~~§~~ if the individual
52a knowingly and willfully offers,
53 pays, promises to pay, solicits, or receives any remuneration, including any commission, bonus,
54 kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in kind, or
55 engages in any split-fee arrangement in return for:

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

58 (b) receiving a referred individual for the furnishing or arranging for the furnishing of

59 any item or service for the treatment of a substance use disorder; or

60 (c) referring a clinical sample to a person, including a laboratory, for testing that is
 61 used toward the furnishing of any item or service for the treatment of a substance use disorder.

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

63 (a) any discount, payment, waiver of payment, or payment practice not prohibited by
 64 42 U.S.C. Sec. 1320a-7(b) or regulations made under 42 U.S.C. Sec. 1320a-7(b);

65 (b) patient referrals within a practice group;

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

69 (d) payments to or by a health care provider, practice group, or substance use disorder
 70 treatment program that has contracted with a local mental health authority, a local substance
 71 abuse authority, a health insurer, a health care purchasing group, or the Medicare or Medicaid
 72 program to provide health, mental health, or substance use disorder services; ~~§~~ → [or] ← ~~§~~

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

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

81 (ii) does not provide or represent that the information service provides diagnostic or
 82 counseling services or assessments of illness or injury and does not make any promises of cure
 83 or guarantees of treatment; and

84 (iii) charges and collects fees from a health care provider, practice group, or substance
 85 use disorder treatment program participating in information services that:

86 (A) are set in advance;

87 (B) are consistent with the fair market value for those information services; and

88 (C) are not based on the potential value of the goods or services that a health care

89 provider, practice group, or substance use disorder treatment program may provide to a patient ~~§~~ →

89a [;] ; or ← ~~§~~

89b ~~§~~ → (f) payments by a laboratory to a person that:

89c (i) does not have a financial interest in or with a facility or person who refers a clinical ~~⊗~~

- 89d **☛sample to the laboratory;**
- 89e **(ii) is not related to an owner of a facility or a person who refers a clinical sample to the**
- 89f **laboratory;**
- 89g **(iii) is not related to and does not have a financial relationship with a health care provider**
- 89h **who orders the laboratory to conduct a test that is used toward the furnishing of an item or service**
- 89i **for the treatment of a substance use disorder;**
- 89j **(iv) identifies, in advance of providing marketing or sales services, the types of clinical**
- 89k **samples that each laboratory will receive, if the person provides marketing or sales services to**
- 89l **more than one laboratory;**
- 89m **(v) the person does not identify as or hold itself out to be a laboratory or part of a network**
- 89n **with an insurance payor, if the person provides marketing or sales services under a contract with a**
- 89o **laboratory, as described in Subsection (6)(f)(v)(B);**
- 89p **(vi) the person identifies itself in all marketing materials as a salesperson for a licensed**
- 89q **laboratory and identifies each laboratory that the person represents, if the person provides**
- 89r **marketing or sales services under a contract with a laboratory, as described in Subsection**
- 89s **(6)(f)(v)(B); and**
- 89t **(vii)(A) is a sales person employed by the laboratory to market or sell the laboratory's**
- 89u **services to a person who provides substance use disorder treatment; or**
- 89v **(B) is a person under contract with the laboratory to market or sell the laboratory's**
- 89w **services to a person who provides substance use disorder treatment, if the total compensation paid**
- 89x **by the laboratory does not exceed the total compensation that the laboratory pays to employees of**
- 89y **the laboratory for similar marketing or sales services. ←\$**