

1 **TOXICOLOGY AMENDMENTS**

2 2018 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Gene Davis**

5 House Sponsor: Eric K. Hutchings

7 **LONG TITLE**

8 **General Description:**

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

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ makes remuneration for the referral of an individual, including an individual's
- 14 clinical sample, for substance use disorder treatment a class A misdemeanor;
- 15 ▶ specifies permissible exceptions; and
- 16 ▶ coordinates with H.B. 14, Substance Abuse Treatment Facility Patient Brokering.

17 **Money Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 This bill provides a coordination clause.

21 **Utah Code Sections Affected:**

22 AMENDS:

23 **62A-2-116**, as last amended by Laws of Utah 2016, Chapter 211

24 **Utah Code Sections Affected by Coordination Clause:**

25 **62A-2-116**, as last amended by Laws of Utah 2016, Chapter 211

27 *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 class A misdemeanor if the individual 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;

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;
90 or
91 (f) payments by a laboratory to a person that:
92 (i) does not have a financial interest in or with a facility or person who refers a clinical
93 sample to the laboratory;
94 (ii) is not related to an owner of a facility or a person who refers a clinical sample to
95 the laboratory;
96 (iii) is not related to and does not have a financial relationship with a health care
97 provider who orders the laboratory to conduct a test that is used toward the furnishing of an
98 item or service for the treatment of a substance use disorder;
99 (iv) identifies, in advance of providing marketing or sales services, the types of clinical
100 samples that each laboratory will receive, if the person provides marketing or sales services to
101 more than one laboratory;
102 (v) the person does not identify as or hold itself out to be a laboratory or part of a
103 network with an insurance payor, if the person provides marketing or sales services under a
104 contract with a laboratory, as described in Subsection (6)(f)(v)(B);
105 (vi) the person identifies himself in all marketing materials as a salesperson for a licensed
106 laboratory and identifies each laboratory that the person represents, if the person provides
107 marketing or sales services under a contract with a laboratory, as described in Subsection
108 (6)(f)(v)(B); and
109 (vii) (A) is a sales person employed by the laboratory to market or sell the laboratory's
110 services to a person who provides substance use disorder treatment; or
111 (B) is a person under contract with the laboratory to market or sell the laboratory's
112 services to a person who provides substance use disorder treatment, if the total compensation
113 paid by the laboratory does not exceed the total compensation that the laboratory pays to

114 employees of the laboratory for similar marketing or sales services.

115 Section 2. **Coordinating S.B. 222 with H.B. 14 -- Substantive amendment.**

116 If this S.B. 222 and H.B. 14, Substance Abuse Treatment Facility Patient Brokering,
117 both pass and become law, the Legislature intends that the amendments to Section [62A-2-116](#)
118 in this bill supersede the amendments to Section [62A-2-116](#) in H.B. 14, when the Office of
119 Legislative Research and General Counsel prepares the Utah Code database for publication.