

Patient Brokers Exploiting Texans

What is Patient Brokering?

Within healthcare, the term patient brokering means giving or getting anything of value to induce a patient/client referral. This practice is also known as receiving kickbacks, body brokering or patient trafficking. While referral fees may be a best practice in some industries, it causes underlying problems in healthcare¹:

- **Fraud:** From intentional misrepresentation to submission of unwarranted claim for payment
- **Waste:** Behavior inconsistent with sound fiscal, business, or clinical practices, resulting in unnecessary cost, and reimbursement of unnecessary services.
- **Harm:** Ineffective treatment by financially-driven patient referral patterns without a focus on clinical needs, resulting in substandard care or patient deaths (overdose, suicide, medication mismanagement)
- **Exploitation:** Mines financial resources such as insurance benefits and personal savings, especially out-of-network billing that can result in families being responsible for the amount not covered by insurance.

Example: An Emergency Room, detox, residential or outpatient treatment facility or a drug confirmation lab offers or provides compensation to a treatment provider or recovery home operator, their staff or family in exchange for referring an individual to their service. The kickback is funded by overcharging the insurance company or exploiting other financial resources tied to service delivery. The referring agent may even require the client to utilize the services as a condition of admission or continued stay. In the case of recovery homes, residency may be contingent on utilization of these services. Clients or residents with “good insurance” may be offered an inducement (e.g. cash, gifts or “fee forgiveness”) to participate in fraudulent activity. “Fee forgiveness” waives the individual’s deductible, copays and coinsurance.

Prevalence in Texas’ Addiction Treatment and Recovery Field

Patient brokering has plagued healthcare for decades and was prevalent in Texas in the late 1980s and early 1990s. Numerous investigations occurred, and as a result of legislation passed in the 1990s², patient brokering was drastically reduced. Since then, the marketplace has changed and laws have become outdated and forgotten. A new wave of patient brokering has arisen across the nation, and as other states address this issue, “bad players” move to states, such as Texas, where patient brokering is less scrutinized.

As highlighted in a 2019 U.S. Government Accountability Office (GAO)³ Report, patient brokers have recently targeted recovery housing residents. Four of the five states studied had investigated and taken legislative action to address patient brokering between clinical service providers and recovery housing. The fifth state, Texas, had not. If we look beyond Texas state agencies, there is ample evidence that patient brokering is occurring in our State:

Patient Brokering Cases in Texas

- **Current** - [Houston case. Still ongoing investigation].
- **Past Civil Courts**- In the last 5 years, Sun Clinical Laboratories and Mission Toxicology, both based in Texas, have been sued for over \$153 million in “fee forgiveness” schemes, illegal kickbacks and fraudulent billing by Aetna⁴, Blue Cross and Blue Shield and United Healthcare.
 - 2019- United Healthcare sues Axis Diagnostic, Sky Toxicology Ltd., Frontier Toxicology Ltd., Hill Country Toxicology Ltd., and Eclipse Toxicology Ltd⁵ operating out of San Antonio for \$56 million claiming illegal kickbacks to healthcare providers and addiction treatment facilities. Cigna sued two of these companies for \$20 million in 2015 claiming another “fee forgiveness” scheme.
 - 2018- United Healthcare sues Sun Clinical Laboratories and Mission Toxicology for \$44 million in fraudulent billing and kickbacks.
 - 2017- Blue Cross and Blue Shield sued Texas based labs, Sun Clinical Laboratories and Mission Toxicology for \$33 Million for fraudulent billing and kickbacks⁶
 - 2015- Health Diagnostics was sued by Cigna for \$84 million “fee forgiveness” scheme.

Current System Is Not Stopping Patient Brokering in Texas

- Federal patient brokering laws (Anti-Kickback Statute⁷ and Recovery Kickback Prohibition⁸) are too narrow to protect Texans. Plus, federal law enforcement are selective about where to get involved.
- Texas patient brokering laws^{2,9} are not enforced and are too narrow.
- Few local, county district attorney's focus on healthcare fraud, let alone addiction treatment/behavioral health fraud.
- State oversight agencies have limited oversight and resources.
- Whistleblowers are reluctant to come forward in fear of losing their housing, support or job. Barriers include stigma and marginalization, confusion around where and what to report, disbelief that change will occur.

Policy Recommendations

- Update and strengthen Texas' patient brokering laws^{2,9}
- Create a task force in Texas similar to the one in Florida¹⁰, and add a recovery community liaison to facilitate reporting and provide peer support for whistleblowers who may need new housing or employment.
- Implement and incentive voluntary recovery housing certification linked to nationally recognized standards as outlined in National Council for Behavioral Health policy toolkit¹¹.

References

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