

HB 248: Patient brokering and deceptive marketing

Overview: Our Current System Is Not Stopping Patient Brokering in Texas

Texas and federal patient brokering laws (Anti-Kickback Statute and Recovery Kickback Prohibition) are too narrow to protect Texans. Federal law enforcement is selective about where to get involved while few local, county district attorney's focus on healthcare fraud, let alone addiction treatment/behavioral health fraud. State oversight agencies have limited oversight and even fewer resources to investigate claims of brokering and fraud. Whistleblowers are reluctant to come forward in fear of losing their housing, support, or job. On top of stigma and marginalization, there is confusion around where and what to report and disbelief that change will occur.

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 healthcare and is mining the already strained financial resources of Texans and the state. In Texas, this looks like:

- **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.

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 1990s, 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 Since then, the marketplace has changed and laws have become outdated and forgotten.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) 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:

- **Past Civil Courts-** In the last 8 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 Aetna, 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 Ltd 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 kickbacks
- 2015- Health Diagnostics was sued by Cigna for \$84 million “fee forgiveness” scheme.

Policy recommendations:

Texans personal liberties are worth protecting. Updating and strengthening Texas’ patient brokering laws will bring them current with ongoing issues. By creating a task force similar to one in Florida with a recovery community liaison, Texans and their families will be more apt to report these illegal atrocities and be provided with peer support for those who may need new housing or employment. Implement and incentive voluntary recovery housing certification linked to nationally recognized standards as outlined in the National Council for Mental Wellbeing policy toolkit. (See HB 299- Murr)

HB 248:

- Updates marketing avenues to include the internet and call centers
- Updates language and penalties for fraud and deceptive marketing
- Creates a task force to study and make recommendations on how to improve enforcement and prevention of illegal conduct
- Task force issues a report by December 1st of even number years to help drive any needed policy changes

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