



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB4949

by Rep. Sara Feigenholtz

SYNOPSIS AS INTRODUCED:

225 ILCS 47/55 new
225 ILCS 60/22.2
815 ILCS 505/2VVV new

Amends the Consumer Fraud and Deceptive Business Practices Act. Provides that it is an unlawful practice for any person to engage in misleading or false advertising or promotion that misrepresents the need to seek mental health disorder or substance use disorder treatment outside of the State of Illinois. Requires any marketing, advertising, promotional, or sales materials directed to Illinois residents concerning mental health disorder or substance use disorder treatment to (i) prominently display or announce the full physical address of the treatment program or facility; (ii) include a link to the Internet website for the Department of Human Services' Division of Mental Health and Division of Alcoholism and Substance Abuse; and (iii) provide that mental health disorder and substance use disorder treatment may be available at a reduced cost or for free for Illinois residents. Prohibits arrangements under which a patient seeking mental health disorder or substance use disorder treatment is referred to a mental health disorder or substance use disorder treatment program or facility in exchange for a fee or other remuneration. Amends the Health Care Worker Self-Referral Act. Provides that a violation of any provision of the Act constitutes an unlawful practice under the Consumer Fraud and Deceptive Business Practices Act. Amends the Medical Practice Act of 1987. Provides that a violation of the Act's prohibition against fee splitting constitutes an unlawful practice under the Consumer Fraud and Deceptive Business Practices Act.

LRB100 16226 KTG 31349 b

1 AN ACT concerning business.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. The Health Care Worker Self-Referral Act is
5 amended by adding Section 55 as follows:

6 (225 ILCS 47/55 new)

7 Sec. 55. Application of the Consumer Fraud and Deceptive
8 Business Practices Act. A violation of any of the provisions of
9 this Act constitutes an unlawful practice under the Consumer
10 Fraud and Deceptive Business Practices Act. All remedies,
11 penalties, and authority granted to the Attorney General or
12 State's Attorney by the Consumer Fraud and Deceptive Business
13 Practices Act shall be available to him or her for the
14 enforcement of this Act.

15 Section 5. The Medical Practice Act of 1987 is amended by
16 changing Section 22.2 as follows:

17 (225 ILCS 60/22.2)

18 (Section scheduled to be repealed on December 31, 2019)

19 Sec. 22.2. Prohibition against fee splitting.

20 (a) A licensee under this Act may not directly or
21 indirectly divide, share or split any professional fee or other

1 form of compensation for professional services with anyone in
2 exchange for a referral or otherwise, other than as provided in
3 this Section 22.2.

4 (b) Nothing contained in this Section abrogates the right
5 of 2 or more licensed health care workers as defined in the
6 Health Care Worker Self-referral Act to each receive adequate
7 compensation for concurrently rendering services to a patient
8 and to divide the fee for such service, provided that the
9 patient has full knowledge of the division and the division is
10 made in proportion to the actual services personally performed
11 and responsibility assumed by each licensee consistent with his
12 or her license, except as prohibited by law.

13 (c) Nothing contained in this Section prohibits a licensee
14 under this Act from practicing medicine through or within any
15 form of legal entity authorized to conduct business in this
16 State or from pooling, sharing, dividing, or apportioning the
17 professional fees and other revenues in accordance with the
18 agreements and policies of the entity provided:

19 (1) each owner of the entity is licensed under this
20 Act;

21 (2) the entity is organized under the Medical
22 Corporation Act, the Professional Services Corporation
23 Act, the Professional Association Act, or the Limited
24 Liability Company Act;

25 (3) the entity is allowed by Illinois law to provide
26 physician services or employ physicians such as a licensed

1 hospital or hospital affiliate or licensed ambulatory
2 surgical treatment center owned in full or in part by
3 Illinois-licensed physicians;

4 (4) the entity is a combination or joint venture of the
5 entities authorized under this subsection (c); or

6 (5) the entity is an Illinois not for profit
7 corporation that is recognized as exempt from the payment
8 of federal income taxes as an organization described in
9 Section 501(c)(3) of the Internal Revenue Code and all of
10 its members are full-time faculty members of a medical
11 school that offers a M.D. degree program that is accredited
12 by the Liaison Committee on Medical Education and a program
13 of graduate medical education that is accredited by the
14 Accreditation Council for Graduate Medical Education.

15 (d) Nothing contained in this Section prohibits a licensee
16 under this Act from paying a fair market value fee to any
17 person or entity whose purpose is to perform billing,
18 administrative preparation, or collection services based upon
19 a percentage of professional service fees billed or collected,
20 a flat fee, or any other arrangement that directly or
21 indirectly divides professional fees, for the administrative
22 preparation of the licensee's claims or the collection of the
23 licensee's charges for professional services, provided that:

24 (i) the licensee or the licensee's practice under
25 subsection (c) of this Section at all times controls the
26 amount of fees charged and collected; and

1 (ii) all charges collected are paid directly to the
2 licensee or the licensee's practice or are deposited
3 directly into an account in the name of and under the sole
4 control of the licensee or the licensee's practice or
5 deposited into a "Trust Account" by a licensed collection
6 agency in accordance with the requirements of Section 8(c)
7 of the Illinois Collection Agency Act.

8 (e) Nothing contained in this Section prohibits the
9 granting of a security interest in the accounts receivable or
10 fees of a licensee under this Act or the licensee's practice
11 for bona fide advances made to the licensee or licensee's
12 practice provided the licensee retains control and
13 responsibility for the collection of the accounts receivable
14 and fees.

15 (f) Excluding payments that may be made to the owners of or
16 licensees in the licensee's practice under subsection (c), a
17 licensee under this Act may not divide, share or split a
18 professional service fee with, or otherwise directly or
19 indirectly pay a percentage of the licensee's professional
20 service fees, revenues or profits to anyone for: (i) the
21 marketing or management of the licensee's practice, (ii)
22 including the licensee or the licensee's practice on any
23 preferred provider list, (iii) allowing the licensee to
24 participate in any network of health care providers, (iv)
25 negotiating fees, charges or terms of service or payment on
26 behalf of the licensee, or (v) including the licensee in a

1 program whereby patients or beneficiaries are provided an
2 incentive to use the services of the licensee.

3 (g) A violation of any of the provisions of this Section
4 constitutes an unlawful practice under the Consumer Fraud and
5 Deceptive Business Practices Act. All remedies, penalties, and
6 authority granted to the Attorney General by the Consumer Fraud
7 and Deceptive Business Practices Act shall be available to him
8 or her for the enforcement of this Section.

9 (Source: P.A. 96-608, eff. 8-24-09; 96-1126, eff. 7-20-10.)

10 Section 10. The Consumer Fraud and Deceptive Business
11 Practices Act is amended by adding Section 2VVV as follows:

12 (815 ILCS 505/2VVV new)

13 Sec. 2VVV. Deceptive marketing, advertising, and sale of
14 mental health disorder and substance use disorder treatment.

15 (a) As used in this Section:

16 "Facility" has the same meaning as that term is defined in
17 Section 1-10 of the Alcoholism and Other Drug Abuse and
18 Dependency Act.

19 "Mental health disorder" has the same meaning as "mental
20 illness" under Section 1-129 of the Mental Health and
21 Developmental Disabilities Code.

22 "Program" has the same meaning as that term is defined in
23 Section 1-10 of the Alcoholism and Other Drug Abuse and
24 Dependency Act.

1 "Substance use disorder" has the same meaning as "substance
2 abuse" under Section 1-10 of the Alcoholism and Other Drug
3 Abuse and Dependency Act.

4 "Treatment" has the same meaning as that term is defined in
5 Section 1-10 of the Alcoholism and Other Drug Abuse and
6 Dependency Act.

7 (b) It is an unlawful practice for any person to engage in
8 misleading or false advertising or promotion that
9 misrepresents the need to seek mental health disorder or
10 substance use disorder treatment outside of the State of
11 Illinois.

12 (c) Any marketing, advertising, promotional, or sales
13 materials directed to Illinois residents concerning mental
14 health disorder or substance use disorder treatment must:

15 (1) prominently display or announce the full physical
16 address of the treatment program or facility;

17 (2) include a link to the Internet website for the
18 Department of Human Services' Division of Mental Health and
19 Division of Alcoholism and Substance Abuse or any successor
20 State agency; and

21 (3) provide that mental health disorder and substance
22 use disorder treatment may be available at a reduced cost
23 or for free for Illinois residents within the State of
24 Illinois.

25 (d) It is an unlawful practice for any person to enter into
26 an arrangement under which a patient seeking mental health

1 disorder or substance use disorder treatment is referred to a
2 mental health disorder or substance use disorder treatment
3 program or facility in exchange for a fee, a percentage of the
4 treatment program's or facility's revenues that are related to
5 the patient, or any other remuneration that takes into account
6 the volume or value of the referrals to the treatment program
7 or facility. Such practice shall also be considered a violation
8 of the prohibition against fee splitting in Section 22.2 of the
9 Medical Practice Act of 1987 and a violation of the Health Care
10 Worker Self-Referral Act. This Section does not apply to health
11 insurance companies, health maintenance organizations, and
12 managed care plans or organizations licensed in Illinois.