

JAN 21 2011

A BILL FOR AN ACT

RELATING TO HEALTH CARE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 708, Hawaii Revised Statutes, is
2 amended by adding a new section to part VII to be appropriately
3 designated and to read as follows:

4 "§708- Patient brokering. (1) A person commits the
5 offense of patient brokering if the person:

6 (a) Offers, pays, solicits, or receives any commission,
7 bonus, rebate, kickback, or bribe in any form,
8 directly or indirectly, or engages in any split-fee
9 arrangement in connection with the referral of
10 patients to or from a health care provider or a health
11 care facility; or

12 (b) Offers, pays, solicits, or receives any commission,
13 bonus, rebate, kickback, or bribe in any form,
14 directly or indirectly, or engages in any split-fee
15 arrangement in connection with the provision or
16 acknowledgement of treatment from a health care
17 provider or a health care facility.

18 (2) As used in this section:



1 "Health care facility" means any private or public program,
2 institution, place, building, agency, or portion thereof,
3 whether organized for profit or not, that is used, operated, or
4 designed to provide medical diagnosis, treatment, nursing,
5 rehabilitative, or preventive care to any person or persons;
6 provided that a "health care facility" shall include but not be
7 limited to facilities commonly referred to as hospitals,
8 extended care and rehabilitation centers, nursing homes, skilled
9 nursing facilities, intermediate care facilities, care homes,
10 hospices, kidney disease treatment centers including
11 freestanding hemodialysis units, outpatient clinics, organized
12 ambulatory health care facilities, emergency care facilities and
13 centers, home health agencies, health maintenance organizations,
14 mental health facilities, drug and alcohol treatment facilities,
15 and others providing similarly organized services regardless of
16 nomenclature.

17 "Health care provider" means a person who is licensed,
18 certified, or otherwise authorized or permitted to provide
19 medical or other health services as defined in title 42 United
20 States Code section 1395x(s), to act as a provider of services
21 as defined in title 42 United States Code section 1395x(u), or



1 to otherwise administer health care in the ordinary course of
2 business or practice of a profession.

3 "Health care provider network entity" means a corporation,
4 partnership, or limited liability company owned or operated by
5 two or more health care providers and organized for the purpose
6 of entering into agreements with health insurers, health care
7 purchasing groups, or the medicare or medicaid programs.

8 "Health insurer" means any insurer licensed to provide
9 accident or health and sickness insurance pursuant to article
10 431:10A, long term care insurance pursuant to article 431:10H, a
11 mutual benefit society or a fraternal benefit society authorized
12 to provide benefits pursuant to chapter 432, or a health
13 maintenance organization established pursuant to chapter 432D.

14 (3) Patient brokering is a class C felony.

15 (4) This section shall not apply to:

16 (a) Any discount, payment, waiver of payment, or practice
17 not prohibited by title 42 United States Code section
18 1320a-7b(b) or its related federal regulations;

19 (b) Any payment, compensation, or financial arrangement
20 within a group practice; provided that the payment,
21 compensation, or financial arrangement does not



- 1 involve persons who are not members of the group
2 practice;
- 3 (c) Payments to a health care provider or health care
4 facility for professional consulting services;
- 5 (d) Commissions, fees, or other remuneration lawfully paid
6 to a licensed insurance producer;
- 7 (e) Reimbursements by an insurer for goods and services
8 provided in the course of health care, mental health
9 care, or substance abuse treatment pursuant to a
10 health benefit plan;
- 11 (f) Payments for goods and services provided in the course
12 of health care, mental health care, or substance abuse
13 treatment pursuant to a contract between a health
14 insurer, health care purchasing group, or the medicare
15 or medicaid program and a health care provider, a
16 health care facility, or a health care provider
17 network entity;
- 18 (g) Otherwise lawful insurance advertising gifts;
- 19 (h) Commissions or fees paid to a nurse registry for
20 referring persons providing health care services to
21 clients of the nurse registry;



1 (i) Payments by a health care provider or health care
2 facility for participation in an information service
3 that provides information about health care providers
4 or health care facilities upon request and without
5 charge to consumers to facilitate consumer selection
6 of health care providers and health care facilities;
7 provided that the information service:

8 (i) Does not attempt to use standard questions for
9 solicitation of consumer criteria or any other
10 means to steer or lead a consumer to any
11 particular health care provider or health care
12 facility;

13 (ii) Does not provide or represent itself as providing
14 diagnostic services, counseling services,
15 assessments of illness or injury; make promises
16 of cure; or guarantee the provision of treatment;

17 (iii) Does not provide or arrange for transportation of
18 a consumer to or from a health care provider or
19 facility; and

20 (iv) Charges and collects fees for participation from
21 health care providers and health care facilities
22 according to a fee schedule that is set in



1 advance, consistent with the fair market value
 2 for similar information services, and not based
 3 on the potential value either of particular
 4 patients to the health care provider or health
 5 care facility or of the goods and services
 6 provided to the consumer by the health care
 7 facility.

8 (5) The provisions of this section apply in addition to
 9 any other civil, criminal, or administrative action provided by
 10 law. Notwithstanding the existence or pursuit of any other
 11 remedy, the attorney general may maintain an action for
 12 injunctive relief or other process to enforce this section."

13 SECTION 2. This Act does not affect rights and duties that
 14 matured, penalties that were incurred, and proceedings that were
 15 begun before its effective date.

16 SECTION 3. New statutory material is underscored.

17 SECTION 4. This Act shall take effect on July 1, 2011.

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INTRODUCED BY: Sharonne Chun Calland

Jim
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[Signature]

Report Title:

Health Care; Patient Brokering Prohibited

Description:

Creates the class C felony of patient brokering to prohibit payments for patient referrals and for the acknowledgement of treatment by health care providers, health care facilities, and health insurers.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

