

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1071 (Delegate Pippy, *et al.*)
Health and Government Operations

Public Health - Substance-Related Disorder Services (Maryland Patient
Protection and Treatment Ethics Act)

This bill establishes the Maryland Patient Protection and Treatment Ethics Act, with the intent to maximize protection for patient and families and the communities in which they live. The bill addresses (1) marketing and advertising materials published by a behavioral health program; (2) website referrals; (3) kickbacks; (4) unnecessary treatment; (5) referrals to recovery residences; (6) third-party contracts; and (7) codes of ethics. The bill establishes multiple penalties and civil fines, and it authorizes certain civil actions. The bill also prohibits the State or a political subdivision of the State from distributing any State or local funds to a recovery residence that is not certified.

Fiscal Summary

State Effect: General fund revenues increase to the extent fines are collected from cases heard in the District Court. The Division of Consumer Protection of the Office of the Attorney General may experience an increased caseload as a result of the bill. The Behavioral Health Administration (BHA) can likely implement the bill with existing budgeted resources, as discussed below.

Local Effect: Local revenues increase to the extent fines are collected from cases heard in the circuit courts and decrease to the extent there are fewer referrals to local health departments (LHDs) with behavioral health programs. Expenditures increase for LHDs with behavioral health programs to comply with the bill's provisions, as discussed below.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Marketing or Advertising Materials

Any marketing or advertising materials published or provided by a behavioral health program must provide accurate information in plain and easily understanding language that includes specified information.

A health care practitioner may not knowingly and willfully make a materially false or misleading statement or provide false or misleading information about the nature, identity, or location of substance-related disorder services or a recovery residence in specific marketing materials or whether the health care practitioner is an in-network or an out-of-network provider.

If a behavioral health program provides substance-related disorder services in an outpatient setting with a housing component and is not licensed by BHA as a residential program, the behavioral health program must include specified information in any advertising statement.

A person may not:

- knowingly provide false or misleading information about (1) the identity of or contact information for a health care practitioner or (2) the Internet address of a health care practitioner's website, including by surreptitiously directing the reader of a health care practitioner's website to another website;
- suggest or imply that a relationship exists between the person and a health care practitioner, unless the health care practitioner provided express, written consent to the relationship; or
- knowingly make a materially false or misleading statement about substance use disorder treatment services.

Violations of these prohibitions constitute an unfair, abusive, or deceptive trade practices regardless of whether a consumer was misled or deceived.

Website Referrals

In general, a behavioral health program, recovery residence, or health care practitioner may not enter into a contract with or provide any consideration to a marketing provider for the purpose of generating leads or referrals for the placement of patients with the health care

practitioner or the recovery residence through a call center or website, with specified exceptions.

Kickbacks

Except in certain circumstances, a behavioral health program, health care practitioner, recovery residence, or an employee of the behavioral health program or recovery residence may not engage in specified behaviors to induce (or in return for) certain patient referrals or acceptance or acknowledgment of a patient's treatment. The bill also prohibits aiding, abetting, advising, or otherwise participating in the prohibited conduct. The bill lists certain exceptions to the prohibited conduct. For example, the prohibition does not apply to commissions, fees, or other payments lawfully paid to insurance agents in accordance with State law.

Violators are guilty of a misdemeanor and subject to a fine of:

- if the person engaged in prohibited conduct involving fewer than 10 patients, up to \$50,000;
- if the person engaged in prohibited conduct involving at least 10 but fewer than 20 patients, up to \$100,000; or
- if the person engaged in prohibited conduct involving 20 or more patients, up to \$500,000.

Unnecessary Treatment

A behavioral health program, health care practitioner, or recovery residence may not (1) refer a patient to an out-of-network laboratory for drug testing if an in-network laboratory is reasonably available or (2) order or perform drug testing for the sole purpose of confirming a prior result, unless there is a documented medical or legal need for the testing.

Violators are guilty of a misdemeanor, liable for full restitution to the party adversely impacted by the violation, and subject to a fine of:

- if the amount billed to the patient for drug testing ordered or performed in violation of the prohibition is less than \$5,000, up to \$5,000 per violation;
- if the amount billed to the patient for drug testing ordered or performed in violation of the prohibition is \$5,000 or more, up to \$10,000 per violation; or
- if the amount billed to a patient for drug testing ordered or performed in violation of the prohibition exceeds \$100,000 in a 12-month period, up to \$100,000.

Referrals to Recovery Residences

Each behavioral health program must maintain a record of each referral to or from a recovery residence including, if known, information about whether the patient chose to receive services at the recovery residence to which the patient was referred.

A behavioral health program may not make a referral of a prospective, current, or discharged patient to a recovery residence if the recovery residence (1) is not certified or (2) requires the patient to receive treatment from a particular health care practitioner or facility as a condition of staying at the recovery residence, except as specified.

Third-party Contracts

A behavioral health program may not enter into any contract or agreement with a third party under which (1) the third party provides payments to the behavioral health program and (2) the contract or agreement induces or incentivizes reducing or limiting services to a patient to a level or service below the level that is reasonable to meet the medical needs of a patient or for a duration of time that is less than the duration that is reasonable to meet the medical needs of the patient.

Code of Ethics and Attestation of Compliance

Each behavioral health program must develop and adopt a written code of ethics that the behavioral health program will comply with the bill.

By July 1 each year, beginning in 2021, each behavioral health program must submit to BHA a specified attestation, signed under oath, attesting that the behavioral health program is in compliance with the bill.

Penalties and Civil Actions

In general, a health care practitioner may not request, receive, or retain payment for services provided to a patient if a determination has been made that the services violated the bill's prohibitions. A person that violates any provision of the bill is guilty of a misdemeanor and is subject to a civil penalty of up to \$10,000 for each violation. A court may award, in addition to any other restitution, the costs of investigating and prosecuting the case.

A person who loses money or property as a result of a violation of the bill may file a civil action. A court must award damages in an amount at least three times the amount sustained as well as reasonable attorney's fees, filing fees, and costs.

The Attorney General or the State's Attorney for a county may bring an action under the bill and may recover specified expenses and costs.

A health occupations board may assess a penalty, suspend or revoke a license or certification or deny an application, or recommend other disciplinary action if the board finds an individual has violated the bill's provisions.

Current Law: Certain patient referrals are prohibited. For example, a health care practitioner may not refer a patient, or direct an employee of or person under contract with the health care practitioner to refer a patient to a health care entity in which the health care practitioner or the practitioner in combination with the practitioner's immediate family owns a beneficial interest.

State Expenditures: This analysis assumes that enforcement of the bill will be compliance based. Thus, BHA can likely receive attestations of compliance from behavioral health programs and enforce the bill using existing budgeted resources. To the extent BHA receives a significant number of complaints, additional resources are required.

Local Expenditures: Expenditures increase for LHDs with behavioral health programs to comply with the bill's requirements, including marketing material and record keeping requirements, and to prepare and annually submit an attestation of compliance. To the extent an LHD's behavioral health program violates any of the bill's prohibitions, it may be required to pay restitution, civil penalties, or fines. Revenues could decrease to the extent fewer referrals are made to the LHD's behavioral health program due to the bill's provisions.

Small Business Effect: Expenditures increase for small business behavioral health programs to comply with the bill's requirements, including marketing material and record keeping requirements, and to prepare and annually submit an attestation of compliance. To the extent a small business violates any of the bill's prohibitions, it may be required to pay restitution, civil penalties, or fines. Revenues could decrease for such facilities to the extent fewer referrals are made due to the bill's provisions. A health care practitioner that violates the bill's provisions can be subject to disciplinary action by their respective health occupations board, including suspension or revocation of a license.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 696 (Senator Klausmeier) - Finance.

Information Source(s): Maryland Department of Health; Maryland Insurance Administration; Judiciary (Administrative Office of the Courts); Department of Legislative Services

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