

HEALTH & SAFETY CODE
CHAPTER 164. TREATMENT FACILITIES MARKETING AND ADMISSION
PRACTICES

Sec. 164.001. SHORT TITLE. This chapter may be cited as the Treatment Facilities Marketing Practices Act. Added by Acts 1993, 73rd Leg., ch. 705, Sec. 2.01, eff. Sept. 1, 1993.

Sec. 164.002. LEGISLATIVE PURPOSE. The purpose of this chapter is to safeguard the public against fraud, deceit, and misleading marketing practices and to foster and encourage competition and fair dealing by mental health facilities and chemical dependency treatment facilities by prohibiting or restricting practices by which the public has been injured in connection with the marketing and advertising of mental health services and the admission of patients. Nothing in this chapter should be construed to prohibit a mental health facility from advertising its services in a general way or promoting its specialized services. However, the public should be able to distinguish between the marketing activities of the facility and its clinical functions. Added by Acts 1993, 73rd Leg., ch. 705, Sec. 2.01, eff. Sept. 1, 1993.

Sec. 164.003. DEFINITIONS. In this chapter:

(1) "Advertising" or "advertise" means a solicitation or inducement, through print or electronic media, including radio, television, or direct mail, to purchase the services provided by a treatment facility.

(2) "Chemical dependency" has the meaning assigned by Section 462.001.

(3) "Chemical dependency facility" means a treatment facility as that term is defined by Section 462.001.

(4) "Intervention and assessment service" means a service that offers assessment, counseling, evaluation, intervention, or referral services or makes treatment recommendations to an individual with respect to mental illness or chemical dependency.

(5) "Mental health facility" means:

(A) a "mental health facility" as defined by Section 571.003;

(B) a residential treatment facility, other than a mental health facility, in which persons are treated for emotional problems or disorders in a 24-hour supervised living environment; and

(C) an adult day-care facility or adult day health care facility as defined by Section 103.003, Human Resources Code.

(6) "Mental health professional" means a:

(A) "physician" as defined by Section 571.003;

(B) "licensed professional counselor" as defined by Section 503.002, Occupations Code;

(C) "chemical dependency counselor" as defined by Section 504.001, Occupations Code;

(D) "psychologist" offering "psychological services" as defined by Section 501.003, Occupations Code;

(E) "registered nurse" licensed under Chapter 301, Occupations Code;

(F) "vocational nurse" licensed under Chapter 301, Occupations Code;

(G) "licensed marriage and family therapist" as defined by Section 502.002, Occupations Code; and

(H) "social worker" as defined by Section 505.002, Occupations Code.

(7) "Mental health services" has the meaning assigned by Section 531.002.

(8) "Mental illness" has the meaning assigned by Section 571.003.

(9) "Referral source" means a person who is in a position to refer or who refers a person to a treatment facility. "Referral source" does not include a physician, an insurer, a health maintenance organization (HMO), a preferred provider arrangement (PPA), or other third party payor or discount provider organization (DPO) where the insurer, HMO, PPA, third party payor, or DPO pays in whole or in part for the treatment of mental illness or chemical dependency.

(10) "Treatment facility" means a chemical dependency

facility and a mental health facility.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 2.01, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.784, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 553, Sec. 2.010, eff. Feb. 1, 2004.

Sec. 164.004. EXEMPTIONS. This chapter does not apply to:

- (1) a treatment facility:
 - (A) operated by the Texas Department of Mental Health and Mental Retardation, a federal agency, or a political subdivision; or
 - (B) funded by the Texas Commission on Alcohol and Drug Abuse;
 - (2) a community center established under Subchapter A, Chapter 534, or a facility operated by a community center; or
 - (3) a facility owned and operated by a nonprofit or not-for-profit organization offering counseling concerning family violence, help for runaway children, or rape.
- Added by Acts 1993, 73rd Leg., ch. 705, Sec. 2.01, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 96, Sec. 1, eff. May 20, 2003.

Sec. 164.005. CONDITIONING EMPLOYEE OR AGENT RELATIONSHIPS ON PATIENT REVENUE. A treatment facility may not permit or provide compensation or anything of value to its employees or agents, condition employment or continued employment of its employees or agents, set its employee or agent performance standards, or condition its employee or agent evaluations, based on:

- (1) the number of patient admissions resulting from an employee's or agent's efforts;
 - (2) the number or frequency of telephone calls or other contacts with referral sources or patients if the purpose of the telephone calls or contacts is to solicit patients for the treatment facility; or
 - (3) the existence of or volume of determinations made respecting the length of patient stay.
- Added by Acts 1993, 73rd Leg., ch. 705, Sec. 2.01, eff. Sept. 1, 1993.

Sec. 164.006. SOLICITING AND CONTRACTING WITH CERTAIN REFERRAL SOURCES. A treatment facility or a person employed or under contract with a treatment facility, if acting on behalf of the treatment facility, may not:

- (1) contact a referral source or potential client for the purpose of soliciting, directly or indirectly, a referral of a patient to the treatment facility without disclosing its soliciting agent's, employee's, or contractor's affiliation with the treatment facility;
- (2) offer to provide or provide mental health or chemical dependency services to a public or private school in this state, on a part-time or full-time basis, the services of any of its employees or agents who make, or are in a position to make, a referral, if the services are provided on an individual basis to individual students or their families. Nothing herein prohibits a treatment facility from:
 - (A) offering or providing educational programs in group settings to public schools in this state if the affiliation between the educational program and the treatment facility is disclosed;
 - (B) providing counseling services to a public school in this state in an emergency or crisis situation if the services are provided in response to a specific request by a school; provided that, under no circumstances may a student be referred to the treatment facility offering the services; or
 - (C) entering into a contract under Section 464.020 with the board of trustees of a school district with a disciplinary alternative education program, or with the board's designee, for the provision of chemical dependency treatment services;
- (3) provide to an entity of state or local government, on a part-time or full-time basis, the mental health or chemical dependency services of any of its employees, agents, or contractors who make or are in a position to make referrals unless:
 - (A) the treatment facility discloses to the governing authority of the entity:
 - (i) the employee's, agent's, or contractor's relationship to the facility; and
 - (ii) the fact that the employee, agent, or

contractor might make a referral, if permitted, to the facility; and

(B) the employee, agent, or contractor makes a referral only if:

(i) the treatment facility obtains the governing authority's authorization in writing for the employee, agent, or contractor to make the referrals; and

(ii) the employee, agent, or contractor discloses to the prospective patient the employee's, agent's, or contractor's relationship to the facility at initial contact; or

(4) in relation to intervention and assessment services, contract with, offer to remunerate, or remunerate a person who operates an intervention and assessment service that makes referrals to a treatment facility for inpatient treatment of mental illness or chemical dependency unless the intervention and assessment service is:

(A) operated by a community mental health and mental retardation center funded by the Texas Department of Mental Health and Mental Retardation;

(B) operated by a county or regional medical society;

(C) a qualified mental health referral service as defined by Section 164.007; or

(D) owned and operated by a nonprofit or not-for-profit organization offering counseling concerning family violence, help for runaway children, or rape.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 2.01, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 1112, Sec. 3, eff. June 18, 1999; Acts 2003, 78th Leg., ch. 1055, Sec. 28, eff. June 20, 2003.

Sec. 164.007. QUALIFIED MENTAL HEALTH REFERRAL SERVICE: DEFINITION AND STANDARDS. (a) A qualified mental health referral service means a service that conforms to all of the following standards:

(1) the referral service does not exclude as a participant in the referral service an individual who meets the qualifications for participation and qualifications for participation cannot be based in whole or in part on an individual's or entity's affiliation or nonaffiliation with other participants in the referral service;

(2) a payment the participant makes to the referral service is assessed equally against and collected equally from all participants, and is only based on the cost of operating the referral service and not on the volume or value of any referrals to or business otherwise generated by the participants of the referral service;

(3) the referral service imposes no requirements on the manner in which the participant provides services to a referred person, except that the referral service may require that the participant charge the person referred at the same rate as it charges other persons not referred by the referral service, or that these services be furnished free of charge or at a reduced charge;

(4) a referral made to a mental health professional or chemical dependency treatment facility is made only in accordance with Subdivision (1) and the referral service does not make referrals to mental health facilities other than facilities maintained or operated by the Texas Department of Mental Health and Mental Retardation, community mental health and mental retardation centers, or other political subdivisions, provided that a physician may make a referral directly to any mental health facility;

(5) the referral service is staffed by appropriately licensed and trained mental health professionals and a person who makes assessments for the need for treatment of mental illness or chemical dependency is a mental health professional as defined by this chapter;

(6) in response to each inquiry or after personal assessment, the referral service makes referrals, on a clinically appropriate, rotational basis, to at least three mental health professionals or chemical dependency treatment facilities whose practice addresses or facilities are located in the county of residence of the person seeking the referral or assessment, but if there are not three providers in the inquirer's county of residence, the referral service may include additional providers from other counties nearest the inquirer's county of residence;

(7) no information that identifies the person seeking

a referral, such as name, address, or telephone number, is used, maintained, distributed, or provided for a purpose other than making the requested referral or for administrative functions necessary to operating the referral service;

(8) the referral service makes the following disclosures to each person seeking a referral:

(A) the manner in which the referral service selects the group of providers participating in the referral service;

(B) whether the provider participant has paid a fee to the referral service;

(C) the manner in which the referral service selects a particular provider from its list of provider participants to which to make a referral;

(D) the nature of the relationship or any affiliation between the referral service and the group of provider participants to whom it could make a referral; and

(E) the nature of any restriction that would exclude a provider from continuing as a provider participant;

(9) the referral service maintains each disclosure in a written record certifying that the disclosure has been made and the record certifying that the disclosure has been made is signed by either the person seeking a referral or by the person making the disclosure on behalf of the referral service; and

(10) if the referral service refers callers to a 1-900 telephone number or another telephone number that requires the payment of a toll or fee payable to or collected by the referral service, the referral service discloses the per minute charge.

(b) A qualified mental health referral service may not limit participation by a person for a reason other than:

(1) failure to have a current, valid license without limitation to practice in this state;

(2) failure to maintain professional liability insurance while participating in the service;

(3) a decision by a peer review committee that the person has failed to meet prescribed standards or has not acted in a professional or ethical manner;

(4) termination of the contract between the participant and the qualified mental health referral service by either party under the terms of the contract; or

(5) significant dissatisfaction of consumers that is documented and verifiable.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 2.01, eff. Sept. 1, 1993.

Sec. 164.008. OPERATING AN INTERVENTION AND ASSESSMENT SERVICE. A treatment facility may not own, operate, manage, or control an intervention and assessment service that makes referrals to a treatment facility for inpatient treatment of mental illness or chemical dependency unless the intervention and assessment service:

(1) is a qualified mental health referral service under Section 164.007;

(2) discloses in all advertising the relationship between the treatment facility and the intervention and assessment service; and

(3) discloses to each person contacting the service, at the time of initial contact, the relationship between the treatment facility and the intervention and assessment service.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 2.01, eff. Sept. 1, 1993.

Sec. 164.009. DISCLOSURES AND REPRESENTATIONS. (a) A treatment facility may not admit a patient to its facilities without fully disclosing to the patient or, if the patient is a minor, the patient's parent, managing conservator, or guardian, in, if possible, the primary language of the patient, managing conservator, or guardian, as the case may be, the following information in writing before admission:

(1) the treatment facility's estimated average daily charge for inpatient treatment with an explanation that the patient may be billed separately for services provided by mental health professionals;

(2) the name of the attending physician, if the treatment facility is a mental health facility, or the name of the attending mental health professional, if the facility is a chemical dependency facility; and

(3) the current "patient's bill of rights" as adopted by the Texas Department of Mental Health and Mental Retardation, the Texas Commission on Alcohol and Drug Abuse, or the Texas Department of Health that sets out restrictions to the patient's freedom that may be imposed on the patient during the patient's stay in a treatment facility.

(b) A treatment facility may not misrepresent to a patient or the parent, guardian, managing conservator, or spouse of a patient, the availability or amount of insurance coverage available to the prospective patient or the amount and percentage of a charge for which the patient will be responsible.

(c) A treatment facility may not represent to a patient who requests to leave a treatment facility against medical advice that:

(1) the patient will be subject to an involuntary commitment proceeding or subsequent emergency detention unless that representation is made by a physician or on the written instruction of a physician who has evaluated the patient within 48 hours of the representation; or

(2) the patient's insurance company will refuse to pay all or any portion of the medical expenses previously incurred.

(d) A mental health facility may not represent or recommend that a prospective patient should be admitted for inpatient treatment unless the representation is made by a licensed physician or, subsequent to evaluation by a licensed physician, by a mental health professional.

(e) A chemical dependency facility may not represent or recommend that a prospective patient should be admitted to a facility for treatment unless and until:

(1) the prospective patient has been evaluated, in person, by a mental health professional; and

(2) the mental health professional determines that the patient meets the facility's admission standards.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 2.01, eff. Sept. 1, 1993.

Sec. 164.010. PROHIBITED ACTS. It is a violation of this chapter, in connection with the marketing of mental health services, for a person to:

(1) advertise, expressly or impliedly, the services of a treatment facility through the use of:

(A) promises of cure or guarantees of treatment results that cannot be substantiated; or

(B) any unsubstantiated claims;

(2) advertise, expressly or impliedly, the availability of intervention and assessment services unless and until the services are available and are provided by mental health professionals licensed or certified to provide the particular service;

(3) fail to disclose before soliciting a referral source or prospective patient to induce a person to use the services of the treatment facility an affiliation between a treatment facility and its soliciting agents, employees, or contractors;

(4) obtain information considered confidential by state or federal law regarding a person for the purpose of soliciting that person to use the services of a treatment facility unless and until consent is obtained from the person or, in the case of a minor, the person's parent, managing conservator, or legal guardian or another person with authority to give that authorization; or

(5) represent that a referral service is a qualified mental health referral service unless and until the referral service complies with Section 164.007.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 2.01, eff. Sept. 1, 1993.

Sec. 164.011. INJUNCTION. (a) If it appears that a person is in violation of this chapter, the attorney general, a district attorney, or a county attorney may institute an action for injunctive relief to restrain the person from continuing the violation and for civil penalties of not less than \$1,000 and not more than \$25,000 per violation.

(b) A civil action filed under this section shall be filed in a district court in Travis County or in the county in which the defendant resides.

(c) The attorney general, a district attorney, or a county attorney may recover reasonable expenses incurred in obtaining injunctive relief, civil penalties, or both, under this section,

including court costs, reasonable attorney fees, investigative costs, witness fees, and deposition expenses.

(d) A civil penalty recovered in a suit instituted by a local government under this chapter shall be paid to that local government.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 2.01, eff. Sept. 1, 1993.

Sec. 164.012. PENALTIES. In addition to the penalties prescribed by this chapter, a violation of a provision of this chapter by an individual or treatment facility that is licensed by a state health care regulatory agency is subject to the same consequences as a violation of the licensing law applicable to the individual or treatment facility or of a rule adopted under that licensing law.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 2.01, eff. Sept. 1, 1993.

Sec. 164.013. DECEPTIVE TRADE PRACTICES. A person may bring suit under Subchapter E, Chapter 17, Business & Commerce Code, for a violation of this chapter, and a public or private right or remedy prescribed by that subchapter may be used to enforce this chapter.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 2.01, eff. Sept. 1, 1993.

Sec. 164.014. RULE-MAKING AUTHORITY. The Texas Commission on Alcohol and Drug Abuse and Texas Board of Mental Health and Mental Retardation may adopt rules interpreting the provisions of this chapter relating to the activities of a chemical dependency facility or mental health facility under its jurisdiction.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 2.01, eff. Sept. 1, 1993.