

CHAPTER 706

S.B. No. 211

AN ACT

relating to illegal remuneration; creating an offense; providing penalties.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Subchapter I, Chapter 161, Health and Safety Code, as added by Chapter 15, Acts of the 72nd Legislature, 1st Called Session, 1991, is amended to read as follows:

SUBCHAPTER I. ILLEGAL REMUNERATION

Sec. 161.091. PROHIBITION ON ILLEGAL REMUNERATION. (a) A person [~~licensed, certified, or registered by a health care regulatory agency of this state~~] commits an

offense if the person intentionally or knowingly offers to pay or agrees to accept any remuneration directly or indirectly, overtly or covertly, in cash or in kind, to or from any person, firm, association of persons, partnership, or corporation for securing or soliciting patients or patronage for or from a person licensed, certified, or registered by a state health care regulatory agency.

(b) *It is a rebuttable presumption that a person has violated this section if:*

(1) *the person refers or accepts a referral of a person to an inpatient mental health facility or chemical dependency treatment facility;*

(2) *before the patient is discharged or furloughed from the inpatient facility, the person pays the referring person or accepts payment from the inpatient facility for outpatient services to be provided by the referring person after the patient is discharged or furloughed from the inpatient facility; and*

(3) *the referring person does not provide the outpatient services for which payment was made and does not return to the inpatient facility the payment for the services not provided.*

(c) This section shall not be construed to prohibit advertising except that which is false, misleading, or deceptive or that which advertises professional superiority or the performance of a professional service in a superior manner and that is not readily subject to verification.

(d) ~~(e)~~ Except as provided by this section, an offense under this section is a Class A misdemeanor. If it is shown ~~on [in]~~ the trial of a person under ~~[violation of]~~ this section that the person has previously been convicted of an offense under ~~[a violation of]~~ this section or that the person was employed by a federal, state, or local government at the time the offense occurred, the offense is ~~is~~, ~~on conviction the person shall be punished for~~ a felony of the third degree. In addition to any other penalties or remedies provided, a violation of this section shall be grounds for disciplinary action by a ~~the~~ regulatory agency that has issued a license, certification, or registration to the person.

~~(e) (d) The appropriate health care regulatory agency may institute an action to enjoin a violation or potential violation of this section. The action for an injunction shall be in addition to any other action, proceeding, or remedy authorized by law. The regulatory agency shall be represented by the attorney general.~~

~~[(e) This section shall not be construed to prohibit remuneration for advertising, marketing, or other services that are provided for the purpose of securing or soliciting patients provided the remuneration is set in advance, is consistent with the fair market value of the services, and is not based on the volume or value of any patient referrals or business otherwise generated between the parties.~~

~~[(f) This section shall not be construed to permit [prohibit] any payment, business arrangements, or payments practice permitted [not prohibited] by 42 U.S.C. Section 1320a-7b(b) or any regulations promulgated pursuant thereto.~~

(f) ~~(g)~~ This section shall not apply to licensed insurers, governmental entities, including intergovernmental risk pools established under Chapter 172, Local Government Code, and institutions as defined in the Texas State College and University Employees Uniform Insurance Benefits Act (Article 3.50-3, Vernon's Texas Insurance Code), group hospital service corporations, or health maintenance organizations which reimburse, provide, offer to provide, or administer hospital, medical, dental, or other health-related benefits under a health benefits plan for which it is the payor.

Sec. 161.0915. EXEMPTION. (a) *This subchapter does not apply to a health care information service that:*

(1) *provides its services to a consumer only by telephone communication on request initiated by the consumer and without charge to the consumer;*

(2) *provides information about health care providers to enable consumer selection of health care provider services without any direct influence by a health care provider on actual consumer selection of those services;*

(3) *in response to each consumer inquiry, on a nondiscriminatory basis, provides information identifying health care providers who substantially meet the consumer's detailed criteria based on consumer responses to standard questions designed to elicit a*

consumer's criteria for a health care provider, including criteria concerning location of the practice, practice specialties, costs and payment policies, acceptance of insurance coverage, general background and practice experience, and various personal characteristics;

(4) does not attempt through its standard questions for solicitation of consumer criteria or through any other means or methods to steer or lead a consumer to select or consider selection of a particular health care provider for health care provider services;

(5) identifies to a consumer:

(A) all health care providers who substantially meet the consumer's stated criteria and who are located within the zip code area in which the consumer elects to obtain services from a health care provider; or

(B) all health care providers substantially meeting the consumer's stated criteria who are located in zip code areas in the closest proximity to the elected zip code area if no health care provider substantially meeting the consumer's criteria is located within that zip code area;

(6) discloses to each consumer the relationship between the health care information service and health care providers participating in its services;

(7) does not provide or represent itself as providing diagnostic or counseling services or assessment of illness or injury and does not make any promises of cure or guarantees of treatment;

(8) does not provide or arrange for transportation of a consumer to or from the location of a health care provider;

(9) does not limit the scope of or direct its advertising or other marketing of its services to a particular health care provider specialty, to a particular segment of the population, or to persons suffering from a particular illness, condition, or infirmity;

(10) charges to and collects fees from a health care provider participating in its services that are set in advance, are consistent with the fair market value for those information services, and are not based on the potential value of a patient or patients to a health care provider or on the value of or a percentage of the value of a professional service provided by the health care provider;

(11) does not limit participation by a health care provider in its services to a particular health care specialty or to a particular service provided by a health care provider;

(12) does not limit participation by a health care provider in its services for a reason other than:

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

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

(C) significant dissatisfaction of consumers of the health care information service that is documented and can be proved;

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

(E) termination of the contract between the health care provider and the health care information service by either party under the terms of the contract;

(13) maintains a customer service department to handle complaints and answer questions for consumers;

(14) maintains a customer follow-up system to monitor consumer satisfaction; and

(15) does not use, maintain, distribute, or provide for any purpose any information that will identify a particular consumer, such as a name, address, or telephone number, obtained from a consumer seeking its services other than for the purposes of:

(A) providing the information to the health care provider with whom an appointment is made;

(B) performing administrative functions necessary to operate the health care information service;

(C) providing directly to a consumer, at the request of that consumer on that consumer's initial contact with the health care information service, information relating to health-related support groups or providers of health-care-related services or equipment within the area or areas of interest requested by the consumer; or

(D) conducting analytical research on data obtained through provision of services and preparing statistical reports that generally analyze that data but do not in any manner identify one or more specific consumers.

(b) In this section:

(1) "Health care information service" means a person who provides information to a consumer regarding health care providers that can enable the consumer to select one or more health care providers to furnish health care services.

(2) "Health care provider" means a person licensed, certified, or registered by a state health care regulatory agency other than a:

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

(B) treatment facility as defined by Section 464.001.

Sec. 161.092. NOTIFICATION OF REMUNERATION. (a) A person commits an offense if:

(1) the person, in a manner otherwise permitted under Section 161.091, accepts remuneration to secure or solicit patients or patronage for a person licensed, certified, or registered by a state health care regulatory agency; and

(2) does not, at the time of initial contact and at the time of referral, disclose to the patient:

(A) the person's affiliation, if any, with the person for whom the patient is secured or solicited; and

(B) that the person will receive remuneration, directly or indirectly, for securing or soliciting the patient.

(b) Except as otherwise provided by this section, an offense under this section is a Class A misdemeanor. If it is shown on the trial of a person under this section that the person has previously been convicted of an offense under this section or that the person was employed by a federal, state, or local government at the time the offense occurred, the offense is a felony of the third degree.

(c) In addition to other penalties or remedies provided by this subchapter, a violation of this section is grounds for disciplinary action by a regulatory agency that has issued a license, certification, or registration to the person.

Sec. 161.093. INJUNCTION. (a) The attorney general or the appropriate district or county attorney, in the name of the state, may institute and conduct an action in a district court of Travis County or of a county in which any part of the violation occurs for an injunction or other process against a person who is violating this subchapter.

(b) The district court may grant any prohibitory or mandatory relief warranted by the facts, including a temporary restraining order, temporary injunction, or permanent injunction.

Sec. 161.094. CIVIL PENALTIES. (a) A person who violates this subchapter is subject to a civil penalty of not more than \$10,000 for each day of violation and each act of violation. In determining the amount of the civil penalty, the court shall consider:

(1) the person's previous violations;

(2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(3) whether the health and safety of the public was threatened by the violation;

(4) the demonstrated good faith of the person; and

(5) the amount necessary to deter future violations.

(b) *The attorney general or the appropriate district or county attorney, in the name of the state, may institute and conduct an action authorized by this section in a district court of Travis County or of a county in which any part of the violation occurs.*

(c) *The party bringing the suit may:*

(1) combine a suit to assess and recover civil penalties with a suit for injunctive relief brought under Section 161.093; or

(2) file a suit to assess and recover civil penalties independently of a suit for injunctive relief.

(d) *The party bringing the suit may recover reasonable expenses incurred in obtaining injunctive relief, civil penalties, or both, including investigation costs, court costs, reasonable attorney fees, witness fees, and deposition expenses.*

(e) *A penalty collected under this section by the attorney general shall be deposited to the credit of the general revenue fund. A penalty collected under this section by a district or county attorney shall be deposited to the credit of the general fund of the county in which the suit was heard.*

(f) *The civil penalty and injunction authorized by this subchapter are in addition to any other civil, administrative, or criminal action provided by law.*

SECTION 2. (a) The changes in law made by this Act apply only to an offense or violation committed on or after the effective date of this Act. For purposes of this Act, an offense or violation is committed before the effective date of this Act if any element of the offense or violation occurs before that date.

(b) An offense or violation committed before the effective date of this Act is covered by the law in effect when the offense or violation was committed, and the former law is continued in effect for that purpose.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on March 25, 1993: Yeas 31, Nays 0; passed the House on May 26, 1993, by a non-record vote.

Approved June 16, 1993.

Effective Aug. 30, 1993, 90 days after date of adjournment.