

HOUSE BILL 2068

By Love

AN ACT to amend Tennessee Code Annotated, Title 4;
Title 33; Title 39; Title 63 and Title 68, relative to
treatment for alcohol and drug abuse.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 33, Chapter 10, is amended by adding the following as a new part:

33-10-601.

(a) The general assembly recognizes that consumers of substance abuse treatment have disabling conditions and that consumers and their families are vulnerable and at risk of being easily victimized by fraudulent marketing practices that adversely impact the delivery of health care. To protect the health, safety, and welfare of this vulnerable population, a service provider of alcohol and drug services, as defined in § 33-2-402; an operator of an alcohol and drug treatment facility (ADTF); or a third party who provides any form of advertising or marketing services to a service provider of alcohol and drug services or an operator of an ADTF shall not engage in any of the following marketing practices:

(1) Making a false or misleading statement or providing false or misleading information about the provider's or operator's or third party's products, goods, services, or geographical locations in its marketing, advertising materials, or media or on its website;

(2) Including on its website false information or electronic links, coding, or activation that provides false information or that surreptitiously directs the reader to another website;

(3) Soliciting, receiving, or making an attempt to solicit or receive a commission, benefit, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engaging or making an attempt to engage in a split-fee arrangement in return for a referral or an acceptance or acknowledgement of treatment from a service provider of alcohol and drug services or ADTF; or

(4) Entering into a contract with a marketing provider who agrees to generate referrals or leads for the placement of patients with a service provider of alcohol and drug services or in an ADTF through a call center or a web-based presence, unless the service provider of alcohol and drug services or the operator of the ADTF discloses the following to the prospective patient so that the patient can make an informed healthcare decision:

(A) Clear and concise language and instructions that allow the prospective patient to easily determine whether the marketing provider represents specific, licensed service providers or recovery residences that pay a fee to the marketing provider, and the identity of such service providers of alcohol and drug services or ADTF; and

(B) Clear and concise instructions that allow the prospective patient to easily access lists of licensed service providers of alcohol and drug services and ADTFs on the department website.

(b) A person or entity must obtain a license as a service provider from the department and before attempting, by any method or design, including, but not limited to, a call center or a web-based presence, to generate a referral or lead for the placement of a patient with a service provider of alcohol and drug services or in an ADTF. As a condition of the license, the person or entity must maintain an office in the state for the purpose of service of process.

(c)

(1) In addition to any other punishment authorized by law, a person or entity that knowingly violates subdivision (a)(1), (a)(2), or (a)(4) commits a Class A misdemeanor.

(2) In addition to any other punishment authorized by law, a person or entity that knowingly violates subdivision (a)(3) has violated the prohibition on patient brokering and commits a Class E felony.

33-10-602. It is an offense for any person to knowingly make a materially false or misleading statement or provide false or misleading information about the identity, products, goods, services, or geographical location of a licensed service provider of alcohol and drug services, as defined in § 33-2-402, in marketing, advertising materials, or other media or on a website with the intent to induce another person to seek treatment with that service provider. A person who violates this section commits a Class A misdemeanor.

33-10-603.

(a) It is an offense for any healthcare provider licensed under title 63 or healthcare facility licensed under title 68, with respect to alcohol and drug services, as defined in § 33-2-402, to knowingly:

(1) Offer or pay a commission, benefit, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, to induce the referral of a patient or patronage to or from a licensee or facility, under chapter 2, part 4 of this title;

(2) Solicit or receive a commission, benefit, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, in return for referring a patient or patronage to or from a licensee or facility, under chapter 2, part 4 of this title;

(3) Solicit or receive a commission, benefit, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, in return for the acceptance or acknowledgment of treatment from a licensee or facility, under chapter 2, part 4 of this title; or

(4) Aid, abet, advise, or otherwise participate in the conduct prohibited under subdivision (a)(1), (a)(2), or (a)(3).

(b)

(1) Any healthcare provider licensed under title 63 or healthcare facility licensed under title 68, with respect to alcohol and drug services, that violates this section commits a Class A misdemeanor.

(2) Any healthcare provider licensed under title 63 or healthcare facility licensed under title 68, with respect to alcohol and drug services, that violates this section, where the prohibited conduct involves ten (10) or more patients but fewer than twenty (20) patients, commits a Class E felony.

(3) Any healthcare provider licensed under title 63 or healthcare facility licensed under title 68, with respect to alcohol and drug services, that violates this section, where the prohibited conduct involves twenty (20) or more patients, commits a Class D felony.

SECTION 2. This act shall take effect July 1, 2018, the public welfare requiring it.