

# **WEST VIRGINIA LEGISLATURE**

**2020 REGULAR SESSION**

**Committee Substitute**

**for**

**House Bill 4422**

BY DELEGATES BOGGS, ROHRBACH, ELLINGTON,  
STAGGERS, WESTFALL, LOVEJOY, N. BROWN, HARTMAN,  
SHOTT, EVANS AND MANDT

[Originating in the Committee on the Judiciary;

Reported February 14, 2020.]



1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
2 designated §16-60-1, §16-60-2, and §16-60-3, all relating to prohibiting patient brokering;  
3 defining terms; prohibiting causing or participating in acts that are intended to derive any  
4 benefit or profit from referral of a patient to a healthcare provider or health care facility;  
5 prohibiting patient brokering related to a recovery residence; establishing criminal  
6 penalties for persons and business entities engaged in unlawful patient brokering;  
7 providing exceptions; and defining terms.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 60. THE PATIENT BROKERING ACT.**

**§16-60-1. Definitions.**

1 For the purposes of this article:

2 “Health care provider or health care facility” means any person or entity licensed or  
3 certified or authorized by law to provide professional health care service in this state to a patient  
4 during that patient’s medical, remedial or behavioral health care, treatment or confinement.

5 “Health care provider network entity” means a corporation, partnership, or limited liability  
6 company owned or operated by two or more health care providers and organized for the purpose  
7 of entering into agreements with health insurers, health care purchasing groups, or the Medicare  
8 or Medicaid program.

9 “Health insurer” means any insurance company authorized to transact health insurance in  
10 the state, any insurance company authorized to transact health insurance or casualty insurance  
11 in the state that is offering a minimum premium plan or stop-loss coverage for any person or entity  
12 providing health care benefits, any self-insurance plan, any health maintenance organization, any  
13 prepaid health clinic, any prepaid limited health service organization, any multiple-employer  
14 welfare arrangement, or any fraternal benefit society providing health benefits to its members.

**§16-60-2. Patient brokering prohibited.**

1           (a) It is unlawful for any person, including any health care provider or health care facility,  
2 to:

3           (1) Offer or pay a commission, benefit, bonus, rebate, kickback, or bribe, directly or  
4 indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, to  
5 induce the referral of a patient or patronage to or from a health care provider or health care facility;

6           (2) Solicit or receive a commission, benefit, bonus, rebate, kickback, or bribe, directly or  
7 indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, in  
8 return for referring a patient or patronage to or from a health care provider or health care facility;

9           (3) Solicit or receive a commission, benefit, bonus, rebate, kickback, or bribe, directly or  
10 indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, in  
11 return for the acceptance or acknowledgment of treatment from a health care provider or health  
12 care facility;

13           (4) Aid, abet, advise, or otherwise participate in the conduct prohibited under this  
14 subsection; or

15           (5) Engage in any of the unlawful acts provided for in this subsection in regard to a  
16 recovery residence as defined in §16-59-1 of this code.

17           (b) Penalties. –

18           (1) Any person, including an officer, partner, agent, attorney, or other representative of a  
19 firm, joint venture, partnership, business trust, syndicate, corporation, or other business entity,  
20 who violates any provision of this section is guilty of a felony and, upon conviction thereof, shall  
21 be fined not more than \$50,000, or confined in a state correctional facility not less than one year,  
22 or both fined and confined.

23           (2) Any person, including an officer, partner, agent, attorney, or other representative of a  
24 firm, joint venture, partnership, business trust, syndicate, corporation, or other business entity,

25 who violates any provision of this section, where the prohibited conduct involves 10 or more  
26 patients but fewer than 20 patients, is guilty of a felony and, upon conviction, shall be fined not  
27 more than \$100,000, or confined in a state correctional facility not less than two years nor more  
28 than five years, or both fined and confined.

29 (3) Any person, including an officer, partner, agent, attorney, or other representative of a  
30 firm, joint venture, partnership, business trust, syndicate, corporation, or other business entity,  
31 who violates any provision of this section, where the prohibited conduct involves 20 or more  
32 patients is guilty of a felony and, upon conviction, shall be fined not more than \$500,000, or  
33 confined in a state correctional facility not less than five years nor more than seven years, or both  
34 fined and confined.

**§16-60-3. Exceptions.**

1 This article does not apply to the following payment practices:

2 (1) Any discount, payment, waiver of payment, or payment practice expressly authorized  
3 by 42 U.S.C. §1320a-7b(b)(3) or regulations adopted thereunder;

4 (2) Any payment, compensation, or financial arrangement within a group practice provided  
5 such payment, compensation, or arrangement is not to or from persons who are not members of  
6 the group practice;

7 (3) Payments to a health care provider or health care facility for professional consultation  
8 services;

9 (4) Commissions, fees, or other remuneration lawfully paid to insurance agents;

10 (5) Payments by a health insurer who reimburses, provides, offers to provide, or  
11 administers health, mental health, or substance abuse goods or services under a health benefit  
12 plan;

13 (6) Payments to or by a health care provider or health care facility, or a health care provider  
14 network entity, that has contracted with a health insurer, a health care purchasing group, or the  
15 Medicare or Medicaid program to provide health, mental health, or substance abuse goods or

16 services under a health benefit plan when such payments are for goods or services under the  
17 plan;

18 (7) Insurance advertising and promotional gifts;

19 (8) Commissions or fees paid to a person or entity providing a referral service to nurses  
20 which provide health care services;

21 (9) Payments by a health care provider or health care facility to a health, mental health, or  
22 substance abuse information service that provides information upon request and without charge  
23 to consumers about providers of health care goods or services to enable consumers to select  
24 appropriate providers or facilities, provided that such information service:

25 (A) Does not attempt through its standard questions for solicitation of consumer criteria or  
26 through any other means to steer or lead a consumer to select or consider selection of a particular  
27 health care provider or health care facility;

28 (B) Does not provide or represent itself as providing diagnostic or counseling services or  
29 assessments of illness or injury and does not make any promises of cure or guarantees of  
30 treatment;

31 (C) Does not provide or arrange for transportation of a consumer to or from the location of  
32 a health care provider or health care facility; and

33 (D) Charges and collects fees from a health care provider or health care facility  
34 participating in its services that are set in advance, are consistent with the fair market value for  
35 those information services, and are not based on the potential value of a patient or patients to a  
36 health care provider or health care facility or of the goods or services provided by the health care  
37 provider or health care facility.

38 (10) Payments made by an assisted living facility to an individual employed by the assisted  
39 living facility, or with whom the facility contracts to provide marketing services for the facility, if the  
40 individual clearly indicates that he or she works with or for the facility; and

41           (11) Payments made to a resident of an assisted living facility who refers a friend, family  
42 members, or other individuals with whom the resident has a personal relationship to the assisted  
43 living facility, in which case the assisted living facility may provide a monetary reward to the  
44 resident for making such referral.

Strike-throughs indicate language that would be stricken from a heading or the present law  
and underscoring indicates new language that would be added.