Research Protocol for State Laws Related to Substance Use Disorder Treatment Patient Brokering and Deceptive Marketing

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**Objective**:

Characterize state laws regarding patient brokering and deceptive marketing in the context of substance use disorder (SUD) treatment. This dataset is at the state-law level (e.g., each new amendment to a law is captured in a new row).

**Inclusion criteria:**

State laws and amendments relating to patient brokering and/or deceptive marketing of SUD treatment that were enacted and effective as of 12/31/22. Amendments to Florida laws passed before 1999 may have been missed due to limitations in online databases.

Identification of policies:

Previous reports by the National Association for Model State Drug Laws (NAMSDL) were used to identify states who had laws of interest,[[1]](#footnote-2),[[2]](#footnote-3) These were further augmented by search results from a research librarian using the Westlaw database, detailed below.

Databases included Westlaw, Westlaw Proposed and Adopted Legislation and Regulations, and Westlaw Bill Tracking:

* *Database: Westlaw*
  + Keywords: (((patient OR body) N/8 (broker! OR kickback)) N/50 ("sober home" OR "sober residence" OR "substance use" OR "substance abuse" OR addiction)
  + Notes: The database allows proximity operators – N/8 means within 8 words of the following terms and the ! character allows word truncation, so it finds broker, brokers, brokering, etc.
* *Database: Westlaw Proposed and Adopted Legislation and Regulations*
  + Search Parameters (note: the % character is used for the “NOT” operator): ((substance-use addiction substance-abuse /50 (disorder treatment #provider #providers service residence recovery sober facility lab laboratory website) /100 (fraud! false decept! surreptitious! mislead!) /50 (#market #markets #marketing #advertise #advertises advertising sale payment #pay compensat! anything-of-value thing-of-value remunerat! #refer #refers #referral #referrals solicit! induce inducement steer! broker! web-site kick-back fee-split! split-fee! bribe!)) OR (eliminating-kickbacks /2 recovery) % bad-debt payment-policy payment-policies parity)
* *Database: Westlaw Bill Tracking*
  + Search Parameters: (substance-use addiction substance-abuse /50 (disorder treatment #provider #providers service residence recovery sober facility lab laboratory website) /100 (fraud! false decept! surreptitious! mislead!) /50 (#market #markets #marketing #advertise #advertises advertising sale payment #pay compensat! anything-of-value thing-of-value remunerat! #refer #refers #referral #referrals solicit! induce inducement steer! broker! web-site kick-back fee-split! split-fee! bribe!)) OR (eliminating-kickbacks /2 recovery) % bad-debt payment-policy payment-policies parity

The Westlaw databases were last checked in May 2022. In December 2022, we ran a supplementary search of the online Justia database[[3]](#footnote-4) using the following terms:

* *Database: Justia*
  + Search Parameters: (((patient OR body) AND (broker! OR kickback)) AND ("sober home" OR "sober residence" OR "substance use" OR "substance abuse" OR addiction)"
  + (fraud! OR false OR decept! OR surreptitious! OR mislead!) AND (market! OR advertise!) AND ("sober home" OR "sober residence" OR "substance use" OR "substance abuse" OR addiction)"

**Exclusion Criteria**:

If a law mentioned activities prohibited under a different statute, these were not recorded. States without an identified patient brokering or deceptive marketing law are not included in the databases.

**Coding:**

Questions were informed by the model state law developed by [NAMSDL](https://namsdl.org/wp-content/uploads/Model-Patient-Protection-and-Treatment-Ethics-Act.pdf). After a small sampling of states were coded, the questions and coding protocol were further refined, to facilitate inter-rater reliability. All states were again coded fresh based off that refinement. The coding team included three coders**.** One researcher was assigned to each state as the primary coder. The majority of records were redundantly and independently coded by a second coder.Divergences, or differences between the original coding and redundant coding, were resolved through consultation and discussion within the team. The monqcle.com interface was used to capture data. Questions are detailed on the following pages (patient brokering, p. 4; deceptive marketing, p. 8).

**PATIENT BROKERING**

**QUESTION: Did the state's substance use disorder patient brokering law become effective on a different date than it was enacted?**

“Yes” selected if the law indicated it was to become effective at a different date than it was enacted.

“No” selected if the law did not indicate that it was to become effective at a different date than it was enacted.

*When was the law enacted?*

Answer based on text in the law itself that indicates enactment date, from state website records of enacted and effective dates, casetext.com, and legiscan. If dates could not be identified, used https://www.statescape.com/resources/legislative/bill-effective-dates/ as a guide for differences between enacted and effective dates.

**QUESTION: Does the law explicitly mention patient brokering by name?**

“Yes” selected if the law explicitly mentions patient brokering, either in the full body of the legislative text, or in the title of the legislative text.

“No” selected if the law does not explicitly mention patient brokering, either in the full body of the legislative text, or in the title of the legislative text. This also includes any implicit mention of patient brokering by defining the practice, but not specifying it by name.

**QUESTION: What entities are covered by the law?**

Included types of entities are included based off the NAMSDL model law; entities include person, licensed health care provider, health care facility, sober living home, licensed alcoholism or drug abuse recovery and treatment facility (“licensed facility”), “Certified alcohol or other drug program ("certified program")”, “Owner, partner, officer, director, or shareholder (>10%) of licensed facility or certified program”, and “Provider (purported or otherwise) of SUD services”. The following selections were also included:

“Other” selected if the law names any entity that is covered by the law and that has not been previously outlined in the selections above.

“Does not specify” selected if the law does not provide specifics about any entities who are covered by the law.

**QUESTION: Does the law reference referrals to substance use disorder treatment facilities?**

“Yes” selected if the law includes any references to referrals to substance use disorder treatment facilities.

**QUESTION: Does the law include specific mentions of paying, receiving, or soliciting offerings or referrals, or mentions of aiding and abetting any of these activities? Check all that apply.**

Up to four types of mentions could be selected: “Paying”, “Receiving”, “Soliciting,”  
 and “Aiding and Abetting.”

“Does not specify,” selected if the law does not include specific references to covered entities who pay, receive, solicit, or aid and abet offerings of any kind related to substance use disorder treatment and patient brokering.

*If yes, which offerings are mentioned in the law? Check all that apply.*

Types of offerings are informed both by the NAMSDL model law and the corresponding analysis and augmented by research about types of offerings. Choices included: benefit, bonus, bribe, cash, commission, direct, indirect, in-kind, kickback, rebate, and fee (including split fees). Reviewers checked everything mentioned in the state law as an offering. In addition, the following options were available to choose:

“Other” selected if the law explicitly names any kind other type of offering that has not been listed as an offer.

“None” selected if the law does not explicitly name any type of offering.

*If indirect, does it specify what kind of offerings?*

Specifics about indirect offerings (offering goes through a third party) were included based on input from subject matter experts.

“Covering travel expenses (i.e., flights)” selected if there is any mention of covering travel expenses (such as the indirect purchasing of flights) included in the law.

“Payment to a family member or significant other while patient is in treatment” selected if any mention of providing a payment to a family member or significant other – even if there are no particular or specific parameters about what is covered – is included in the law.

“Other” selected if any mention of some other type of indirect offering that has not been previously outlined is included in the law.

“Not Applicable” selected if indirect offerings are not mentioned in this state law.

**QUESTION: Are there stated exceptions to the law?**

“Yes” selected if there are any stated exceptions to the substance use disorder treatment patient brokering law mentioned.

*If yes, what are the stated exceptions to these laws? Check all that apply.*

Included exceptions are informed by the NAMSDL model law. Choices include: “Only when providing or offering SUD services,” “Discount, payment, waiver of payment, or payment practice not prohibited by 42 U.S.C. § 1320a-7b(b) or regulations,” “Compensation within a group practice so long as not with persons who are not members of the group practice,” “Payments to a health care provider or health care facility for professional consultation services,” “Commissions (fees or other remuneration) lawfully paid to insurance agents,” “Payments by a health insurer who reimburses SUD goods or services,” “Payments to or by certain health care providers who have contracted with other providers or Medicare/Medicaid to provide SUD services,” “Payments by certain health care providers to a health, mental health, or substance use disorder information service that provides information upon request and without charge,” “Lawful payments by HMO or health insurer for SUD services,” Lawful payments to or by a provider by an HMO or health insurer as a payment or refund,” “Activity that at the time activity was committed would have been lawful,” “Activity conducted by properly identified individuals (either marketer or clinician) done with no effort to steer or lead the potential patient.”

Reviewers checked all that applied if they were mentioned at all in the state law as an exception. The following selections were also included:

“Other” selected if there is a stated exception that had not already been named.

*If other, what are other stated exceptions?*

Text box provided to summarize and highlight any other exceptions that might have been stated but not provided as option.

**QUESTION: Does the patient brokering law mention laboratory testing used by substance use disorder treatment facilities?**

“Yes” selected if there is any mention of laboratory testing used by substance use disorder treatment facilities with regards to patient brokering.

*If yes, what aspects of laboratory testing are mentioned?*

Choices include “Yes, laws regarding in- or out-of-network status” and “Yes, laws regarding confirmatory testing”.

“Yes, other” selected if law addresses some other aspect of laboratory testing that has not been provided as an option.

*If other, please specify.*

Text box provided to summarize and highlight any other aspect of laboratory testing that is mentioned regarding substance use disorder patient brokering.

**QUESTION: Does the law differentiate between intentionally (knowingly, willfully) and accidentally receiving or soliciting referrals?**

“Yes” selected if the law differentiates between intentionally (either using that exact term, or also knowingly or willfully) and accidentally receiving or soliciting referrals.

**QUESTION: Does the law specify if a violation is a felony or misdemeanor? Check all that apply.**

Choices include “Felony” and “Misdemeanor.”

“Does not specify” selected if the law does not explicitly mention if any violation associated with substance use disorder patient brokering is classified as a felony or misdemeanor.

**QUESTION: Does the law specify if the violation is criminal, civil, or a breach of professional regulation standards? Check all that apply.**

Choices include “Criminal,” “Civil,” and “Breach of professional regulation standards.”

“Does not specify” selected if the law does not explicitly state what kind of violation is associated with substance use disorder and patient brokering.

**QUESTION: Does the law specify what kind of penalty is associated with patient brokering?**

“Yes” selected if the law specifies there is a penalty of any kind that is specifically associated with substance use disorder patient brokering.

*If yes, what kind of penalty or fine is associated with patient brokering? Check all that apply.*

Included penalties or fines are informed by the NAMSDL model law and augmented by research about types of offerings and input from legal subject matter experts.

Choices include: “Fine,” “License revocation (temporary), “License revocation (permanent),” and “Prison sentence.”

“Other” selected if the law either does not specify or does not include any reference to a penalty or fine that is associated with substance use disorder patient brokering.

*If fines are listed as a specified penalty, does the law specify the magnitude of fines that are associated with any violations of patient brokering?*

“Yes” selected if the law explicitly states the magnitude of fines associated with violations of patient brokering.

*If the law specifies a prison sentence, how long?*

Open text box to be used if a prison sentence duration is stated to insert how much time the law specifies a certain amount of prison time that is associated with substance use disorder-related patient brokering.

*If other, what kind of penalty does the law specify?*

Open text box to be used to summarize what penalty or fine is associated with substance use disorder-related patient brokering that is not a license revocation (either temporary or permanent) or a prison sentence.

**QUESTION: Does the law specify if there is associated funding?**

“No” selected if the law does not provide any reference to associated funding or funding mechanisms.

**QUESTION: Does the law reference anything else that is relevant and has not been mentioned (e.g., regulation)?**

“Yes” selected if the law references anything else is mentioned in the law that may affects its implementation, such as regulatory bodies. Caution flag is also marked “yes” to indicate what part of the law is relevant to this question.

**DECEPTIVE MARKETING**

**QUESTION: Did the state's deceptive marketing law related to substance use disorder become effective on a different date than it was enacted?**

“Yes” selected if the law indicated that it was to become effective at a different date.

*When was the law enacted?*

Answer based on text in the law itself that indicates enactment date, from state website records of enacted and effective dates, casetext.com, and legiscan. If dates could not be identified, used <https://www.statescape.com/resources/legislative/bill-effective-dates/> as a guide for differences between enacted and effective dates.

**QUESTION: Do the marketing laws related to substance use disorder treatment facilities specify if they are for marketing and/or advertising materials?**

Choices include “Yes, marketing only”, “Yes, advertising only”, and “Yes, marketing and advertising”. Answers are based on explicit mentions of marketing and/or advertising.

“No, does not specify” selected if the law does not have an explicit mention of either marketing or advertising in the text.

**QUESTION: Does the law require facilities or providers to clearly disclose what methods, treatments, and services are provided or used?**

“Yes” selected if the law specifically mentions that facilities or providers must disclose types of methods, treatments, or services that are provided or used. Any mention of such suffices; a law that provides detailed lists of potential methods, treatments, or services that could be disclosed is coded the same as a state that simply requires facilities or providers to disclose methods, treatments, or services that are provided.

**QUESTION: Does the law require facilities or providers to accurately detail categories of treatment (as identified by state licensing laws)?**

“Yes” selected if the law has any mention of a requirement for a state-regulated facility or provider to accurately detail categories of treatment regulated by state licensing laws.

“No” selected if the law does not mention a requirement for a state-regulated facility or provider to accurately detail categories of treatment, nor does it provide a reference to state licensing laws.

**QUESTION: Does the law state what is allowed when entering a contract between marketing provider and treatment provider?**

“No” selected if the law does not state any permissions or restrictions specifically related to contracts between marketing providers and treatment providers, or if the law does not explicitly refer to marketing providers and treatment providers (i.e., other entities are named).

*If yes, what does the law state?*

Open text box used to summarize what the law (if applicable) states about contracts between marketing providers and treatment providers. If not applicable, field is left blank.

**QUESTION: Are there state licensure laws related to entities that provide substance use disorder marketing services?**

“Yes” selected if the law provides a specific mention, outlines, or points to what state licensure laws apply to substance use disorder treatment marketing services.

“No” selected if the law neither provides any specific mention, nor outlines, nor points to what state licensure laws apply to substance use disorder treatment marketing services.

*If yes, are there licensing penalties associated with violations of these laws? Check all that apply.*

Choices include “suspension” and “termination.”

“Not applicable” selected if the law does not mention any licensing penalty associated with state licensure law violations pertaining to substance use disorder marketing services.

**QUESTION: Does the law require facilities or providers to clearly disclose levels of care (as identified by state licensing laws)?**

“Yes” selected if the law states that there are any requirements for facilities or providers to fully disclose levels of care and a specific reference to where these are identified by state licensing laws.

Clear disclosure of levels of care, per the NAMSDL Model Patient Protection and Treatment Ethics Act, means that the law clearly communicates both treatment settings and levels of care to consumers.

**QUESTION: Does the law require facilities or providers to clearly disclose average lengths of stay?**

“Yes” selected if the law explicitly requires facilities or providers to clearly disclose average lengths of stay.

Clear disclosure of the average length of stay, per the NAMSDL Model Patient Protection and Treatment Ethics Act, refers to the average length of stay in the preceding twelve-month period and provided in plain language that is easy to understand.

**QUESTION: Does the law mention willingly, knowingly, or intentionally making false or misleading statements related to substance use disorder facilities?**

Choices include “Willingly,” “Knowingly,” and “Intentionally.”

“Does not specify” selected if the law does not specify either willingly or knowingly making misleading statements related to substance use disorder facilities.

**QUESTION: Does the law mention making a false or misleading statement about status as a licensed residential treatment provider versus providing housing alongside outpatient services?**

“Yes” selected if the law mentions making a false or misleading statement about status as a licensed residential treatment provider vs providing housing along outpatient services

**QUESTION: Does the law mention making a false or misleading statement about status as an in- or out-of-network provider?**

“Yes” selected if the law mentions making a false or misleading statement about status as an in or out of network provider

**QUESTION: Does the law mention making a false or misleading statement about relationships between treatment providers and marketing or advertising entities?**

“Yes” selected if the law mentions making a false or misleading statement about relationships between treatment providers and marketing entities

**QUESTION: Does the law mention making Internet address redirects?**

“Yes” selected if the law provides any reference to Internet address redirects.

**QUESTION: Does the law mention making a false or misleading statement about the nature of services provided?”**

“Yes” selected if the law mentions making a false or misleading statement about nature of services provided

**QUESTION: Does the law mention lead generation?**

Lead generation is a marketing tactic in which consumer interest in a product or service with the intention of turning that interest into a sale.

“Yes” selected if the law provides any reference to lead generation.

**QUESTION: Does the law mention making a false or misleading statement about the identity of any treatment provider?**

“Yes” selected if the law mentions making a false or misleading statement about the identity of any treatment provider

**QUESTION: Does the law specify if a violation is a felony or misdemeanor?**

Choices include “Felony” and “Misdemeanor.”

“Does not specify” selected if the law does not contain any explicit mention that any violation associated with substance use disorder deceptive marketing is a felony or a misdemeanor.

**QUESTION: Does the law specify if a violation is civil, criminal, or a breach of professional regulation standards? Check all that apply.**

Choices include “civil,” “criminal,” and “breach of professional regulation standards.”

“Does not specify” selected if the law does not specify that making false or misleading statements is a civil, criminal, or a breach of professional regulation standards.

**QUESTION: Does the law specify what kind of penalty or fine is associated with deceptive marketing? Check all that apply.**

Choices include “Fine,” “License revocation (temporary),” “License revocation (permanent),” “Prison sentence,” and “Other.”

“Does not specify” selected if the law does not include any reference to a penalty or fine that is associated with substance use disorder deceptive marketing.

*If fines are listed as a specified penalty, does the law specify the magnitude of fines that are associated with any violations of deceptive marketing?*

“Yes” selected if the law specifies the magnitude of fines associated with any violation of substance use disorder-related deceptive marketing.

*If yes, do the specified fines increase depending on the number of patients affected?*

“No” selected if the law either does not specify any magnitude of fines at all, or if the law does not specify any changes in magnitude of fines depending on the number of people who are affected.

*If the law specifies a prison sentence, how long is it?*

Open text box to be used if a prison sentence duration is stated, to insert how much time the law specifies a certain amount of prison time that is associated with substance use disorder-related deceptive marketing.

*If other, please specify.*

Open text box to be used to summarize if another type of penalty or fine that has not been mentioned is stated.

**QUESTION: Does the law specify if there is associated funding?**

“No” selected if the law does not provide any reference to associated funding or funding mechanisms.

**QUESTION: Does the law reference anything else that is relevant and has not been mentioned (e.g., regulation)?**

“Yes” selected if the law references anything else is mentioned in the law that may affects its implementation, such as regulatory bodies.

1. Model Patient Protection and Treatment Ethics Act. National Alliance for Model State Drug Laws. (2019, July 1). Retrieved March 28, 2022, from https://namsdl.org/wp-content/uploads/Model-Patient-Protection-and-Treatment-Ethics-Act.pdf [↑](#footnote-ref-2)
2. Summary and Impact Analysis of State Laws Addressing Predatory and Unethical Substance Use Disorder Treatment Practices. National Alliance for Model State Drug Laws. (2019, July 1). Retrieved March 28, 2022, from https://namsdl.org/wp-content/uploads/Summary-and-Impact-Analysis-of-State-Laws-Addressing-Predatory-and-Unethical-Substance-Use-Disorder-Treatment-Practices.pdf [↑](#footnote-ref-3)
3. https://law.justia.com/ [↑](#footnote-ref-4)