

CS/SB 788 – Marketing Practices for Substance Abuse Services

This bill amends and creates multiple statutes. First, it amends s. 16.56, F.S., adding “patient brokering to offenses that the Office of Statewide Prosecution can investigate and prosecute. It also creates s. 397.488, F.S., adding a prohibition for the use of patient brokering, which is defined as “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 acknowledgment of treatment from a service provider or recovery residence.” While much of this definition currently exists in s. 817.505, F.S., “benefit” is added to the prohibitions for offering or paying to induce the referral of a patient (now singular) or patronage to or from a health care provider or health care facility, soliciting or receiving in return for referring a patient (now singular) or patronage to or from a health care provider or health care facility or for the acceptance or acknowledgment of treatment from a health care provider or health care facility. Currently a Level 3, 3rd degree felony exists for “any person, including an officer, partner, agent, attorney, or other representative of a firm, joint venture, partnership, business trust, syndicate, corporation, or other business entity” committing these violations. This is increased to a **Level 4, 3rd degree felony**. S. 817.505, F.S. is further amended, creating a **Level 6, 2nd degree felony** for when these violations involve between 10 and 20 patients, and a **Level 8, 1st degree felony** for when these violations involve 20 or more patients.

The bill also creates s. 817.0345, F.S., adding an **unranked, 3rd degree felony** to “knowingly and willfully 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, as defined in chapter 397, 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.”

Also, by adding the ability for an order authorizing disclosure of the records of an individual seeking substance abuse for an active criminal investigation to s. 397.501, F.S., this bill improves the chances of successful convictions in future cases.

Finally, this bill amends s. 895.02, F.S., adding “patient brokering” to racketeering activity, along with other Chapter 817 acts, such as fraudulent practices, false pretenses, fraud generally, and credit card crimes.

Per DOC, in FY 15-16, there were 7 (adj.) offenders sentenced for patient brokering, but none of these offenders received a prison sentence. It is not known how many patients were involved in each case. According to FDLE, in FY 15-16, judicial records show that of those with a guilty or adjudication withheld, only one had multiple counts, with two. However, it does not necessarily mean that this was the number of patients involved. Also, it is not known how many incidents of false/misleading marketing practices occur each fiscal year.

In FY 15-16, the incarceration rate for an unranked, 3rd degree felony was 9.9%, for a Level 4, 3rd degree felony was 25.2%, for a Level 6, 2nd degree felony was 52.7%, and for a Level 8, 1st degree felony was 77.4%.

CONFERENCE ADOPTED ESTIMATE: Positive Insignificant

Requested by: Senate