

1 AN ACT relating to prohibited health care referral practices.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔Section 1. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO  
4 READ AS FOLLOWS:

5 *(1) For purposes of this section:*

6 *(a) "Health care provider" or "provider" has the same meaning as in KRS*  
7 *304.17A-005;*

8 *(b) "Health care service" has the same meaning as in KRS 304.17A-005;*

9 *(c) "Health facility" or "facility" has the same meaning as in KRS 216B.015;*

10 *(d) "Insurer" has the same meaning as in KRS 304.17A-005; and*

11 *(e) "Provider network" has the same meaning as in KRS 304.17A-005.*

12 *(2) No person, including any provider or health care facility, shall:*

13 *(a) Offer or pay a commission, benefit, bonus, rebate, kickback, or bribe,*  
14 *directly or indirectly, in cash or in kind, or engage in any split-fee*  
15 *arrangement, in any form whatsoever, to induce the referral of a patient for*  
16 *health care services or to gain patronage to or from a provider or health*  
17 *care facility;*

18 *(b) Solicit or receive a commission, benefit, bonus, rebate, kickback, or bribe,*  
19 *directly or indirectly, in cash or in kind, or engage in any split-fee*  
20 *arrangement, in any form whatsoever, in return for referring a patient for*  
21 *health care services or gaining patronage to or from a provider or health*  
22 *care facility;*

23 *(c) Solicit or receive a commission, benefit, bonus, rebate, kickback, or bribe,*  
24 *directly or indirectly, in cash or in kind, or engage in any split-fee*  
25 *arrangement, in any form whatsoever, in return for the acceptance or*  
26 *acknowledgement of health care services from a provider or health care*  
27 *facility; or*

1       (d) Aid, abet, advise, or otherwise participate in the conduct prohibited under  
2               paragraph (a), (b), or (c) of this subsection.

3       (3) Subsection (2) of this section shall not apply to the following payment practices:

4       (a) Any discount, payment, waiver of payment, or payment practice expressly  
5               authorized by 42 U.S.C. sec. 1320a-7b(b)(3);

6       (b) Any payment, compensation, or financial arrangement within a group  
7               medical practice if the payment, compensation, or arrangement is not to or  
8               from persons who are not members of the group medical practice;

9       (c) Payments to a provider or health care facility for professional consultation  
10               services;

11       (d) Commissions, fees, or other remuneration lawfully paid to insurance  
12               agents;

13       (e) Payments by an insurer who reimburses, provides, offers to provide, or  
14               administers health care services under a health benefit plan;

15       (f) Payments to or by a provider, health care facility, or a provider network that  
16               has contracted with an insurer, a health care purchasing group, or the  
17               Medicare or Medicaid program to provide health care services under a  
18               health benefit plan when the payments are for services under the plan;

19       (g) Insurers advertising gifts lawfully permitted; and

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

25               1. Does not attempt through its standard questions for solicitation of  
26               consumer criteria or through any other means to steer or lead a  
27               consumer to select or consider selection of a particular provider or

- 1           health care facility;
- 2           2. Does not provide or represent itself as providing diagnostic or
- 3           counseling services or assessments of illness or injury and does not
- 4           make any promises for cures or guarantees of treatment;
- 5           3. Does not provide or arrange for transportation of a consumer to or
- 6           from the location of a provider or health care facility; and
- 7           4. Charges and collects fees from a provider or health care facility
- 8           participating in its services that are set in advance, are consistent with
- 9           the fair market value for those information services, and are not based
- 10           on the potential value of a patient or patients to a provider or health
- 11           care facility or of the goods or services provided by the provider or
- 12           health care facility.
- 13       (4) Any person, including an officer, partner, agent, attorney, or other representative
- 14       of a firm, joint venture, partnership, business trust, syndicate, corporation, or
- 15       other business entity, who violates any provision of this section where the
- 16       prohibited conduct involves:
- 17           (a) One (1) or more patients but fewer than ten (10) patients commits a Class D
- 18           felony and shall be ordered to pay a fine of fifty thousand dollars (\$50,000);
- 19           (b) Ten (10) or more patients but fewer than twenty (20) patients commits a
- 20           Class C felony and shall be ordered to pay a fine of one hundred thousand
- 21           dollars (\$100,000); or
- 22           (c) Twenty (20) or more patients commits a Class B felony and shall be ordered
- 23           to pay a fine of five hundred thousand dollars (\$500,000).
- 24       (5) The party bringing an action under this section may recover reasonable expenses
- 25       in obtaining injunctive relief, including but not limited to investigative costs,
- 26       court costs, reasonable attorney's fees, witness costs, and deposition expenses.
- 27       (6) The provisions of this section are in addition to any other civil, administrative, or

1        *criminal actions provided by law and may be imposed against both corporate and*  
2        *individual defendants.*