

Body Brokering in New Jersey

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For the last two years, NJOP and the Not One More Campaign have been working to expand and improve the coverage of the existing body brokering law – and now, our improvements have been passed into law.

To recap, body brokering, also known as patient brokering, is a type of health care fraud committed by individuals, detox and rehab centers, clinical laboratories, and even recovery residence owners and operators. Financial incentives are offered to the treatment professionals to ensure clients are referred to them. Lures are also offered to clients struggling with a substance use disorder – for example, they may be offered free transportation to treatment. These practices often take place over state lines.

In our last body brokering explainer from August 2023, we bemoaned the fact that, even though there is an existing body brokering law, there had been no prosecutions as far as we knew. In other words, even though there was already a law against this type of fraud, nobody was truly being held accountable to it. There was no incentive for fraudulent providers to change, and our communities were still being taken advantage of when we most needed support. We encouraged the prosecution based on the existing law, but recognized the law itself was inadequate: the bad actors found new ways to circumvent it.

New unethical and illegal practices arose as well, including deceptive marketing practices, in which health care entities would provide false information, locations, and types of services in order to lure patients to their facilities, often using the names of reputable treatment centers without their knowledge or consent.

We argued and implored and pleaded and reasoned with our New Jersey legislators for two years to amend the existing law and address some of the ways bad actors were avoiding detection and prosecution. Finally, we recommended amending NJ's statute to mirror an existing federal anti-kickback law, EKRA, as we saw that US Attorneys around the country, including in NJ, were much more successful in using this federal law when prosecuting body brokering and other fraud cases. Two bills emerged to address these issues, and now, over a year later, those bills have been signed into law.

What's different about the new bills? The primary bill increases the penalties for violations to 3-5 years in prison and fines up to \$50,000 for providers who commit body brokering. The bill also provides for a new remedy enabling both NJ's state Departments of Health and Community Affairs to investigate allegations and, if substantiated, suspend or revoke a facility's license, as well as levy fines of up to \$20,000 for each offense. (We know that increasing penalties without

further revision of the law isn't always a great use of time, but the legislature insisted on this part of the bill.)

The bill expands coverage to individuals, as well as recovery centers and residences, health care providers, and even non-profits as well as clinical laboratories. It expands the definition of "body brokering" to include make, solicit, offer, or receive payments, fees, commissions, kickbacks, rebates or bribes directly, indirectly, overtly, covertly, in cash or in kind, in exchange for a patient using services. This is language that parallels the language in the federal EKRA law, the one referenced when these cases are actually being prosecuted.

In a companion bill, additional problems aimed at deceptive marketing practices were addressed. The bill requires all of the above providers listed in the primary bill to provide accurate information as to the scope of their services, their location, and their names. Some providers were fraudulently luring patients to their facilities using the names and addresses of more prominent and reputable recovery centers.

The violations under this companion bill would lead to civil penalties levied by NJ's Department of Health and/or Community Affairs of up to \$20,000, with license suspension or revocation on the line. Victims of the fraud may also sue for damages.

As with any piece of legislation, it is only as good as its implementation. Once these bills become law, NJOP and the Not One More Campaign will have our eyes on the Attorney General's office as well as the state's Departments of Health and Community Affairs to ensure that the fraud we know exists, is pursued and bad actors rooted out and that its victims, those suffering from a substance use disorder, are protected.