

HOUSE BILL 1071

J1, J2, J3

0lr0615
CF SB 696

By: **Delegates Pippy, K. Young, Cox, and Metzgar**

Introduced and read first time: February 6, 2020

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Public Health – Substance–Related Disorder Services**
3 **(Maryland Patient Protection and Treatment Ethics Act)**

4 FOR the purpose of declaring the intent of the General Assembly; requiring certain
5 marketing or advertising materials to provide certain information; prohibiting a
6 health care practitioner from knowingly and willfully making certain statements or
7 providing certain information; prohibiting a health care practitioner from knowingly
8 making certain statements; requiring a certain behavioral health program to include
9 a certain statement in any advertising; prohibiting a person from knowingly
10 providing certain information, suggesting or implying that a certain relationship
11 exists, or making certain statements; providing that a violation of certain provisions
12 of this Act constitutes a violation of a certain provision of law; prohibiting certain
13 persons from entering into a contract with or providing consideration to a marketing
14 provider for a certain purpose except under certain circumstances; prohibiting
15 certain persons from offering, paying, soliciting, or receiving certain payments or
16 engaging in certain split–fee arrangements for taking certain actions or from
17 participating in certain prohibited actions, except under certain circumstances;
18 prohibiting certain persons from referring a patient to a certain laboratory for drug
19 testing under certain circumstances or ordering or performing drug testing for a
20 certain purpose except under certain circumstances; requiring each behavioral
21 health program to maintain certain records; prohibiting a behavioral health program
22 from making a certain referral to a recovery residence under certain circumstances;
23 prohibiting a behavioral health program from entering into certain contracts or
24 agreements; requiring each behavioral health program to develop, adopt, and make
25 available to certain patients a certain code of ethics; requiring each behavioral health
26 program to submit a certain attestation, detailed account, and, under certain
27 circumstances, corrective action plan to the Behavioral Health Administration on or
28 before a certain date each year; prohibiting a health care practitioner from
29 requesting, receiving, or retaining certain payment under certain circumstances;
30 establishing certain penalties for certain violations of this Act; authorizing a certain
31 person to seek certain relief and recover certain damages, fees, and costs; authorizing

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



the Attorney General or a certain State's Attorney to seek certain relief and recover certain expenses; authorizing a certain health occupations board to take certain action under certain circumstances; providing that the penalties provided under certain provisions of this Act are in addition to certain other penalties; requiring certain employees and health care practitioners to comply with certain provisions of this Act; prohibiting the State or any political subdivision of the State from distributing certain funds to certain recovery residences; providing for the application of this Act; making conforming changes; defining certain terms; and generally relating to substance-related disorder services.

BY renumbering

Article – Health – General
Section 7.5–601
to be Section 7.5–607
Annotated Code of Maryland
(2019 Replacement Volume)

BY repealing and reenacting, without amendments,

Article – Commercial Law
Section 13–303
Annotated Code of Maryland
(2013 Replacement Volume and 2019 Supplement)

BY adding to

Article – Health – General
Section 7.5–601 through 7.5–606 and 7.5–608 through 7.5–611 to be under the amended subtitle “Subtitle 6. Maryland Patient Protection and Treatment Ethics Act”; and 19–2505
Annotated Code of Maryland
(2019 Replacement Volume)

BY repealing and reenacting, with amendments,

Article – Health – General
Section 7.5–607
Annotated Code of Maryland
(2019 Replacement Volume)
(As enacted by Section 1 of this Act)

BY repealing and reenacting, without amendments,

Article – Health – General
Section 19–4B–01(a) and (h) and 19–2501(a) and (c)
Annotated Code of Maryland
(2019 Replacement Volume)

BY repealing and reenacting, with amendments,

Article – Health – General
Section 19–2504

Annotated Code of Maryland
(2019 Replacement Volume)

BY repealing and reenacting, without amendments,
Article – Health Occupations
Section 1–301(a) and (f) and 1–302
Annotated Code of Maryland
(2014 Replacement Volume and 2019 Supplement)

BY repealing and reenacting, without amendments,
Article – Insurance
Section 27–209
Annotated Code of Maryland
(2017 Replacement Volume and 2019 Supplement)

Preamble

WHEREAS, The United States remains in the grips of an epidemic of substance use disorders; and

WHEREAS, Although the United States is blessed with countless excellent addiction treatment programs with staff who perform tireless and lifesaving work that is often thankless and entirely outside the limelight, on an illness that is still far too stigmatized, with the stigma often extending to the people trying to treat the illness, there remains a need for this Act; and

WHEREAS, This Act is intended to create a level playing field that denies an advantage to programs and personnel that engage in or support predatory, unsafe, and unethical practices, that create barriers to desperately needed treatment, and that cause incalculable needless harm to desperate families and the communities in which they live; and

WHEREAS, Enacting legislation that sets forth and provides for the enforcement of uniform, ethical standards for treatment programs benefits all residents of Maryland by improving the availability of high–quality, ethical treatment, and by protecting families and individuals in crisis from misleading information and other unethical practices; and

WHEREAS, This Act is designed to protect families and patients; now, therefore,

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That Section(s) 7.5–601 of Article – Health – General of the Annotated Code of Maryland be renumbered to be Section(s) 7.5–607.

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Commercial Law

1 13–303.

2 A person may not engage in any unfair, abusive, or deceptive trade practice, as
3 defined in this subtitle or as further defined by the Division, in:

4 (1) The sale, lease, rental, loan, or bailment of any consumer goods,
5 consumer realty, or consumer services;

6 (2) The offer for sale, lease, rental, loan, or bailment of consumer goods,
7 consumer realty, or consumer services;

8 (3) The offer for sale of course credit or other educational services;

9 (4) The extension of consumer credit;

10 (5) The collection of consumer debts; or

11 (6) The purchase or offer for purchase of consumer goods or consumer
12 realty from a consumer by a merchant whose business includes paying off consumer debt
13 in connection with the purchase of any consumer goods or consumer realty from a
14 consumer.

15 **Article – Health – General**

16 Subtitle 6. [Referrals to Recovery Residences] **MARYLAND PATIENT PROTECTION AND**
17 **TREATMENT ETHICS ACT.**

18 **7.5–601.**

19 **IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THIS SUBTITLE BE**
20 **CONSTRUED TO MAXIMIZE PROTECTIONS FOR PATIENTS AND FAMILIES, AND THE**
21 **COMMUNITIES IN WHICH THEY LIVE.**

22 **7.5–602.**

23 **(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**
24 **INDICATED.**

25 **(B) “BEHAVIORAL HEALTH PROGRAM” MEANS A BEHAVIORAL HEALTH**
26 **PROGRAM THAT PROVIDES SUBSTANCE–RELATED DISORDER SERVICES.**

27 **(C) “HEALTH CARE PRACTITIONER” MEANS A PERSON WHO:**

28 **(1) IS LICENSED, CERTIFIED, OR OTHERWISE AUTHORIZED UNDER**

1 THE HEALTH OCCUPATIONS ARTICLE TO PROVIDE HEALTH CARE SERVICES IN THE
2 ORDINARY COURSE OF BUSINESS OR PRACTICE OF A PROFESSION; AND

3 (2) PROVIDES SUBSTANCE-RELATED DISORDER SERVICES.

4 (D) "REFERRAL" MEANS INFORMING A PERSON THROUGH ANY MEANS OF
5 THE NAME, ADDRESS, OR OTHER IDENTIFYING INFORMATION OF A BEHAVIORAL
6 HEALTH PROGRAM, HEALTH CARE PRACTITIONER, OR RECOVERY RESIDENCE.

7 7.5-603.

8 (A) ANY MARKETING OR ADVERTISING MATERIALS PUBLISHED OR
9 PROVIDED BY A BEHAVIORAL HEALTH PROGRAM SHALL PROVIDE ACCURATE
10 INFORMATION IN PLAIN AND EASILY UNDERSTANDABLE LANGUAGE THAT
11 INCLUDES:

12 (1) INFORMATION ABOUT THE TYPES AND LOCATIONS OF
13 TREATMENT SERVICES PROVIDED AND THE METHODS USED BY THE BEHAVIORAL
14 HEALTH PROGRAM, INCLUDING ANY CATEGORIES OF TREATMENT OR LEVELS OF
15 SERVICE IDENTIFIED BY THE ADMINISTRATION;

16 (2) THE AVERAGE LENGTH OF STAY DURING THE IMMEDIATELY
17 PRECEDING CALENDAR YEAR FOR EACH TYPE OF THE TREATMENT SERVICE
18 PROVIDED BY THE BEHAVIORAL HEALTH PROGRAM;

19 (3) THE NAME AND, IF APPLICABLE, BRAND OF THE BEHAVIORAL
20 HEALTH PROGRAM; AND

21 (4) A BRIEF SUMMARY OF ANY FINANCIAL RELATIONSHIP BETWEEN
22 THE BEHAVIORAL HEALTH PROGRAM AND A PUBLISHER OF MARKETING OR
23 ADVERTISING INFORMATION.

24 (B) A HEALTH CARE PRACTITIONER MAY NOT:

25 (1) KNOWINGLY AND WILLFULLY MAKE A MATERIALLY FALSE OR
26 MISLEADING STATEMENT OR PROVIDE FALSE OR MISLEADING INFORMATION ABOUT
27 THE NATURE, IDENTITY, OR LOCATION OF SUBSTANCE-RELATED DISORDER
28 SERVICES OR A RECOVERY RESIDENCE:

29 (I) IN ADVERTISING MATERIALS;

30 (II) ON A CALL LINE;

(III) ON A WEBSITE; OR

(IV) IN ANY OTHER MARKETING MATERIALS; OR

(2) KNOWINGLY MAKE A FALSE OR MISLEADING STATEMENT ABOUT THE HEALTH CARE PRACTITIONER'S STATUS AS AN IN-NETWORK OR OUT-OF-NETWORK PROVIDER OF SUBSTANCE-RELATED DISORDER SERVICES.

(C) IF A BEHAVIORAL HEALTH PROGRAM PROVIDES SUBSTANCE-RELATED DISORDER SERVICES IN AN OUTPATIENT SETTING WITH A HOUSING COMPONENT AND IS NOT LICENSED BY THE ADMINISTRATION AS A RESIDENTIAL PROGRAM, THE BEHAVIORAL HEALTH PROGRAM SHALL INCLUDE IN ANY ADVERTISING A STATEMENT THAT:

(1) THE BEHAVIORAL HEALTH PROGRAM PROVIDES SUBSTANCE-RELATED DISORDER SERVICES IN AN OUTPATIENT SETTING WITH A HOUSING COMPONENT; AND

(2) THE PROGRAM IS NOT LICENSED BY THE ADMINISTRATION AS A RESIDENTIAL PROGRAM.

(D) A PERSON MAY NOT:

(1) KNOWINGLY PROVIDE FALSE OR MISLEADING INFORMATION ABOUT:

(I) THE IDENTITY OF OR CONTACT INFORMATION FOR A HEALTH CARE PRACTITIONER; OR

(II) THE INTERNET ADDRESS OF A HEALTH CARE PRACTITIONER'S WEBSITE, INCLUDING BY SURREPTITIOUSLY DIRECTING THE READER OF A HEALTH CARE PRACTITIONER'S WEBSITE TO ANOTHER WEBSITE;

(2) SUGGEST OR IMPLY THAT A RELATIONSHIP EXISTS BETWEEN THE PERSON AND A HEALTH CARE PRACTITIONER, UNLESS THE HEALTH CARE PRACTITIONER PROVIDED EXPRESS, WRITTEN CONSENT TO THE RELATIONSHIP; OR

(3) KNOWINGLY MAKE A MATERIALLY FALSE OR MISLEADING STATEMENT ABOUT SUBSTANCE USE DISORDER TREATMENT SERVICES.

(E) A VIOLATION OF THIS SECTION CONSTITUTES A VIOLATION OF § 13-303 OF THE COMMERCIAL LAW ARTICLE, REGARDLESS OF WHETHER A CONSUMER WAS MISLED OR DECEIVED.

1 **7.5-604.**

2 **(A) THIS SECTION DOES NOT APPLY TO A WEBSITE RELATING TO**
3 **SUBSTANCE USE DISORDERS OR SUBSTANCE USE DISORDER TREATMENT OPERATED**
4 **BY A FEDERAL, STATE, OR LOCAL GOVERNMENT ENTITY.**

5 **(B) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, A**
6 **BEHAVIORAL HEALTH PROGRAM, RECOVERY RESIDENCE, OR HEALTH CARE**
7 **PRACTITIONER MAY NOT ENTER INTO A CONTRACT WITH OR PROVIDE ANY**
8 **CONSIDERATION TO A MARKETING PROVIDER FOR THE PURPOSE OF GENERATING**
9 **LEADS OR REFERRALS FOR THE PLACEMENT OF PATIENTS WITH THE HEALTH CARE**
10 **PRACTITIONER OR THE RECOVERY RESIDENCE THROUGH A CALL CENTER OR**
11 **WEBSITE.**

12 **(C) A BEHAVIORAL HEALTH PROGRAM, HEALTH CARE PRACTITIONER, OR**
13 **RECOVERY RESIDENCE MAY CONTRACT FOR OR PROVIDE CONSIDERATION TO A**
14 **MARKETING PROVIDER FOR ONLINE ADVERTISING IF:**

15 **(1) THE ADVERTISING IS ON A WEBSITE OPERATED OR CONTROLLED**
16 **BY A HEALTH CARE PRACTITIONER OR RECOVERY RESIDENCE;**

17 **(2) THE PERSON THAT OPERATES OR CONTROLS THE WEBSITE IS**
18 **CLEARLY IDENTIFIED IN PLAIN LANGUAGE ON THE WEBSITE; AND**

19 **(3) ANY COMPENSATION PAID TO THE PERSON THAT OPERATES OR**
20 **CONTROLS THE WEBSITE IS NOT BASED ON THE VOLUME OR VALUE OF REFERRALS,**
21 **CLICKS, OR OTHER SIMILAR METRIC.**

22 **7.5-605.**

23 **(A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A**
24 **BEHAVIORAL HEALTH PROGRAM, HEALTH CARE PRACTITIONER, RECOVERY**
25 **RESIDENCE, OR AN EMPLOYEE OF THE BEHAVIORAL HEALTH PROGRAM OR**
26 **RECOVERY RESIDENCE MAY NOT:**

27 **(1) OFFER OR PAY A COMMISSION, BENEFIT, BONUS, REBATE,**
28 **KICKBACK, OR BRIBE, DIRECTLY OR INDIRECTLY, IN CASH OR IN KIND, OR ENGAGE**
29 **IN ANY SPLIT-FEE ARRANGEMENT TO INDUCE THE REFERRAL OF A PATIENT OR**
30 **PATRONAGE TO OR FROM A HEALTH CARE PRACTITIONER, BEHAVIORAL HEALTH**
31 **PROGRAM, OR RECOVERY RESIDENCE;**

32 **(2) SOLICIT OR RECEIVE A COMMISSION, BENEFIT, BONUS, REBATE,**

KICKBACK, OR BRIBE, DIRECTLY OR INDIRECTLY, IN CASH OR IN KIND, OR ENGAGE IN ANY SPLIT-FEE ARRANGEMENT IN RETURN FOR REFERRING A PATIENT OR PATRONAGE TO OR FROM A HEALTH CARE PRACTITIONER OR HEALTH CARE FACILITY;

(3) SOLICIT OR RECEIVE A COMMISSION, BENEFIT, BONUS, REBATE, KICKBACK, OR BRIBE, DIRECTLY OR INDIRECTLY, IN CASH OR IN KIND, OR ENGAGE IN ANY SPLIT-FEE ARRANGEMENT, IN RETURN FOR THE HEALTH CARE PRACTITIONER, BEHAVIORAL HEALTH PROGRAM, OR RECOVERY RESIDENCE'S ACCEPTANCE OR ACKNOWLEDGEMENT OF A PATIENT'S TREATMENT; OR

(4) AID, ABET, ADVISE, OR OTHERWISE PARTICIPATE IN CONDUCT PROHIBITED UNDER ITEMS (1), (2), OR (3) OF THIS SUBSECTION.

(B) SUBSECTION (A) OF THIS SECTION DOES NOT APPLY TO:

(1) ANY DISCOUNT, PAYMENT, WAIVER OF PAYMENT, OR PAYMENT PRACTICE AUTHORIZED UNDER 42 U.S.C. 1320A-7B(B)(3);

(2) A HEALTH CARE PRACTITIONER WHO REFERS A PATIENT TO ANOTHER HEALTH CARE PRACTITIONER IN THE SAME GROUP PRACTICE, AS DEFINED IN § 1-301 OF THE HEALTH OCCUPATIONS ARTICLE;

(3) PAYMENTS TO A HEALTH CARE PRACTITIONER OR HEALTH CARE FACILITY, INCLUDING A BEHAVIORAL HEALTH PROGRAM AND RECOVERY RESIDENCE, FOR PROFESSIONAL CONSULTATION SERVICES;

(4) COMMISSIONS, FEES, OR OTHER PAYMENT LAWFULLY PAID TO INSURANCE AGENTS IN ACCORDANCE WITH STATE LAW;

(5) PAYMENTS BY A HEALTH INSURER WHO REIMBURSES, PROVIDES, OFFERS TO PROVIDE, OR ADMINISTERS HEALTH, MENTAL HEALTH, OR SUBSTANCE USE GOODS OR SERVICES UNDER A HEALTH BENEFIT PLAN;

(6) PAYMENTS TO OR BY A HEALTH CARE PRACTITIONER OR HEALTH CARE FACILITY, INCLUDING A BEHAVIORAL HEALTH PROGRAM AND RECOVERY RESIDENCE, OR A GROUP PRACTICE, AS DEFINED IN § 1-301 OF THE HEALTH OCCUPATIONS ARTICLE, THAT HAS CONTRACTED WITH A HEALTH INSURER, THE MARYLAND MEDICAL ASSISTANCE PROGRAM, OR THE MEDICARE PROGRAM TO PROVIDE HEALTH, MENTAL HEALTH, OR SUBSTANCE USE GOODS OR SERVICES UNDER A HEALTH BENEFIT PLAN WHEN THE PAYMENTS ARE FOR GOODS OR SERVICES UNDER THE PLAN;

1 **(7) THE PROVISION OF INSURANCE EDUCATIONAL MATERIALS,**
2 **PROMOTIONAL MATERIALS, OR ARTICLES OF MERCHANDISE THAT COST NO MORE**
3 **THAN \$50 IN ACCORDANCE WITH § 27-209 OF THE INSURANCE ARTICLE;**

4 **(8) A COMMISSION OR FEE PAID TO A NURSING REFERRAL SERVICE**
5 **AGENCY, AS DEFINED IN § 19-4B-01 OF THIS ARTICLE, FOR REFERRING PERSONS**
6 **PROVIDING HEALTH CARE SERVICES TO CLIENTS OF THE NURSING REFERRAL**
7 **SERVICE AGENCY;**

8 **(9) PAYMENTS BY A HEALTH CARE PRACTITIONER OR HEALTH CARE**
9 **FACILITY, INCLUDING A BEHAVIORAL HEALTH PROGRAM AND RECOVERY**
10 **RESIDENCE, TO A SERVICE THAT PROVIDES HEALTH, MENTAL HEALTH, OR**
11 **SUBSTANCE USE INFORMATION ON REQUEST AND WITHOUT CHARGE TO CONSUMERS**
12 **ABOUT PROVIDERS OF HEALTH CARE GOODS OR SERVICES TO ENABLE CONSUMERS**
13 **TO SELECT THE APPROPRIATE PRACTITIONER OR FACILITY, IF THE SERVICE:**

14 **(I) DOES NOT ATTEMPT TO LEAD A CONSUMER TO SELECT OR**
15 **CONSIDER SELECTING A PARTICULAR HEALTH CARE PRACTITIONER OR HEALTH**
16 **CARE FACILITY THROUGH STANDARD QUESTIONING USED TO SOLICIT CONSUMER**
17 **CRITERIA OR THROUGH ANY OTHER MEANS;**

18 **(II) DOES NOT PROVIDE OR REPRESENT THE SERVICE AS**
19 **PROVIDING DIAGNOSTIC OR COUNSELING SERVICES OR ASSESSMENTS OF ILLNESS**
20 **OR INJURY;**

21 **(III) DOES NOT MAKE A PROMISE OF CURE OR GUARANTEE OF**
22 **TREATMENT;**

23 **(IV) DOES NOT PROVIDE OR ARRANGE FOR TRANSPORTATION**
24 **OF A CONSUMER TO OR FROM THE LOCATION OF A HEALTH CARE PRACTITIONER OR**
25 **HEALTH CARE FACILITY; AND**

26 **(v) 1. DOES NOT CHARGE OR COLLECT A FEE FROM A**
27 **HEALTH CARE PRACTITIONER OR HEALTH CARE FACILITY PARTICIPATING IN THE**
28 **SERVICE; OR**

29 **2. CHARGES AND COLLECTS A FEE FROM A HEALTH**
30 **CARE PRACTITIONER OR HEALTH CARE FACILITY PARTICIPATING IN THE SERVICE**
31 **THAT IS:**

32 **A. SET IN ADVANCE;**

33 **B. CONSISTENT WITH THE FAIR MARKET VALUE FOR THE**

1 INFORMATION SERVICES; AND

2 C. NOT BASED ON THE POTENTIAL VALUE OF A PATIENT
3 TO A HEALTH CARE PRACTITIONER OR HEALTH CARE FACILITY OR OF THE GOODS
4 OR SERVICES PROVIDED BY THE HEALTH CARE PRACTITIONER OR HEALTH CARE
5 FACILITY; OR

6 (10) AN ACTIVITY ALLOWED UNDER § 1-302 OF THE HEALTH
7 OCCUPATIONS ARTICLE.

8 (C) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR
9 AND SUBJECT TO A FINE OF:

10 (1) IF THE PERSON ENGAGED IN PROHIBITED CONDUCT INVOLVING
11 FEWER THAN 10 PATIENTS, UP TO \$50,000;

12 (2) IF THE PERSON ENGAGED IN PROHIBITED CONDUCT INVOLVING
13 AT LEAST 10 BUT FEWER THAN 20 PATIENTS, UP TO \$100,000; OR

14 (3) IF THE PERSON ENGAGED IN PROHIBITED CONDUCT INVOLVING
15 20 OR MORE PATIENTS, UP TO \$500,000.

16 7.5-606.

17 (A) A BEHAVIORAL HEALTH PROGRAM, HEALTH CARE PRACTITIONER, OR
18 RECOVERY RESIDENCE MAY NOT:

19 (1) REFER A PATIENT TO AN OUT-OF-NETWORK LABORATORY FOR
20 DRUG TESTING IF AN IN-NETWORK LABORATORY IS REASONABLY AVAILABLE; OR

21 (2) ORDER OR PERFORM DRUG TESTING FOR THE SOLE PURPOSE OF
22 CONFIRMING A PRIOR RESULT, UNLESS THERE IS A DOCUMENTED MEDICAL OR
23 LEGAL NEED FOR THE TESTING.

24 (B) A PERSON WHO VIOLATES THIS SECTION IS:

25 (1) GUILTY OF A MISDEMEANOR AND SUBJECT TO A FINE OF:

26 (I) EXCEPT AS PROVIDED IN ITEM (III) OF THIS ITEM, IF THE
27 AMOUNT BILLED TO THE PATIENT FOR DRUG TESTING ORDERED OR PERFORMED IN
28 VIOLATION OF THIS SECTION IS LESS THAN \$5,000, UP TO \$5,000 PER VIOLATION;

29 (II) EXCEPT AS PROVIDED IN ITEM (III) OF THIS ITEM, IF THE

1 AMOUNT BILLED TO A PATIENT FOR DRUG TESTING ORDERED OR PERFORMED IN
2 VIOLATION OF THIS SECTION IS \$5,000 OR MORE, UP TO \$10,000 PER VIOLATION; OR

3 (III) IF THE AMOUNT BILLED TO A PATIENT FOR DRUG TESTING
4 ORDERED OR PERFORMED IN VIOLATION OF THIS SECTION EXCEEDS \$100,000 IN A
5 12-MONTH PERIOD, UP TO \$100,000; AND

6 (2) LIABLE FOR FULL RESTITUTION TO THE PARTY ADVERSELY
7 IMPACTED BY THE VIOLATION.

8 7.5–607.

9 (a) (1) (I) In this [section] SUBSECTION the following words have the
10 meanings indicated.

11 [(2)] (II) “ASAM Level 3.1 services” means the level of clinically managed,
12 low-intensity residential services for the treatment of addictive,
13 substance-related, and co-occurring conditions described by the American Society of
14 Addiction Medicine.

15 [(3)] (III) “Health professional” means a person who:

16 [(i)] 1. Is licensed under the Health Occupations Article; and

17 [(ii)] 2. Is providing mental health or substance-related disorder
18 services according to the requirements of the appropriate professional board.

19 [(b)] (2) [Beginning November 1, 2017, a] A behavioral health program or
20 health professional, when referring an individual to receive services at a recovery residence,
21 shall:

22 [(1)] (I) Provide the individual with a list of certified recovery residences
23 operating in the State that is published by the Department under § 19–2503(b) of this
24 article; and

25 [(2)] (II) Provide to an individual who has been assessed as in need of
26 ASAM Level 3.1 services information on where the individual may receive those services.

27 (B) EACH BEHAVIORAL HEALTH PROGRAM SHALL MAINTAIN A RECORD OF
28 EACH REFERRAL TO OR FROM A RECOVERY RESIDENCE INCLUDING, IF KNOWN,
29 INFORMATION ABOUT WHETHER THE PATIENT CHOSE TO RECEIVE SERVICES AT THE
30 RECOVERY RESIDENCE TO WHICH THE PATIENT WAS REFERRED.

31 (C) A BEHAVIORAL HEALTH PROGRAM MAY NOT MAKE A REFERRAL OF A
32 PROSPECTIVE, CURRENT, OR DISCHARGED PATIENT TO A RECOVERY RESIDENCE IF

1 **THE RECOVERY RESIDENCE:**

2 **(1) IS NOT A CERTIFIED RECOVERY RESIDENCE AS DEFINED IN §**
3 **19-2501 OF THIS ARTICLE; OR**

4 **(2) REQUIRES THE PATIENT TO RECEIVE TREATMENT FROM A**
5 **PARTICULAR HEALTH CARE PRACTITIONER OR HEALTH CARE FACILITY AS A**
6 **CONDITION OF STAYING AT THE RECOVERY RESIDENCE, UNLESS:**

7 **(I) THE RECOVERY RESIDENCE IS SUBJECT TO THE OVERSIGHT**
8 **AND CONTROL OF THE REFERRING BEHAVIORAL HEALTH PROGRAM;**

9 **(II) THE ARRANGEMENT BETWEEN THE PATIENT, RECOVERY**
10 **RESIDENCE, AND THE BEHAVIORAL HEALTH PROGRAM IS NOT IN VIOLATION OF §**
11 **7.5-605 OF THIS SUBTITLE;**

12 **(III) THE RECOVERY RESIDENCE IS A CERTIFIED RECOVERY**
13 **RESIDENCE AS DEFINED IN § 19-2501 OF THIS ARTICLE; AND**

14 **(VI) THE RECOVERY RESIDENCE IS LOCATED CONTIGUOUS TO**
15 **THE REFERRING BEHAVIORAL HEALTH PROGRAM'S FACILITY.**

16 **7.5-608.**

17 **A BEHAVIORAL HEALTH PROGRAM MAY NOT ENTER INTO ANY CONTRACT OR**
18 **AGREEMENT WITH A THIRD PARTY UNDER WHICH:**

19 **(1) THE THIRD PARTY PROVIDES PAYMENTS TO THE BEHAVIORAL**
20 **HEALTH PROGRAM; AND**

21 **(2) THE CONTRACT OR AGREEMENT INDUCES OR INCENTIVIZES**
22 **REDUCING OR LIMITING SERVICES TO A PATIENT:**

23 **(I) TO A LEVEL OF SERVICE BELOW THE LEVEL THAT IS**
24 **REASONABLE TO MEET THE MEDICAL NEEDS OF A PATIENT; OR**

25 **(II) FOR A DURATION OF TIME THAT IS LESS THAN THE**
26 **DURATION THAT IS REASONABLE TO MEET THE MEDICAL NEEDS OF THE PATIENT.**

27 **7.5-609.**

28 **(A) (1) EACH BEHAVIORAL HEALTH PROGRAM SHALL DEVELOP AND**
29 **ADOPT A WRITTEN CODE OF ETHICS THAT THE BEHAVIORAL HEALTH PROGRAM WILL**

1 COMPLY WITH THIS SUBTITLE.

2 (2) EACH BEHAVIORAL HEALTH PROGRAM SHALL MAKE THE CODE OF
3 ETHICS ADOPTED UNDER PARAGRAPH (1) OF THIS SUBSECTION AVAILABLE TO EACH
4 PATIENT AND PROSPECTIVE PATIENT OF THE BEHAVIORAL HEALTH PROGRAM.

5 (B) ON OR BEFORE EACH JULY 1, BEGINNING IN 2021, EACH BEHAVIORAL
6 HEALTH PROGRAM SHALL SUBMIT TO THE ADMINISTRATION:

7 (1) AN ATTESTATION, SIGNED UNDER OATH BY A RESPONSIBLE
8 CORPORATE OFFICER OF THE BEHAVIORAL HEALTH PROGRAM, ATTESTING THAT:

9 (I) THE BEHAVIORAL HEALTH PROGRAM HAS COMPLIED WITH
10 THE REQUIREMENTS OF THIS SUBTITLE, EXCEPT AS ACCOUNTED FOR UNDER ITEM
11 (2) OF THIS SUBSECTION;

12 (II) THE BEHAVIORAL HEALTH PROGRAM HAS ADOPTED AND
13 IMPLEMENTED POLICIES AND PROCEDURES DESIGNED AND INTENDED TO ENSURE
14 COMPLIANCE WITH THE REQUIREMENTS OF THIS SUBTITLE; AND

15 (III) THE ATTESTATION IS BASED ON A REASONABLE
16 INVESTIGATION CARRIED OUT AT THE DIRECTION AND UNDER THE SUPERVISION
17 AND CONTROL OF THE RESPONSIBLE OFFICER FOR THE BEHAVIORAL HEALTH
18 PROGRAM;

19 (2) A DETAILED ACCOUNT OF ANY AREAS IN WHICH THE BEHAVIORAL
20 HEALTH PROGRAM HAS FAILED TO COMPLY WITH THE REQUIREMENTS OF THIS
21 SUBTITLE; AND

22 (3) IF APPLICABLE, A CORRECTIVE ACTION PLAN DESIGNED TO
23 ADDRESS THE BEHAVIORAL HEALTH PROGRAM'S FAILURES TO COMPLY WITH THIS
24 SUBTITLE, AS ACCOUNTED FOR UNDER ITEM (2) OF THIS SUBSECTION.

25 7.5-610.

26 (A) THIS SECTION DOES NOT APPLY TO A VIOLATION OF § 7.5-607(A) OF
27 THIS SUBTITLE.

28 (B) A HEALTH CARE PRACTITIONER MAY NOT REQUEST, RECEIVE, OR
29 RETAIN PAYMENT FOR SERVICES PROVIDED TO A PATIENT IF A DETERMINATION HAS
30 BEEN MADE THAT THE SERVICES VIOLATED THIS SUBTITLE.

31 (C) (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBTITLE, A PERSON

1 THAT VIOLATES ANY PROVISION OF THIS SUBTITLE IS GUILTY OF A MISDEMEANOR
2 AND IS SUBJECT TO A CIVIL PENALTY NOT EXCEEDING \$10,000 FOR EACH
3 VIOLATION.

4 (2) IF A COURT FINDS THAT A PERSON IS GUILTY OF A CRIMINAL
5 OFFENSE UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE COURT SHALL AWARD
6 TO THE PROSECUTION, IN ADDITION TO ANY OTHER RESTITUTION, THE COSTS OF
7 INVESTIGATING AND PROSECUTING THE CASE.

8 (D) (1) A PERSON WHO LOSES MONEY OR PROPERTY AS A RESULT OF A
9 VIOLATION OF THIS SUBTITLE MAY FILE A CIVIL ACTION WITHIN THE STATE
10 AGAINST THE PERSON WHO VIOLATED THIS SUBTITLE OR ANY PERSON WHO AIDED,
11 ABETTED, OR PARTICIPATED IN THE VIOLATION.

12 (2) A COURT SHALL AWARD TO A PLAINTIFF WHO SUCCEEDS IN A
13 CIVIL ACTION FILED UNDER PARAGRAPH (1) OF THIS SUBSECTION:

14 (I) DAMAGES IN AN AMOUNT AT LEAST THREE TIMES THE
15 AMOUNT OF THE DAMAGES SUSTAINED BY THE PLAINTIFF; AND

16 (II) REASONABLE ATTORNEY'S FEES, FILING FEES, AND COSTS.

17 (E) (1) THE ATTORNEY GENERAL OR THE STATE'S ATTORNEY FOR THE
18 COUNTY IN WHICH ANY PART OF THE OFFENSE OCCURRED MAY SEEK PENALTIES,
19 INJUNCTIVE RELIEF, OR OTHER RELIEF, AS APPROPRIATE, TO ENFORCE THE
20 PROVISIONS OF THIS SUBTITLE.

21 (2) THE ATTORNEY GENERAL OR A STATE'S ATTORNEY BRINGING AN
22 ACTION UNDER THIS SUBSECTION MAY RECOVER REASONABLE EXPENSES IN
23 OBTAINING RELIEF, INCLUDING INVESTIGATIVE COSTS, COURT COSTS,
24 REASONABLE ATTORNEY'S FEES, WITNESS COSTS, AND DEPOSITION EXPENSES.

25 (F) IF AN INDIVIDUAL WHO VIOLATES THIS SUBTITLE IS LICENSED OR
26 CERTIFIED BY A HEALTH OCCUPATIONS BOARD UNDER THE HEALTH OCCUPATIONS
27 ARTICLE AND THE BOARD FINDS A VIOLATION OF THIS SUBTITLE, THE BOARD MAY:

28 (1) ASSESS A PENALTY AGAINST THE INDIVIDUAL;

29 (2) SUSPEND OR REVOKE THE LICENSE OR CERTIFICATION, OR DENY
30 AN APPLICATION FOR LICENSURE OR CERTIFICATION OF THE INDIVIDUAL; OR

31 (3) RECOMMEND OTHER DISCIPLINARY ACTIONS, INCLUDING
32 TERMINATION OF EMPLOYMENT.

(G) THE PENALTIES PROVIDED IN THIS SECTION ARE IN ADDITION TO ANY OTHER CRIMINAL, CIVIL, OR ADMINISTRATIVE PENALTIES PROVIDED UNDER ANY OTHER FEDERAL OR STATE LAW.

7.5-611.

THIS SUBTITLE MAY BE CITED AS THE MARYLAND PATIENT PROTECTION AND TREATMENT ETHICS ACT.

19-4B-01.

(a) In this subtitle the following words have the meanings indicated.

(h) "Nursing referral service agency" means one or more individuals engaged in the business of screening and referring, directly or in accordance with contractual arrangements that may include independent contractors, licensed health professionals or care providers to clients for the provision of nursing services, home health aide services, or other home health care services at the request of the client.

19-2501.

(a) In this subtitle the following words have the meanings indicated.

(c) "Certified recovery residence" means a recovery residence that holds a certificate of compliance.

19-2504.

(a) A person may not advertise, represent, or imply to the public that a recovery residence is a certified recovery residence unless the recovery residence has obtained a certificate of compliance under this subtitle.

(b) (1) A person who violates subsection (a) of this section is subject to a civil penalty imposed by the Department not exceeding \$1,000 for each offense.

(2) In setting the amount of a civil penalty under paragraph (1) of this subsection, the Department shall consider the nature, number, and seriousness of the violations, the ability of the certified recovery residence to pay the penalty, and any other factors the Department determines are relevant.

(C) (1) AN EMPLOYEE OF OR A HEALTH CARE PRACTITIONER PROVIDING CARE AT A RECOVERY RESIDENCE SHALL COMPLY WITH THE REQUIREMENTS OF TITLE 7.5, SUBTITLE 6 OF THIS ARTICLE.

(2) A PERSON WHO VIOLATES PARAGRAPH (1) OF THIS SUBSECTION

1 IS SUBJECT TO THE PENALTIES PROVIDED IN TITLE 7.5, SUBTITLE 6 OF THIS
2 ARTICLE.

3 19–2505.

4 NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE STATE OR A
5 POLITICAL SUBDIVISION OF THE STATE MAY NOT DISTRIBUTE ANY STATE OR LOCAL
6 FUNDS TO A RECOVERY RESIDENCE THAT IS NOT A CERTIFIED RECOVERY
7 RESIDENCE.

8 Article – Health Occupations

9 1–301.

10 (a) In this subtitle the following words have the meanings indicated.

11 (f) “Group practice” means a group of two or more health care practitioners
12 legally organized as a partnership, professional corporation, foundation, nonprofit
13 corporation, faculty practice plan, or similar association:

14 (1) In which each health care practitioner who is a member of the group
15 provides substantially the full range of services which the practitioner routinely provides
16 through the joint use of shared office space, facilities, equipment, and personnel;

17 (2) For which substantially all of the services of the health care
18 practitioners who are members of the group are provided through the group and are billed
19 in the name of the group and amounts so received are treated as receipts of the group; and

20 (3) In which the overhead expenses of and the income from the practice are
21 distributed in accordance with methods previously determined on an annual basis by
22 members of the group.

23 1–302.

24 (a) Except as provided in subsection (d) of this section, a health care practitioner
25 may not refer a patient, or direct an employee of or person under contract with the health
26 care practitioner to refer a patient to a health care entity:

27 (1) In which the health care practitioner or the practitioner in combination
28 with the practitioner’s immediate family owns a beneficial interest;

29 (2) In which the practitioner’s immediate family owns a beneficial interest
30 of 3 percent or greater; or

31 (3) With which the health care practitioner, the practitioner’s immediate
32 family, or the practitioner in combination with the practitioner’s immediate family has a

1 compensation arrangement.

2 (b) A health care entity or a referring health care practitioner may not present or
3 cause to be presented to any individual, third party payor, or other person a claim, bill, or
4 other demand for payment for health care services provided as a result of a referral
5 prohibited by this subtitle.

6 (c) Subsection (a) of this section applies to any arrangement or scheme, including
7 a cross-referral arrangement, which the health care practitioner knows or should know has
8 a principal purpose of assuring indirect referrals that would be in violation of subsection
9 (a) of this section if made directly.

10 (d) The provisions of this section do not apply to:

11 (1) A health care practitioner when treating a member of a health
12 maintenance organization as defined in § 19-701 of the Health – General Article if the
13 health care practitioner does not have a beneficial interest in the health care entity;

14 (2) A health care practitioner who refers a patient to another health care
15 practitioner in the same group practice as the referring health care practitioner;

16 (3) A health care practitioner with a beneficial interest in a health care
17 entity who refers a patient to that health care entity for health care services or tests, if the
18 services or tests are personally performed by or under the direct supervision of the referring
19 health care practitioner;

20 (4) A health care practitioner who refers in-office ancillary services or tests
21 that are:

22 (i) Personally furnished by:

23 1. The referring health care practitioner;

24 2. A health care practitioner in the same group practice as
25 the referring health care practitioner; or

26 3. An individual who is employed and personally supervised
27 by the qualified referring health care practitioner or a health care practitioner in the same
28 group practice as the referring health care practitioner;

29 (ii) Provided in the same building where the referring health care
30 practitioner or a health care practitioner in the same group practice as the referring health
31 care practitioner furnishes services; and

32 (iii) Billed by:

33 1. The health care practitioner performing or supervising the

1 services; or

2 2. A group practice of which the health care practitioner
3 performing or supervising the services is a member;

4 (5) A health care practitioner who has a beneficial interest in a health care
5 entity if, in accordance with regulations adopted by the Secretary:

6 (i) The Secretary determines that the health care practitioner's
7 beneficial interest is essential to finance and to provide the health care entity; and

8 (ii) The Secretary, in conjunction with the Maryland Health Care
9 Commission, determines that the health care entity is needed to ensure appropriate access
10 for the community to the services provided at the health care entity;

11 (6) A health care practitioner employed or affiliated with a hospital, who
12 refers a patient to a health care entity that is owned or controlled by a hospital or under
13 common ownership or control with a hospital if the health care practitioner does not have
14 a direct beneficial interest in the health care entity;

15 (7) A health care practitioner or member of a single specialty group
16 practice, including any person employed or affiliated with a hospital, who has a beneficial
17 interest in a health care entity that is owned or controlled by a hospital or under common
18 ownership or control with a hospital if:

19 (i) The health care practitioner or other member of that single
20 specialty group practice provides the health care services to a patient pursuant to a referral
21 or in accordance with a consultation requested by another health care practitioner who does
22 not have a beneficial interest in the health care entity; or

23 (ii) The health care practitioner or other member of that single
24 specialty group practice referring a patient to the facility, service, or entity personally
25 performs or supervises the health care service or procedure;

26 (8) A health care practitioner with a beneficial interest in, or compensation
27 arrangement with, a hospital or related institution as defined in § 19–301 of the Health –
28 General Article or a facility, service, or other entity that is owned or controlled by a hospital
29 or related institution or under common ownership or control with a hospital or related
30 institution if:

31 (i) The beneficial interest was held or the compensation
32 arrangement was in existence on January 1, 1993; and

33 (ii) Thereafter the beneficial interest or compensation arrangement
34 of the health care practitioner does not increase;

35 (9) A health care practitioner when treating an enrollee of a

1 provider-sponsored organization as defined in § 19–7A–01 of the Health – General Article
2 if the health care practitioner is referring enrollees to an affiliated health care provider of
3 the provider-sponsored organization;

4 (10) A health care practitioner who refers a patient to a dialysis facility, if
5 the patient has been diagnosed with end stage renal disease as defined in the Medicare
6 regulations pursuant to the Social Security Act;

7 (11) A health care practitioner who refers a patient to a hospital in which
8 the health care practitioner has a beneficial interest if:

9 (i) The health care practitioner is authorized to perform services at
10 the hospital; and

11 (ii) The ownership or investment interest is in the hospital itself and
12 not solely in a subdivision of the hospital; or

13 (12) Subject to subsection (f) of this section, a health care practitioner who
14 has a compensation arrangement with a health care entity, if the compensation
15 arrangement is funded by or paid under:

16 (i) A Medicare shared savings program accountable care
17 organization authorized under 42 U.S.C. § 1395jjj;

18 (ii) As authorized under 42 U.S.C. § 1315a:

19 1. An advance payment accountable care organization
20 model;

21 2. A pioneer accountable care organization model; or

22 3. A next generation accountable care organization model;

23 (iii) An alternative payment model approved by the federal Centers
24 for Medicare and Medicaid Services; or

25 (iv) Another model approved by the federal Centers for Medicare and
26 Medicaid Services that may be applied to health care services provided to both Medicare
27 beneficiaries and individuals who are not Medicare beneficiaries.

28 (e) A health care practitioner exempted from the provisions of this section in
29 accordance with subsection (d) of this section shall be subject to the disclosure provisions
30 of § 1–303 of this subtitle.

31 (f) If the Maryland Insurance Commissioner issues an order under § 15–143 of
32 the Insurance Article that a compensation arrangement funded by or paid under a payment
33 model listed in subsection (d)(12) of this section violates the Insurance Article or a

regulation adopted under the Insurance Article, the exemption provided under subsection (d)(12) of this section for a health care practitioner who has the compensation arrangement with a health care entity is null and void.

(g) Subsection (d)(12) of this section may not be construed to:

(1) Permit an individual or entity to engage in the insurance business, as defined in § 1–101 of the Insurance Article, without obtaining a certificate of authority from the Maryland Insurance Commissioner and satisfying all other applicable requirements of the Insurance Article;

(2) (i) Impose additional obligations on a carrier providing incentive-based compensation to a health care practitioner under § 15–113 of the Insurance Article; or

(ii) Require the disclosure of information regarding the incentive-based compensation, except as required under § 15–113 of the Insurance Article;

(3) Authorize a health care entity to knowingly make a direct or indirect payment to a health care practitioner as an inducement to reduce or limit medically necessary services to individuals who are under the direct care of the health care practitioner;

(4) Permit an arrangement that violates:

(i) § 14–404(a)(15) of this article; or

(ii) § 8–508, § 8–511, § 8–512, § 8–516, or § 8–517 of the Criminal Law Article;

(5) Narrow, expand, or otherwise modify:

(i) Any definition in § 1–301 of this subtitle, including the definition of “in-office ancillary services”; or

(ii) Any exception in subsection (d)(4) of this section including the exception for referrals for in-office ancillary services or tests; or

(6) Require a compensation arrangement to comply with the provisions of subsection (d)(12) of this section if the compensation arrangement is exempt under any other provision of subsection (d) of this section.

Article – Insurance

27–209.

(a) Except as otherwise expressly provided by law, a person, including a health

1 maintenance organization, may not knowingly:

2 (1) allow, make, or offer to make a contract of life insurance or health
3 insurance or an annuity contract or an agreement as to the contract other than as plainly
4 expressed in the contract;

5 (2) pay, allow, give, or offer to pay, allow, or give directly or indirectly as
6 an inducement to the insurance or annuity:

7 (i) a rebate of premiums payable on the contract;

8 (ii) a special favor or advantage in the dividends or other benefits
9 under the contract;

10 (iii) paid employment or a contract for services of any kind; or

11 (iv) any valuable consideration or other inducement not specified in
12 the contract;

13 (3) directly or indirectly give, sell, purchase, offer or agree to give, sell, or
14 purchase, or allow as inducement to the insurance or annuity or in connection with the
15 insurance or annuity, regardless of whether specified in the policy or contract, an
16 agreement that promises returns and profits, or stocks, bonds, or other securities, or a
17 present or contingent interest in or measured by stocks, bonds, or other securities, of an
18 insurer or other corporation, association, or partnership, or dividends or profits accrued or
19 to accrue on stocks, bonds, or other securities; or

20 (4) offer, promise, or give any valuable consideration not specified in the
21 contract, except for educational materials, promotional materials, or articles of
22 merchandise that cost no more than \$50.

23 (b) A person may not make receipt of any educational materials, promotional
24 materials, or articles of merchandise under subsection (a)(4) of this section contingent on
25 the sale or purchase of insurance.

26 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
27 October 1, 2020.