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New Tennessee Law Targets Marketing and Referrals by Alcohol and Drug Abuse Treatment Providers

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The growing concern over opioid abuse has prompted both the federal government and many states to address concerns over referrals for substance abuse treatment. Tennessee recently addressed the issue in House Bill No. 2068, which took effect July 1, 2018, and significantly impacts the marketing and referral practices of providers of alcohol and drug treatment services. Additionally, on October 24, 2018, President Trump signed into law a new sweeping bill aimed at the opioid crisis, which also targets marketing and referral practices. This alert has a targeted focus on the new Tennessee law, but updates on the federal law are forthcoming.

With a few minor exceptions, the law impacts anyone who provides alcohol and drug services in Tennessee, including the following licensed providers: (1) alcohol and drug services providers licensed under Title 33 of the Tennessee Code Annotated; (2) health care providers, such as physicians, nurses, physician assistants and psychologists, licensed under Title 63; and (3) health care facilities, including hospitals, licensed under Title 68.

The law generally prohibits four types of conduct by alcohol and drug services providers: (1) making false or misleading statements about the provider's identity, products, goods, services, or geographical locations in marketing materials; (2) including any false information or electronic links, coding, or activation on a website that provides false information or that surreptitiously directs the reader to another website; (3) soliciting or receiving (or attempting to solicit or receive) a commission or kickback in return for a referral to or from a provider of alcohol and drug services; and (4) entering into an arrangement with a marketing provider who agrees to generate referrals through a call center or web-based presence, provided that this may be acceptable if certain disclosures are made to the patient. It is unclear exactly what type of conduct regulators will target under the marketing-related prohibition, but a general review of marketing materials and website content is warranted in light of the new law. Additionally, this is a good time to review all relationships with referral sources to ensure such arrangements do not present risk under the new law.

Penalties for violations of the law vary depending on licensure of the offender. In general, the range for civil penalties is \$250 to \$5,000 per violation. Perhaps more importantly, *all* violations can lead to suspension or revocation of the provider's license, regardless of which Tennessee regulatory authority issued the license.

Of key importance to note, the new Tennessee law and the new federal law both demonstrate the focus on cracking down on a wide variety of marketing practices. Unlike many other health care fraud and abuse laws, prohibited conduct under the new Tennessee law and the new federal law is not limited to marketing or referrals involving beneficiaries of governmental programs. These laws have general application to all types of patients, including private pay and those covered by private insurance. Therefore, all providers of alcohol and drug treatment services need to be aware of the changing landscape in this area and review both their marketing practices and any commission or incentive programs to ensure compliance.

If you have questions on how this law will affect your operations, please contact [Layna Rush](#) or any member of the [Baker Ober Health Law Group](#).

