

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
91st General Assembly
Regular Session, 2017

A Bill

HOUSE BILL 1651

By: Representative Boyd

For An Act To Be Entitled

AN ACT CONCERNING SOLICITATIONS AFTER MOTOR VEHICLE
ACCIDENTS; AND FOR OTHER PURPOSES.

Subtitle

CONCERNING SOLICITATIONS AFTER MOTOR
VEHICLE ACCIDENTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 4, Chapter 88, is amended to add an additional subchapter to read as follows:

Subchapter 11 – Healthcare Marketers And Chiropractic Procurers Solicitation
Act

4-88-1101. Title.

This subchapter shall be known as and may be cited as the "Healthcare Marketers and Chiropractic Procurers Solicitation Act".

4-88-1102. Legislative findings and intent.

(a) The General Assembly finds that:

(1) The use of healthcare marketers and chiropractic procurers by chiropractic physicians and providers of medical services has increased in recent years;

(2) Healthcare marketers and chiropractic procurers are paid by chiropractic physicians and providers of medical services to recruit patients, clients, or customers for chiropractic treatment and medical services;



(3) Due to the incentive of being paid for recruiting efforts, healthcare marketers and chiropractic procurers attempt to obtain as many patients as possible for treatment and medical services regardless of the means utilized to obtain the patient's business;

(4) On occasion, healthcare marketers and chiropractic procurers make deceptive statements and advertisements in order to obtain new patients, clients, or customers for treatment and medical services to Arkansas consumers in person, by telephone, and by electronic means;

(5) A number of healthcare marketers and chiropractic procurers at times will utilize deceptive statements to imply that a relationship exists between a chiropractic physician or provider of medical services and an insurance company or to suggest that treatment and medical services will be free, but fail to explain that the treatment or medical services are offered by a chiropractor physician or other provider of medical services or that a medical lien may be filed against the individual for treatment or medical services;

(6) Deceptive statements by a number of healthcare marketers or chiropractic procurers have resulted in consumers:

(A) Seeking health care based upon the subjective judgment of healthcare marketers or chiropractic procurers;

(B) Incurring unnecessary medical bills when the healthcare marketer or chiropractic procurer promises that the treatment or medical services are free;

(C) Filing unnecessary insurance claims;

(D) Being confused; and

(E) Being exposed to danger and threats to their personal security;

(7) Healthcare marketers and chiropractic procurers obtain motor vehicle accident reports from law enforcement agencies and use the information in motor vehicle accident reports to contact individuals named in motor vehicle accident reports at their residences in person, by telephone or cellular text message, or by other electronic means;

(8) A number of healthcare marketers or chiropractic procurers contact individuals named in motor vehicle accident victims at any time of the day or night at their places of employment or at their residences, and without the consent of the individuals;

(9) Healthcare marketers and chiropractic procurers are not regulated by the Arkansas State Board of Chiropractic Examiners; and

(10) Due to the compensation incentive to obtain patients for treatment or medical services and the lack of any formal regulatory framework, there is a need to protect a consumer's financial and personal security and ability to make informed healthcare choices that are adversely affected if deception is used by healthcare marketers and chiropractic procurers.

(b) It is the intent of the General Assembly:

(1) To create a legal framework governing the marketing of chiropractic treatment and medical services;

(2) To ensure adequate consumer protections are in place and enforced; and

(3) To eliminate unnecessary administration.

4-88-1103. Definitions.

As used in this subchapter:

(1) "Chiropractic procurer" means a healthcare marketer engaged in solicitation or attempted solicitation of individuals for treatment by a chiropractic physician;

(2) "Healthcare marketer" means an individual or entity that for pecuniary gain conducts, attempts to conduct, or directs another individual to conduct, a solicitation;

(3)(A) "Healthcare provider" means an individual who is licensed, certified, or otherwise authorized by the laws of this state to administer health care in the ordinary course of the practice of his or her profession.

(B) "Healthcare provider" includes without limitation:

(i) A chiropractic physician or sponsoring provider;

(ii) An osteopath;

(iii) A physical therapist;

(iv) A physician; or

(v) Any medical or healing arts provider;

(4) "Healthcare provider-patient relationship" means, at a minimum, a relationship established between a healthcare provider and an individual when the healthcare provider has previously provided medical

services or conducted an in-person examination of the individual;

(5) "Immediate family member" means an individual's parent, guardian, child, ward, foster child, sibling, stepchild, and stepparent;

(6) "Medical services" means the diagnosis, cure, mitigation, treatment, or prevention of any disease, injury, medical condition, or infirmity for the purpose of affecting any structure or function of the human body;

(7) "Public media" means telephone directories, professional directories, newspapers and other periodicals, radio and television, billboards, and mailed or electronically transmitted written or visual communications that do not involve in-person or direct contact with a specific prospective client, patient, or customer;

(8)(A) "Solicitation" means direct contact by an individual with another individual by in-person, telephonic, or electronic means for the purpose of offering, referring, or inducing the person to obtain medical services from a particular healthcare provider.

(B) "Solicitation" does not include:

(i) Advertising directly to the general public by public media;

(ii) Direct contact that is:

(a) Taken from a general list of telephone numbers; and

(b) Not targeted at an individual named in a motor vehicle accident report or the immediate family members of such an individual within thirty (30) days of the motor vehicle accident;

(iii) Contact between a healthcare provider and an individual with whom the healthcare provider has a prior healthcare provider-patient relationship; or

(iv) Contact between a person and his or her immediate family member; and

(9) "Sponsoring provider" means a chiropractic physician who registers a specific chiropractic procurer under his or her chiropractic license with the Arkansas State Board of Chiropractic Examiners under § 17-81-107(b) to act as a chiropractic procurer or a healthcare provider who has employed or retained a person to act as a healthcare marketer.

4-88-1104. Requirements for doing business – Chiropractic procurer.

(a) It is unlawful for a person to transact business in this state as a chiropractic procurer unless he or she is registered as a procurer under § 17-81-107(b).

(b) The registration of a chiropractic procurer shall reflect the following without limitation:

- (1) The full name of the chiropractic procurer;
- (2) The address of the chiropractic procurer; and
- (3) The phone number that the chiropractic procurer will use to make phone calls to potential patients.

4-88-1105. Required disclosures.

During a solicitation of an individual for treatment or medical services, a healthcare marketer or chiropractic procurer shall:

- (1) State his or her legal name;
- (2) Disclose to the consumer how he or she obtained the individual's contact information;
- (3) Disclose that he or she is not affiliated with an insurance company;
- (4) State the name of his or her sponsoring provider;
- (5) State the area of practice of his or her sponsoring provider;
- (6) State that the individual is under no obligation to be treated by any healthcare provider;
- (7) Disclose that any treatment or medical services provided to the individual may generate a bill and that the individual is responsible for payment for any treatment or medical services rendered; and
- (8) State that the healthcare provider that provides treatment or medical services to the individual may file a medical lien against the individual to guarantee payment for the treatment or medical services provided to the individual.

4-88-1106. Prohibited activities.

(a) During the first thirty (30) days following a motor vehicle accident, a healthcare provider or a healthcare marketer or chiropractic procurer on behalf of a healthcare provider, shall not conduct or attempt to

conduct, or knowingly permit another person to conduct or attempt to conduct, a solicitation of an individual involved in a motor vehicle accident.

(b) A healthcare marketer shall not:

(1) State, imply, or otherwise communicate that:

(A) He or she has an affiliation with an insurance company;

(B) Payment of an insurance claim or insurance coverage will be available or otherwise affected by the individual's willingness to see a specific chiropractic physician or healthcare provider;

(C) The Attorney General's office, the Arkansas State Board of Chiropractic Examiners, or any other regulatory or governmental agency has approved or is otherwise affiliated with the healthcare marketer or chiropractic procurer; or

(D) A specific medical facility is a preferred medical clinic or in-network provider for any purpose;

(2) Discuss an insurance claim or assist in the submission of an insurance claim of an individual named in a motor vehicle accident report;

(3) Approach potential patients, customers, or clients at their residence or place of employment;

(4) Offer or give anything of value or promise payment or gifts of any kind in connection with a solicitation contact;

(5) Use a false name or identity during the solicitation of individuals named in a motor vehicle accident report regarding treatment or medical services;

(6) Provide or promise to provide prescription or nonprescription medications or medical supplies unless he or she is authorized to prescribe and treat according to state law; or

(7) Make any other statement that is deceptive or misleading within the context of a solicitation.

(c) In addition to the requirements of subsection (b) of this section, a chiropractic procurer shall not make contact with an individual named in a motor vehicle accident report from a telephone number other than the telephone number registered by his or her sponsoring provider.

(d) In addition to the enforcement provisions contained in § 4-88-1108, a violation of this section shall result in the following:

(1) Any charges owed by, or incurred on behalf of, an individual

named in a motor vehicle accident report for medical services provided by a healthcare provider to the individual named in the motor vehicle accident report are void;

(2) Any payments paid by, or on behalf of, an individual named in a motor vehicle accident report for medical services provided by a healthcare provider to the individual named in a motor vehicle accident report shall be returned to the insurance company or other payor; and

(3) A sponsoring provider shall not pursue collection from the individual named in a motor vehicle accident report.

4-88-1107. Obligations of healthcare marketers and chiropractic procurers.

A healthcare marketer or chiropractic procurer operating in this state shall:

(1) Develop a training program for all employees or authorized representatives;

(2) Develop and maintain a solicitation script for use by all employees and authorized representatives;

(3)(A) Make and keep accounts, correspondence, memoranda, papers, books, and other records for a period of five (5) years.

(B) The records described in subdivision (3)(A) of this section shall include:

(i) The name and telephone number of individuals solicited;

(ii) The name of the sponsoring provider;

(iii) If contact is initiated due to a motor vehicle accident, the date and time of the motor vehicle accident;

(iv) The extent of any treatment or medical services obtained by the individual;

(v) The amount of compensation paid to a chiropractic procurer for the solicitation with each actual or potential patient, customer, or client; and

(vi) Any moneys shared by the healthcare marketer with other persons for conducting work as a healthcare marketer;

(4) Maintain a log of all training provided to a chiropractic procurer or healthcare marketer, and the employees or authorized

representatives of the chiropractic procurer or healthcare marketer, that includes:

(A) The contents of any training;
(B) The dates that training is provided; and
(C) The signature of each individual receiving the training and acknowledgment that he or she has completed the training and agrees to perform the work of solicitation in accordance with the training;
and

(5) Maintain all solicitations, advertisements, and advertising materials used by the healthcare marketer in solicitation of consumers.

4-88-1108. Violations – Enforcement.

A violation of this subchapter is:

(1) A deceptive and unconscionable trade practice under § 4-88-107; and
(2) Subject to the penalties, remedies, and enforcement provided by § 4-88-101 et seq.