

December 8, 2017

TO: Members, Subcommittee on Oversight and Investigations

FROM: Committee Majority Staff

RE: Hearing entitled “Examining Concerns of Patient Brokering and Addiction Treatment Fraud.”

The Subcommittee on Oversight and Investigations will hold a hearing on Tuesday, December 12, 2017, at 10:15 a.m. in 2322 Rayburn House Office Building. The hearing is entitled “Examining Concerns of Patient Brokering and Addiction Treatment Fraud.”

The United States is experiencing an epidemic of opioid abuse and addiction, with drug overdose deaths increasing dramatically over the last two decades and becoming the leading cause of injury death in the United States.¹ The most recent data from the Centers for Disease Control and Prevention (CDC) note that the opioid epidemic in the U.S. is taking 91 American lives per day.²

With the opioid epidemic and an increase in substance use disorders, there has been an increased demand for treatment. Recent reports indicate that individuals known as “patient brokers” are treating individuals seeking treatment for their opioid addiction as a commodity, rather than helping them receive legitimate treatment and ultimately achieve recovery. This hearing will examine patient broker schemes and other concerns of fraud and abuse in the treatment industry.

I. WITNESSES

- Douglas Tieman, President and CEO, Caron Treatment Centers;
- Pete Nielsen, CEO, California Consortium of Addiction Programs and Professionals;
- Dave Aronberg, State Attorney, 15th Judicial Circuit, Palm Beach County, FL;
- Alan S. Johnson, Chief Assistant State Attorney, 15th Judicial Circuit, Palm Beach County, FL; Head, Palm Beach County Sober Homes Task Force; and

¹ U.S. Department of Health and Human Services, Opioids, About the Epidemic, *available at* <https://www.hhs.gov/opioids/about-the-epidemic/index.html>.

² Centers for Disease Control and Prevention, Opioid Overdose, Understanding the Epidemic, *available at* <https://www.cdc.gov/drugoverdose/epidemic/index.html/>.

- Eric Gold, Assistant Attorney General, Chief, Health Care Division, Office of the Massachusetts Attorney General.

II. BACKGROUND

The opioid epidemic that has ravaged the United States has led to record numbers of overdoses and overdose deaths. It has also resulted in an increased need for treatment. An August 2017 *Washington Post* article estimated that there are 2.6 million Americans with an opioid addiction.³ Recently, an increasing number of reports have revealed problems resulting from the dramatic surge of addiction treatment centers and “sober living homes” in a number of states. For example, media reports over the past six months highlight individuals known as “patient brokers.”⁴ According to these reports, patient brokers target individuals with substance use disorders, as well as their loved ones, and push them to seek treatment at certain outpatient treatment facilities and to live at affiliated “sober living homes” while undergoing treatment. In exchange for steering patients towards these facilities or sober living homes, patient brokers allegedly receive generous financial kickbacks from the facilities or homes.

In addition to recruiting individuals via word of mouth, patient brokers reportedly engage in unethical marketing practices. For example, there are allegations that individuals will change the contact information of a legitimate treatment facility or sober living home that comes up in an internet search for deceptive purposes. Instead of contacting a legitimate treatment facility or sober living home, someone who is seeking treatment is instead contacting someone who intends to re-direct them to a facility or home that pays a commission for recruiting the patient. Other practices can be disguised as call centers or call aggregators. Some of these call centers and aggregators will advertise their “services” to treatment facilities with promises of filling their beds. These marketers allegedly have little or no training, licensing, or certification requirements. The lack of training and certification can result in patients and their families being misled and misdirected by individuals who are motivated by profit rather than clinical decisions that will place patients in a treatment facility that meets their needs.

Patient brokers are paid in one of two ways: a per-head fee that can range from \$500 to \$5,000 for each patient who successfully enters a treatment center; or a monthly fee from a facility based on the broker meeting a quota of patients. These kickback schemes can generate tens of thousands of dollars in earnings.⁵ Reports also suggest that to help lure patients to these

³ Lenny Bernstein, *Deaths from drug overdoses soared in the first nine months of 2016*, THE WASHINGTON POST, August 8, 2017, https://www.washingtonpost.com/news/to-your-health/wp/2017/08/08/deaths-from-drug-overdoses-soared-in-the-first-nine-months-of-2016/?utm_term=.ebae31ff97da.

⁴ See Teri Sforza et al., *How some Southern California drug rehab centers exploit addiction*, ORANGE COUNTY REGISTER, May 21, 2017, <http://www.ocregister.com/2017/05/21/how-some-southern-california-drug-rehab-centers-exploit-addiction/>; David Armstrong and Evan Allen, *The addict brokers: Middlemen profit as desperate patients are ‘treated like paychecks,’* STAT, May 28, 2017, <https://www.statnews.com/2017/05/28/addict-brokers-opioids/>; and Lisa Riordan Seville, et al., *Florida’s Billion-Dollar Drug Treatment Industry Is Plagued by Overdoses, Fraud*, NBC NEWS, June 25, 2017, <http://www.nbcnews.com/feature/megyn-kelly/florida-s-billion-dollar-drug-treatment-industry-plagued-overdoses-fraud-n773376>.

⁵ David Armstrong and Evan Allen, *The addict brokers: Middlemen profit as desperate patients are ‘treated like paychecks,’* STAT, May 28, 2017, <https://www.statnews.com/2017/05/28/addict-brokers-opioids/>.

facilities, patient brokers and sober living home owners offer incentives such as “scholarships” for treatment, free plane tickets, free housing, discounted groceries, daily yoga sessions, movie tickets, and free cigarettes, among other enticements.

In addition to paying for travel, reports indicate that some brokers offer to assist patients with obtaining private insurance.⁶ In some instances, the broker then pays the premiums on behalf of the patient until treatment benefits are exhausted after 60 to 90 days. It has also been reported that some treatment facilities bill private insurance at higher out-of-network rates that can easily total more than \$10,000 a week.⁷ In addition, there have been allegations that some brokers follow these individuals with substance use disorders after they are released from treatment and provide them with drugs so that they will relapse and the entire process can be repeated.⁸ This scheme creates an incentive for relapse and profit rather than treatment and recovery.

Reports indicate that the facilities may engage in abusive billing practices, including billing insurers several times per week, per patient, for unnecessary urine tests that can cost up to several thousand dollars per test.⁹ A basic urine test in a cup with strips that can detect ten types of drugs or more should cost less than \$10 and can display the results within minutes.¹⁰ While testing patients for drug use is a necessary part of treatment and in some instances are a condition of living in a sober living home, concerns have been raised with the frequency and size of the panels being ordered for testing. For example, when speaking with an insurance company, Committee staff learned that there are instances when expensive confirmatory tests are ordered with such high frequency that the results of one test are not yet available before another test is ordered. In another example, confirmatory tests were ordered that included allergy tests as part of the drug test panel. The frequency and size of the panel can increase the cost of these tests.

Many of these reports also note that sober living homes and certain drug treatment centers lack oversight, transparency, and accountability. On July 13, 2017, bipartisan Committee leaders sent a letter to the U.S. Department of Health and Human Services (HHS) regarding the federal government’s efforts to oversee and combat incidents of patient brokering.¹¹ The Committee received a response from HHS on September 12, 2017, in which the Department noted that “there is wide variability among states in terms of how they regulate residential

⁶ *Id.*

⁷ *Id.*

⁸ Lisa Riordan Seville, et al. Florida’s Billion-Dollar Drug Treatment Industry Is Plagued by Overdoses, Fraud, NBC NEWS, June 25, 2017, <http://www.nbcnews.com/feature/megyn-kelly/florida-s-billion-dollar-drug-treatment-industry-plagued-overdoses-fraud-n773376>.

⁹ Pat Beall and Christine Stapleton, *Addiction treatment bonanza: How urine tests rake in millions*, PALMBEACHPOST, August 1, 2015, <http://www.mypalmbeachpost.com/news/addiction-treatment-bonanza-how-urine-tests-rake-millions/rvmrD8VMBwykDtd6TCSALJ/>.

¹⁰ Fred Schulte and Elizabeth Lucas, *How Doctors Are Getting Rich on Urine Tests for Opioid Patients*, KAISER HEALTH NEWS, November 6, 2017, <https://www.bloomberg.com/news/features/2017-11-06/how-doctors-are-getting-rich-on-urine-tests-for-opioid-patients>.

¹¹ Letter from Hon. Greg Walden, Chairman, H. Comm. on Energy & Commerce, et al., to Hon. Tom Price, Sec’y, U.S. Dept. of Health & Human Services, July 13, 2017, *available at*: <https://archives-energycommerce.house.gov/sites/republicans.energycommerce.house.gov/files/documents/20170713HHS.pdf>.

treatment and sober living homes.”¹² Enclosed with HHS’ response was a document created in 2012 by the National Association for State Alcohol and Drug Abuse Directors (NASADAD), entitled “State Regulations on Substance Use Disorder Programs and Counselors: An Overview,” which contains information on state licensure bodies and practices.¹³ This compilation of state regulations is nearly five years old and needs to be updated. According to HHS, the Substance Abuse and Mental Health Services Administration (SAMHSA) has engaged NASADAD to update this document as soon as possible.

On November 17, bipartisan Committee leaders sent letters to government departments in six states: Arizona, California, Colorado, Florida, Massachusetts, and Pennsylvania. The letters sought to gather additional information regarding how substance use disorder treatment facilities are regulated and overseen at the state level.¹⁴

a. Federal policies and issues

Federal laws, such as the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) and the Affordable Care Act of 2010, increased insurance coverage for behavioral health and substance use disorders. The MHPAEA preserved the Mental Health Parity Act of 1996 protections and added new protections, such as extending the parity requirements to substance use disorders.¹⁵

Additional federal laws, such as the Americans with Disabilities Act (ADA) and the Fair Housing Act (FHA), protect individuals with a substance use disorder. Many states and localities have fair housing laws that are similar to the federal FHA, and some state laws include additional bases on which discrimination is prohibited.¹⁶ Title II of the ADA provides comprehensive civil rights protections for “qualified individuals with disabilities,” which is defined as a person who has a physical or mental impairment that substantially limits a “major life activity,” has a record of such an impairment, or is regarded as having such an impairment.¹⁷ Examples of physical or mental impairment include, but are not limited to, drug addiction and

¹² Letter from Barbara Pisaro Clark, Act. Asst. Sec’y for Leg., to Hon. Greg Walden, Chairman H. Comm. on Energy & Commerce, September 12, 2017, available at: https://energycommerce.house.gov/wp-content/uploads/2017/07/20170912HHS_Response.pdf.

¹³ The National Association of State Alcohol and Drug Abuse Directors (NASADAD), *State Regulations on Substance Use Disorder Programs and Counselors: An Overview*, December 2012, available at https://energycommerce.house.gov/wp-content/uploads/2017/07/20170912HHS_Response_Enclosure.pdf.

¹⁴ Letters from Hon. Greg Walden, Chairman, H. Comm. on Energy & Commerce, et al. to six state governments, November 17, 2017, available at <https://energycommerce.house.gov/news/letter/letters-departments-six-state-governments-patient-brokering-allegations/>.

¹⁵ The Centers for Medicare & Medicaid Services, The Center for Consumer Information & Insurance Oversight, The Mental Health Parity and Addiction Equity Act (MHPAEA), available at [https://www.cms.gov/ccio/programs-and-initiatives/other-insurance-protections/mhpaea_factsheet.html#Summary of MHPAEA Protections](https://www.cms.gov/ccio/programs-and-initiatives/other-insurance-protections/mhpaea_factsheet.html#Summary%20of%20MHPAEA%20Protections).

¹⁶ U.S. Department of Housing and Urban Development, Disability Rights in Housing, available at https://www.hud.gov/program_offices/fair_housing_equal_opp/disabilities/inhousing.

¹⁷ U.S. Department of Justice, Civil Rights Division, *Disability Rights Section*, Title II Highlights, available at <https://www.ada.gov/archive/t2hlt95.htm>.

alcoholism.¹⁸ However, individuals who engage in the illegal use of drugs are not protected by the ADA when an action is taken on the basis of their illegal use of drugs.¹⁹

b. State policies and issues

The substance abuse treatment and sober living home industries are largely regulated at the state level. Further, state regulations and policies regarding substance use disorder treatment facilities appear to vary state by state. For example, Florida has a law that prohibits patient brokering.²⁰ In June 2017, Florida also passed legislation that targets questionable marketing practices used to recruit individuals for treatment.²¹ Both laws are unique to Florida and challenges still exist, especially when an issue crosses state lines.

In addition to legislation, law enforcement is an important component to tackling the issue of patient brokers, as well as other fraud and abuse within the substance abuse disorder treatment community. The State Attorney in Palm Beach County, Florida established a Sober Homes Task Force to combat this issue. The Task Force not only investigates and assists in prosecuting patient brokers, fraudulent treatment facilities and sober living homes, but has also identified policy areas that could strengthen existing laws to give law enforcement and the judicial system the tools it needs to go after bad actors.²² One challenge that appears to be consistent across states, is that sober living homes are largely unregulated, with few professional certifications required.

While Florida has been a leader on this issue, it is not the only state impacted by patient brokering and other fraudulent schemes within the substance use disorder treatment facility and sober living home industries. According to stakeholders and media reports, other states, such as California and Arizona are experiencing similar issues, and some suggest that these schemes are beginning to become a national problem.

III. ISSUES

The following issues may be examined at the hearing:

- Fraud and abuse within the treatment industry;
- How individuals who are seeking treatment are affected by these schemes;

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Florida Legislature, 2012 Florida Statutes, Title XLVI, Chapter 817, Section 505, *available at* http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0800-0899/0817/Sections/0817.505.html.

²¹ Lulu Ramadan, *New: Sober-home regulation starts Saturday with new Florida law*, PALM BEACH POST, June 27, 2017, <http://www.palmbeachpost.com/news/state--regional/new-sober-home-regulation-starts-saturday-with-new-florida-law/cdIUQ9PBeyeDOhLhi3SBsO/>.

²² Palm Beach County Sober Homes Task Force Report, Jan. 1, 2017, *available at* http://www.sa15.state.fl.us/stateattorney/SoberHomes/_content/SHTFReport2017.pdf.

- What the treatment community is doing to combat this issue;
- How oversight of the treatment industry can be improved;
- Successful initiatives and tools utilized by states to combat these issues; and
- Barriers that may exist to successfully combat patient brokers and other fraudulent activities within the substance use disorder treatment industry.

IV. STAFF CONTACTS

If you have any questions regarding the hearing, please contact Brittany Havens, Alan Slobodin, or Jen Barblan of the Committee staff at (202) 225-2927.