



Ethical Policies Regarding Inducements

TERMS:

- Brokering: The act of negotiating a fee for a referral.
- Freedom to Choose: A resident's right to accept or reject recommended services. This is an essential component of the Social Model of Recovery.
- Inducement: Incentive to consume (i.e. utilize an insurance benefit) or to make a referral that is influenced or predicated on reward rather than an individual's need.
- Kickback: The exchange (or offer to exchange), especially illicitly, anything of value in an effort to induce (or reward) the referral of programs and/or services i.e. bribe, inducement, payment. An undercover or indirect payment for a favor.
- Patient Brokering: This is a term borrowed from the medical field, and is commonly used in discussions of the issues related to this family of abuses. Brokering is the act of offering to make a referral in exchange for a fee or other form of compensation, and includes offers to pay such fees or other compensation in return for receiving the referral.
- Referral Source: Any person, business, group, or entity that facilitates residents seeking external providers or recovery-oriented resources.
- Subject Individual: Person who makes decisions or recommendations to or about a person seeking or receiving services in a recovery residence.

Introduction:

Inducements may be made to individuals, families or organizations. The following are examples of situations involving offers of gifts, hospitality or inducements that provide a *test* for whether it is reasonable and customary in the presenting situation. Would a fair-minded member of the public, knowing the facts of the matter, see anything improper or suspicious in the receipt of the offer and/or hospitality?

In short, impartiality must be maintained to the satisfaction of any reasonable person given the facts of the matter. The procedure of authorizing sponsorship is the same as that for gifts and hospitality and all acceptances and offers must be recorded and maintained by the organization's treasurer and made available to financial auditors, designated NARR inspectors, and NARR Affiliate leaders.

Policy Regarding Inducements:

1. Subject individuals shall put the needs and interests of the residents they serve at the forefront of all decision making.
2. Subject individuals are expected to maintain high ethical standards at all times and to avoid any and all activities that create even the appearance of unethical practices. When there is any question regarding the ethics of a given situation, it is incumbent upon subject individuals to consult with residence supervisors, State Affiliate leadership or national leadership before taking action.
3. Subject individuals shall neither accept from, nor offer or provide to any third-party organizations any inducements that add unnecessary or frivolous costs or testing or other such burdens on residents, families or third party payers.
4. Subject individuals shall not offer inducements to residents or potential residents to enroll in additional services such as IOP/PHP/outpatient treatment. Examples of inducements could include free transportation and discounted residence fees.

Here is an example of legislation addressing "patient brokering" in Florida, which addresses the idea of inducements addressed above:

Four basic types of patient brokering from the FL statute 817.505

1. Offer or pay any commission, bonus, rebate, kickback or bribe, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, to induce the referral of patients or patronage to or from a health care provider or health care facility;
2. Solicit or receive any commission, bonus, rebate, kickback or bribe, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, in return for referring patients or patronage to or from a health care provider or health care facility;
3. Solicit or receive any commission, bonus, rebate, kickback or bribe, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, in return for the acceptance or acknowledgement of treatment from a health care provider or health care facility; or
4. Aid, abet, advise or otherwise participate in the conduct prohibited in paragraphs (1), paragraph (2) or paragraph (3).

Source: Memorandum of Law on Patient Brokering, Florida State Attorney, 2017

Each of these types covers different situations.

For example, type 1 covers the situation when an IOP or lab *pays* a recovery residence to induce the recovery residence to refer its residents to the IOP or lab. If the amount of the fee depends on the amount the provider billed the patient's insurance, this creates an illegal split-fee arrangement.

Type 2 covers the situation where the recovery residence owner *receives* a fee for referring his residents to a provider.

Type 3 covers the situation where the resident offers to enroll in an outpatient treatment program on the condition that the program will offset the resident's rent or provide other incentives like free gift cards or transportation.

And type 4 covers the situation where a recovery residence offers a kickback, like free or reduced rent, to a resident in return for the resident's acceptance or acknowledgement of treatment from a healthcare provider or facility, i.e. IOP, PHP.

5. Subject individuals shall promote choice in all recommendations for external services and/or providers. Residents must always be empowered to choose or reject the external services and/or providers suggested by the residence's owners/operators.

Subject individuals shall not retaliate in any form against residents who opt in or out of specifically-suggested external service providers.

6. Subject individuals shall not under any circumstances participate in any form of inducement (i.e. solicitation, enticement or kickbacks). Examples could include but are not limited to free 'rent' or services in exchange for an insurance card, or promise of future employment.

7. It is accepted that in some circumstances it may be appropriate for subject individuals to offer or receive modest gifts and/or hospitality provided their monetary value is less than \$25.00 (for example: calendars or pens from organizations with which the person or agency conducts business.)

8. Under no circumstances are Subject individuals to accept personal gifts of cash even below the \$25.00 threshold.

9. For a Recovery Residence organization, here are some circumstances where cash may be provided by third-party sources for other purposes:

- a. It is permissible to accept cash donations to recognized, legal charitable funds subject to a receipt being issued and the cash being banked in accordance with the affiliate organization's handling policy.
 - b. Subject individuals may accept cash sponsorship for conferences where the intention is clearly to provide the sponsor with an opportunity to represent itself, its products, and its services to recovery residence professionals; however, it must be clear that such sponsorship does not provide any obligation on the part of subject individuals to reciprocate with referrals or other quid pro quo activities.
 - c. Where a meeting is funded in full or in part by a third party, that fact must be disclosed in the papers relating to the meeting and in any published proceedings of the meeting such as minutes or action notes. The procedure of authorizing staff or volunteer attendance at such meetings is the same as that for gifts and hospitality and all acceptances and offers must be recorded and maintained by the organization's treasurer and made available to financial auditors, designated NARR inspectors, and NARR Affiliate leaders.
10. Subject individuals holding state-specific certifications or licensure must comply with appropriate oversight boards.

