

**SENATE
STATE OF MINNESOTA
EIGHTY-EIGHTH LEGISLATURE**

S.F. No. 1132

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DATE	D-PG	OFFICIAL STATUS
03/07/2013	679	Introduction and first reading Referred to Commerce

A bill for an act

relating to no-fault auto insurance; regulating certain unethical practices by health care providers; regulating independent medical examinations; modifying the criminal provision against a person employing, using, or acting as a capper, runner, or steerer; amending Minnesota Statutes 2012, sections 65B.54, subdivision 6; 609.612; proposing coding for new law in Minnesota Statutes, chapter 65B.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2012, section 65B.54, subdivision 6, is amended to read:

Subd. 6. **Unethical practices.** (a) A licensed health care provider shall not initiate direct contact, in person, over the telephone, or by other electronic means, with any person who has suffered an injury arising out of the maintenance or use of an automobile, for the purpose of influencing that person to receive treatment or to purchase any good or item from the licensee or anyone associated with the licensee. This subdivision prohibits such direct contact whether initiated by the licensee individually or on behalf of the licensee by any employee, independent contractor, agent, or third party, including a capper, runner, or steerer, as defined in section 609.612, subdivision 1, paragraph (c). This subdivision does not apply when an injured person voluntarily initiates contact with a licensee.

(b) This subdivision does not prohibit licensees, or persons acting on their behalf, from mailing advertising literature directly to such persons, so long as:

(1) the word "ADVERTISEMENT" appears clearly and conspicuously at the beginning of the written materials;

(2) the name of the individual licensee appears clearly and conspicuously within the written materials;

(3) the licensee is clearly identified as a licensed health care provider within the written materials; and

2.1 (4) the licensee does not initiate, individually or through any employee, independent
2.2 contractor, agent, or third party, direct contact with the person after the written materials
2.3 are sent.

2.4 (c) This subdivision does not apply to:

2.5 (1) advertising that does not involve direct contact with specific prospective
2.6 patients, in public media such as telephone directories, professional directories, ads in
2.7 newspapers and other periodicals, radio or television ads, Web sites, billboards, mailed
2.8 or electronically transmitted communication, or similar media if such advertisements
2.9 comply with paragraph (d);

2.10 (2) general marketing practices, other than those described in clause (1), such as
2.11 giving lectures; participating in special events, trade shows, or meetings of organizations;
2.12 or making presentations relative to the benefits of a specific medical treatment;

2.13 (3) contact with friends or relatives, or statements made in a social setting;

2.14 (4) direct contact initiated by an ambulance service licensed under chapter 144E, a
2.15 medical response unit registered under section 144E.275, or by the emergency department
2.16 of a hospital licensed under chapter 144, for the purpose of rendering emergency care; or

2.17 (5) a situation in which the injured person:

2.18 (i) had a prior professional relationship with the licensee;

2.19 (ii) has selected that licensee as the licensee from whom the injured person receives
2.20 health care; or

2.21 (iii) has received treatment related to the accident from the licensee.

2.22 (d) For purposes of this paragraph, "legal name," for an individual means the
2.23 name under which an individual is licensed or registered as a health care professional in
2.24 Minnesota or an adjacent state, and for a business entity, a name under which the entity is
2.25 registered with the secretary of state in Minnesota or an adjacent state, so long as the name
2.26 does not include any misleading description of the nature of its health care practice; and
2.27 "health care provider" means an individual or business entity that provides, or through its
2.28 advertising appears, or could be interpreted to provide, medical treatment or diagnosis of
2.29 an injury, or referral for medical treatment or diagnosis of an injury eligible as a medical
2.30 expense claim under this chapter. In addition to any laws governing, or rules adopted by, a
2.31 health care provider licensing board, any solicitation or advertisement that appears to be,
2.32 or could be interpreted to be, for medical treatment or diagnosis, or for referral for medical
2.33 treatment or diagnosis, of an injury eligible for treatment under this chapter must:

2.34 (1) presumptively be undertaken only by or at the direction of a one or more duly
2.35 licensed health care ~~provider~~ providers as set forth in paragraph (f);

3.1 (2) prominently display or reference the legal name of the directing health care
3.2 provider providers;

3.3 (3) display or reference the license type of the directing health care provider
3.4 providers, or in the case of a health care provider that is a business entity;

3.5 (i) the license type of all of the owners of the health care provider; and

3.6 (ii) if applicable, the fact that one or more of the owners is not licensed or registered
3.7 as a health care professional, but need not include the names of the owners or health
3.8 care providers actually rendering the treatment or diagnostic procedures or receiving
3.9 the referral for the care;

3.10 (4) not contain any false, deceptive, or misleading information, or misrepresent the
3.11 services to be provided;

3.12 (5) not include any reference to the dollar amounts of the potential benefits under
3.13 this chapter if the reference could be reasonably interpreted to include an unconditional
3.14 right to the entirety of the benefits or a right of direct payment of the benefits to the injured
3.15 person or is in violation of clause (4) in any material respect; and

3.16 (6) not imply:

3.17 (i) endorsement by any law enforcement personnel or agency; or

3.18 (ii) affiliation with, or participation by, one or more trauma centers or emergency
3.19 facilities where the implication is in violation of clause (4) in any material respect.

3.20 (e) A health care provider that is a business entity may satisfy the requirements of
3.21 paragraph (d), clause (3), items (i) and (ii), with respect to its advertising by including the
3.22 required information in the comment field or other appropriate filed of its registration with
3.23 the applicable secretary of state, provided that (i) the contents of the field are published
3.24 online by the secretary and visible to the public and (ii) the applicable registration can
3.25 be readily determined from the advertising, either directly or through an assumed name
3.26 which is also registered with the secretary of state.

3.27 (f) An individual or business entity described in this paragraph that through its
3.28 advertising appears to provide for medical treatment or diagnosis, or for referral for
3.29 medical treatment or diagnosis, of any injury is presumed to be exercising, or attempting
3.30 to exercise, medical judgment and thereby in the practice of healing in this state under
3.31 section 146.01. This presumption may be rebutted with credible evidence including
3.32 without limit (1) copies of written contracts with one or more health care providers eligible
3.33 to receive referral where the contracts do not entail fees directly or indirectly based on the
3.34 number of referrals, or amount of benefits which may be associated with a referral, and do
3.35 not otherwise violate other applicable laws; (2) evidence that the greater number of health
3.36 care providers receiving the referrals are not owned to a substantial degree exclusively

4.1 by a single designated health care entity, or by a group of health care entities sharing
 4.2 a material degree of common ownership; (3) evidence that the referrals for treatment
 4.3 or diagnostic procedures focus primarily on assisting the patient or prospective patient
 4.4 with the choice of health care provider and do not unconditionally or unduly persuade or
 4.5 induce the patient or prospective patient to actually receive care absent an emergency;
 4.6 and (4) evidence that health care providers eligible to receive such referrals comply with
 4.7 section 609.612 with respect to such referrals.

4.8 (e) (g) A violation of this subdivision is grounds for the licensing authority to take
 4.9 disciplinary action against the licensee, or against an individual or business entity acting
 4.10 in the unauthorized practice of healing, including revocation in appropriate cases.

4.11 (h) In any legal action against a state agency or official initiated or maintained under
 4.12 this section, the state may recoup its attorney fees and costs with respect to any claim or
 4.13 cause of action in which it prevails.

4.14 **EFFECTIVE DATE.** This section is effective July 1, 2013.

4.15 Sec. 2. Minnesota Statutes 2012, section 609.612, is amended to read:

4.16 **609.612 EMPLOYMENT OF RUNNERS.**

4.17 Subdivision 1. **Definitions.** (a) As used in this section, the following terms have
 4.18 the meanings given.

4.19 (b) "Cash advance customer" means a person who agrees to receive a monetary sum
 4.20 as a loan based on the prospect that a person either has or may have suffered an injury
 4.21 arising out of the maintenance or use of an automobile.

4.22 (b) (c) "Public media" means telephone directories, professional directories,
 4.23 newspapers and other periodicals, radio and television, billboards, and mailed or
 4.24 electronically transmitted written communications that do not involve in-person contact
 4.25 with a specific prospective patient or client.

4.26 (e) (d) "Runner," "capper," or "steerer" means a person who for a pecuniary gain
 4.27 directly procures or solicits prospective patients, clients, or cash advance customers,
 4.28 through telephonic, electronic, or written communication, or in-person contact, at the
 4.29 direction of, or in cooperation with, or for the benefit of, a health care provider or attorney
 4.30 when the person knows or has reason to know that the provider's or attorney's purpose
 4.31 is to perform or obtain services or benefits for such patients, clients, or cash advance
 4.32 customers under or relating to a contract of motor vehicle insurance. The term runner,
 4.33 capper, or steerer does not include a person who solicits or procures patients or clients

5.1 either through public media, or in the case of providers consistent with the requirements
5.2 of section 65B.54, subdivision 6.

5.3 Subd. 2. **Act constituting.** Whoever employs, uses, or acts as a runner, capper, or
5.4 steerer is guilty of a felony and may be sentenced to imprisonment for not more than
5.5 three years or to a payment of a fine of not more than \$6,000, or both. Charges for any
5.6 services rendered by a health care provider, who violated this section in regard to the
5.7 person for whom such services were rendered, are noncompensable and unenforceable
5.8 as a matter of law.

5.9 Subd. 3. **Investigation and prosecution costs.** In any investigation or prosecution
5.10 by the state, nothing shall prohibit an insurer from providing the financial resources
5.11 necessary for conducting the investigation and prosecution.

5.12 Subd. 4. **Whistle-blowers.** (a) Without limiting an insurer's right of full recovery
5.13 of proceeds paid for services deemed noncompensable under subdivision 2, the court
5.14 may also award those sums deemed appropriate, but in no case more than 25 percent of
5.15 proceeds to be recovered or saved by the insurer with respect to a particular runner, capper,
5.16 or steerer, to a qualified person or entity (herein, "informant") who provides the primary
5.17 specific evidence or information in support of one or more violations under this section,
5.18 taking into account the significance of the evidence or information. For the purposes of
5.19 this subdivision, "informant" shall not include any person or entity bringing an action
5.20 under this section or acting on behalf of the news media.

5.21 (b) An insurer may elect to reimburse, including on a prepayment basis or otherwise,
5.22 reasonable out-of-pocket costs of an actual or potential informant which is incurred or
5.23 likely to be incurred in the course of preparing and disclosing the information. The
5.24 out-of-pocket costs shall include without limit any applicable attorney fees associated with
5.25 the preparation and disclosure of the information by the informant.

5.26 (c) An actual or potential informant may place conditions on the use and disclosure of
5.27 the information. The conditions may include without limit confidentiality as to the identity
5.28 of the informant, as well as the nature of any reimbursement terms, restrictions on the scope
5.29 of individuals and entities with whom the insurer may properly disclose the information,
5.30 assistance in the determination of the scope of the insurer's investigation or efforts to
5.31 prosecute, and other conditions relating to the use and disclosure of the information.

5.32 (d) Unless otherwise requested by the informant, all information provided by an
5.33 informant, including any restriction on use and disclosure, if presented in court, shall be
5.34 examined in a confidential, in camera proceeding, unless the informant requests a hearing
5.35 in open court and the court determines that a public hearing is necessary to the public
5.36 interest and the proper administration of justice.

6.1 (e) In the absence of actual malice, no person or entity furnishing, disclosing, or
6.2 requesting such information under this section shall be subject to civil liability for libel,
6.3 slander, or any other cause of action arising from the furnishing, disclosing, or requesting
6.4 of such information. A person or entity against whom any action is brought who is found
6.5 to be immune from liability under this section may recover reasonable attorney fees and
6.6 costs from the person or party who brought the action. This section does not abrogate or
6.7 modify in any way any common law or statutory privilege or immunity enjoyed by any
6.8 person or entity. Without limiting the terms of this subdivision:

6.9 (1) an insurer shall be permitted to notify any change of representation or treating
6.10 health care provider to state and federal agencies, prior attorneys of record, and prior
6.11 treating providers of record, and to discuss the change with such persons or entities; and

6.12 (2) an insurer shall be permitted to request an explanation of circumstances of
6.13 change of treating provider and attorney to the subsequent treating provider and attorney;
6.14 notwithstanding the foregoing: (i) the payment of any benefits relating to the patient shall
6.15 not be suspended or conditioned upon the failure of the subsequent treating provider or
6.16 attorney to respond to the request or provide such explanation; and (ii) the request shall
6.17 clearly and conspicuously state that the payment of benefits shall not be suspended or
6.18 conditioned upon a response or explanation.

6.19 **EFFECTIVE DATE.** This section is effective on July 1, 2013.

6.20 Sec. 3. **[65B.515] INDEPENDENT MEDICAL EXAMINATIONS.**

6.21 Subdivision 1. **Insurance fraud.** The requirements of section 60A.951, subdivision
6.22 4, applies to an independent medical examination or examination under oath requested by
6.23 a reparation obligor relating to medical treatment or diagnosis of an injury eligible as a
6.24 medical expense claim under this chapter.

6.25 Subd. 2. **Claims practices.** The requirements of section 72A.201, subdivision
6.26 4, relating standards for claim filing and handling applies to the filing and handling of
6.27 any claims for benefits under this chapter. For the purposes of this subdivision, a health
6.28 care provider who submits a claim to a reparation obligor relating to medical treatment
6.29 or diagnosis of an injury eligible as a medical expense claim under this chapter shall
6.30 constitute a claimant.

6.31 Subd. 3. **Payment suspension or denial; transcript.** In the event a reparation
6.32 obligor requests an independent medical examination or examination under oath as set
6.33 forth in this section, and either suspends or denies payment of a medical expense claim
6.34 under this chapter, the reparation obligor shall provide to the claimants a full copy of

7.1 the transcript of the examination under oath or the report of the independent medical
7.2 examination as applicable along with written notice of the suspension or denial.

7.3 Subd. 4. **Failure to comply; payment suspension or denial prohibited.** Without
7.4 abrogating or modifying in any way any other law of this state, in the event that a
7.5 reparation obligor does not comply with the requirements of subdivision 2 or 3, the
7.6 reparation obligor shall be prohibited from suspending or denying payments contrary to
7.7 the requirements of section 65B.54.

7.8 Subd. 5. **Licensing action.** A violation of subdivision 1 by a health care provider
7.9 who performs an independent medical examination is grounds for the licensing authority
7.10 to take disciplinary action against the licensee, including revocation in appropriate cases.