

**Written Statement of Eric Gold
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**“Examining Concerns of Patient Brokering and Addiction Treatment Fraud”
Tuesday, December 12, 2017**

**Before the United States House of Representatives
Committee on Energy and Commerce
Subcommittee on Oversight and Investigations**

Chairman Harper, Ranking Member Degette, and members of the Subcommittee, thank you for inviting me to testify today on this important issue. I am an Assistant Attorney General and Chief of the Health Care Division in the Office of Massachusetts Attorney General Maura Healey.

I. Summary of Written Testimony

In 2014, Massachusetts became the first state to declare the opioid epidemic to be a public health emergency. Last year, there were 2190 overdose deaths in our state and thousands more are in need of treatment for opioid use disorder. Attorney General Healey has made combatting the opioid epidemic her top priority and dedicated the full resources of the Office to addressing the problem from all sides using criminal and civil law enforcement, and promoting treatment, prevention, and education.

Earlier this year, the Office began hearing devastating stories in which young men and women from Massachusetts were lured out of state by paid recruiters who promised them free travel to an addiction treatment center in a warm-weather state. When the patients discovered that the treatment they were to receive was low quality or nonexistent, they were often left thousands of miles from home with no health insurance, no access to the medical care they needed, and no resources to return home. In the most tragic cases, these young people suffered

fatal overdoses following their continued opioid use without treatment. Following these concerns, the Office has opened a criminal investigation into addiction treatment fraud and issued a Consumer Advisory, alerting patients and their families that they should be wary of unsolicited offers for free out-of-state addiction treatment.

Based on our experience in Massachusetts, I have three recommendations for the Subcommittee. First, we need additional resources for federal, state, and local law enforcement to combat patient brokering and addiction treatment fraud. This is a national problem and it requires a coordinated, national, law enforcement solution. Second, patients need transparency into the quality of addiction treatment providers nationwide. If patients are going to travel out of state for treatment, they need a reliable way to identify the high quality providers. Finally, we need to be sure that any attempts to address patient brokering advance the ultimate goal of ensuring that patients with substance use disorder (SUD) have access to the treatment that they need and do not unintentionally limit that access.

II. Introduction and Background

Massachusetts was the first state in the country to declare the opioid epidemic a public health emergency when it did so in 2014. Our state has been in the throes of the epidemic since then. In a state of 6.8 million residents, opioid overdose deaths more than doubled from 638 state-wide in 2009 to 1364 deaths in 2014, and more than 2100 opioid overdose deaths last year.¹ The toll on our state can be measured not only in the number of deaths, but in the vast number of residents who are in need of treatment.²

¹ Massachusetts Dep't of Public Health, Data Brief: Opioid-Related Overdose Deaths Among Massachusetts Residents at 1 (Nov. 2017), at <https://www.mass.gov/files/documents/2017/11/13/sec1-od%20deaths%20mass%20residents%20Nov-17.pdf>

² See Massachusetts Dep't of Public Health, Data Brief: An Assessment of Opioid-Related Overdoses in Massachusetts 2011-2015 at 2 (Aug. 2017), at <https://www.mass.gov/files/documents/2017/08/31/data-brief-chapter-55-aug-2017.pdf>.

Since taking office in January 2015, Attorney General Healey has made combatting the opioid epidemic her top priority. The office has taken a multi-disciplinary approach to addressing the problem, including criminal and civil law enforcement, and promoting treatment, prevention, and education. This work involves our prosecutors and investigators working side by side with health care experts, other law enforcement personnel, advocates, and public policy experts.

For example, last month more than 30 individuals were arrested in a takedown of a heroin and fentanyl distribution ring in central Massachusetts, which resulted from a joint investigation by our office and local police. In October, the Office announced a civil settlement with an opioid manufacturer, Insys Therapeutics, related to its unlawful marketing and payment of kickbacks to promote the use of the fentanyl spray Subsys. And, in our campaign to prevent opioid addiction, the Office has led a \$2 million public-private collaboration called Project Here that is making substance use prevention education available to every public middle school in Massachusetts.³

III. The Massachusetts Experience

A. Patient Brokering in Massachusetts

Earlier this year, the Office began receiving information about Massachusetts residents with SUD who had been lured to out-of-state addiction treatment providers by paid recruiters. Though the particular circumstances in these cases varied, the trends were similar.

Massachusetts-based recruiters have used web-based marketing, social media, text messaging, and in-person meetings, to aggressively solicit Massachusetts residents with SUD. The recruiters often have close connections to the recovery community (some may be in

³ More detail about the Office's work combating the opioid epidemic is available at www.mass.gov/ago/opioids. Information about Project Here is available at www.here.world.

recovery themselves) and may be friends or acquaintances of the patients they solicit. These recruiters have even sought to solicit patients at recovery support group meetings. Other recruiters solicit a wider audience on-line or through social media, including on Facebook. Information reported to the Office (and since publicly reported) indicates that Massachusetts recruiters were paid commissions of up to \$2000 for each referral of a commercially insured patient to an out-of-state treatment provider.

In one situation, it was alleged that a recruiter manipulated the phone number associated with the Google search results for a Massachusetts SUD treatment provider. As a result, when patients dialed the phone number displayed next to the name of the treatment provider on Google, patients were connected to a recruiter, not the local treatment provider they had sought.

When recruiters solicit Massachusetts patients, they often communicate that the recruiters will arrange and pay for the patient's travel to and treatment at out-of-state addiction treatment centers in warm-weather states (including Florida, California, or Arizona). In some circumstances where patients do not have commercial insurance that would pay for out-of-state treatment, recruiters will offer to obtain insurance for the patients.

Patients who accept the solicitation and travel out of state have had varied experiences, but some have found the treatment centers to be very low quality with, in some instances, little or no treatment at all. Yet, the patient may find that he cannot move to a different treatment center because his insurance will no longer pay for those services. The patient's insurance coverage may have been terminated for a variety of reasons, including that the premiums were not paid because the insurance carrier learned that the treatment was not legitimate and denied the claims, or that the insurance carrier canceled the coverage all together, believing the policy was procured fraudulently.

Regardless of the reason, once the patient leaves treatment and loses his insurance, he may be stranded far from home, battling a terrible illness, and without access to housing or the treatment he needs. Unfortunately, without access to treatment, some patients have lost their battle with SUD, continuing to use opioids and overdosing thousands of miles from home. These deaths have been all the more devastating to their family and friends who had thought their loved ones were seeking the treatment they needed in a safe and new environment.

B. Response of the Massachusetts Attorney General's Office

Based on the information summarized above, the Office has substantial concerns with patient brokering and addiction treatment fraud in Massachusetts. Most significantly, the Office is concerned that the use of paid recruiters to refer patients to SUD treatment risks patient safety. Recruiters who receive a commission for each patient they refer may act in their own financial interest, rather than the patient's best interest. As a result, patients may be referred to low quality treatment centers that pay the recruiter a commission, rather than a high quality treatment center that does not pay a commission. Even if the treatment center receiving the referral is high quality, where the recruiter has a financial motive, the patient may be referred to a treatment provider that is not the right fit for that particular patient.

These concerns are heightened when patients are referred out of state, for two reasons. First, it is more difficult for patients and their families to assess the quality of the treatment provider when those providers are far from the patient's home. Second, if the patient does not receive adequate treatment at the out-of-state treatment center, the patient may be left far from home in an especially vulnerable situation without family, support, or the means to return home.

Beyond the risk to patient safety, the Office is concerned that patient brokering and addiction treatment fraud cause financial harm to patients, their families, insurance carriers, and

the health care system as a whole, by charging for unnecessary or inappropriate treatment services.

The Office has responded to this problem using both law enforcement and consumer education tools. In Massachusetts, it is illegal to make or accept a payment to induce the referral of a commercially-insured patient for any health care services. *See* Mass. Gen. Laws ch. 175H, § 3. Massachusetts law also prohibits health insurance fraud. *See* Mass. Gen. Laws ch. 266, § 111A. Based on the information we received, the Office has opened a criminal investigation into addiction treatment fraud. The investigation is ongoing.⁴

Separately, the Office issued a Consumer Advisory in April to alert Massachusetts consumers about patient brokering and offer guidance to patients and their families seeking treatment.⁵ The notice provided information about safely accessing SUD treatment services in Massachusetts and also advised patients to:

- Be wary of unsolicited referrals to out-of-state treatment facilities.
 - Anyone seeking to arrange for addiction treatment out of state may be getting paid by the treatment center.
 - In Massachusetts, it is illegal for recruiters to accept kickbacks for referring you to treatment.
 - Anyone paid a referral fee for recommending a particular treatment center does not have your best interests in mind.
- Be wary of anyone offering to pay for your insurance coverage. They can stop paying your premiums at any time, which will result in the cancellation of your insurance.
- If you accept an offer by someone to pay for travel to an out-of-state clinic, make sure you have a plan and the means to pay for a trip back home.
- Be careful about giving your personal information – including your social security number or insurance number – to a recruiter, unless you can confirm that the person is employed by a medical provider or insurance company.

⁴ I cannot disclose further details of the ongoing criminal investigation.

⁵ The Consumer Advisory is available at <http://www.mass.gov/ago/bureaus/hcfc/the-health-care-division/consumer-advisory-scams-addiction-treatment-.html>.

- If someone is offering to arrange travel or cover insurance costs for treatment, call the treatment facility or your insurance company to confirm that the person is an employee.

IV. Recommendations

The practice of paying for referrals for SUD patients has had devastating consequences for some Massachusetts residents. The scope of the epidemic in Massachusetts has caused delays in accessing treatment for some patients, leaving them particularly vulnerable to solicitations to travel out of state for care. Yet, patient brokering is a very complicated problem and there is no simple way to immediately end the practice. Addressing the issue will require continued work from federal, state, and local law enforcement and policy makers to ensure that patients get the treatment they need and unscrupulous brokers cannot take advantage of these vulnerable patients for their financial benefit. Based on our experience in Massachusetts, I have three recommendations to share with the Subcommittee.

First, we need to expand the resources available for federal, state, and local law enforcement to combat patient brokering and addiction treatment fraud. Each time a recruiter successfully lures a young person from Massachusetts to Florida, California, or Arizona for treatment, that person's life is on the line. While state and local law enforcement, including our Office, are working aggressively to investigate and prosecute these cases, this is a national problem and requires coordination among the states and federal law enforcement, as well. The U.S. Department of Justice has successfully prosecuted patient brokering under the Federal Anti-Kickback Act, 42 U.S.C. § 1320a-7b(b), which prohibits payments to induce the referral of patients whose services will be paid for by a federal health care program.⁶ Dedicating additional

⁶ See, e.g., Press Release, Two Defendants Plead Guilty in Multi-Million Dollar Health Care Fraud and Money Laundering Scheme Involving Sober Homes and Alcohol and Drug Addiction Treatment Centers (S.D. Fla., Mar. 15, 2017), at <https://www.justice.gov/usao-sdfl/pr/two-defendants-plead-guilty-multi-million-dollar-health-care-fraud-and-money-laundering>.

federal resources to investigate and prosecute these cases—especially those that occur across state lines—will ensure that every vulnerable patient is protected from recruiters looking to take advantage of them.

Second, patients need transparency into the quality of addiction treatment providers nationwide. Currently, patients who are referred by family, friends, or a paid recruiter to an addiction treatment provider that is far from home have no reliable way to learn about the treatment provider, including whether it is high or low quality. While some states, including Massachusetts, have on-line directories with information about addiction treatment providers, including whether the providers are licensed and supported by the State, those directories are inconsistent across the states and do not provide detailed information about the providers' quality. As a result, patients are left to rely on treatment providers' websites, calling providers on the phone, and reading personal reviews on various websites. Because many patients are receiving SUD treatment across state lines, there is an opportunity for the federal government to play a role in increasing the transparency that patients have into information about SUD treatment providers.

Finally, we need to be sure that any regulatory or legislative reforms meant to address patient brokering advance the ultimate goal of ensuring that SUD patients have access to the treatment that they need. Following extensive reform over the past decade, including the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008, the Patient Protection and Affordable Care Act, and similar laws in Massachusetts⁷ and other states, most insured patients now have coverage for SUD treatment and can access care when and

⁷ Massachusetts law requires that insurance plans cover medically necessary inpatient acute treatment services and clinical stabilization services for fourteen days without prior authorization and with medical necessity determined solely by the treating clinician in consultation with the patient. *See, e.g.*, Mass. Gen. Laws ch. 176G, § 4AA.

where they need it. As policy makers, we want to encourage SUD patients to seek out the treatment they need and health insurance carriers to pay for that needed treatment.

While one could imagine broad regulatory changes that may reduce the risk of patient brokering in Massachusetts (e.g., limiting insurance coverage for out-of-state SUD treatment), those policy changes would substantially reduce access to treatment for the hundreds of thousands of Massachusetts residents living with substance use disorder.

V. Conclusion

Thank you again for the opportunity to share my perspective—and that of the residents of Massachusetts—with the Subcommittee. And thank you to the Subcommittee for your careful consideration of this important issue. Please do not hesitate to contact me for any additional detail, clarity, or with any questions you may have.