

July 20, 2018

TO: Members, Subcommittee on Oversight and Investigations

FROM: Committee Majority Staff

RE: Hearing entitled “Examining Advertising and Marketing Practices within the Substance Use Treatment Industry.”

The Subcommittee on Oversight and Investigations will hold a hearing on Tuesday, July 24, 2018, at 10:00 a.m. in 2123 Rayburn House Office Building. The hearing is entitled “Examining Advertising and Marketing Practices within the Substance Use Treatment Industry.” The purpose of the hearing is to examine practices within the substance use treatment industry, including advertising and marketing and quality of care.

I. WITNESSES

- Jason Brian, Founder and Owner, Redwood Recovery Solutions and TreatmentCalls.com;
- Michael T. Cartwright, Chairman and CEO, American Addiction Centers;
- Mark Mishek, President and CEO, Hazelden Betty Ford Foundation;
- Robert Niznik, CEO, Addiction Recovery Now and Niznik Behavioral Health, Inc.;
- Kenneth Stoller, M.D., Director, Johns Hopkins Hospital Broadway Center for Addiction; and
- Marvin Ventrell, Executive Director, National Association of Addiction Treatment Providers.

II. BACKGROUND

The United States remains in the throes of a national opioid epidemic, with 115 Americans dying every day from opioid-involved overdoses.¹ Approximately 2.1 million Americans over the age of 12 are believed to have an opioid use disorder² and, amid the epidemic,

¹ Centers for Disease Control and Prevention, Understanding the Epidemic, Opioid Overdose, (Aug. 30, 2017), available at <https://www.cdc.gov/drugoverdose/epidemic/index.html>.

² Substance Abuse and Mental Health Services Administration, *Key Substance Use and Mental Health Indicators in the United States: Results from the 2016 National Survey on Drug Use and Health*, (HHS Publication No. SMA 17-5044, NSDUH Series H-52) available at <https://store.samhsa.gov/shin/content//SMA17-5044/SMA17-5044.pdf>.

the demand for treatment has increased greatly. The number of treatment facility admissions for opiate use increased 58 percent between 2005 and 2015.³

Beginning in April 2014, the Subcommittee on Oversight and Investigations has undertaken an examination of many of the root causes of the opioid epidemic and explored possible solutions to enable greater access to effective, evidence-based treatment for substance use disorders. As part of this work, in July 2017, the Committee began examining the practice of patient brokering, through which individuals known as patient or body brokers are paid by treatment facilities for successfully enrolling patients in their treatment programs.

The Committee wrote to the Department of Health and Human Services (HHS)⁴ in July 2017, and to six states⁵ in November 2017, about the practice of patient brokering. On December 12, 2017, the Subcommittee held a hearing examining concerns about patient brokering and addiction treatment fraud.⁶ The Subcommittee heard testimony about problems stemming from the dramatic surge in substance use disorder treatment facilities, including practices employed by businesses known generally as “call aggregators.” The President and Chief Executive Officer of one treatment facility testified that call aggregators “are essentially collecting leads for treatment centers who are willing to pay a price” and that the call centers will prescreen potential patients with the goal to “ultimately sell the patient’s information to the highest bidder.”⁷ On May 29, 2018, the Committee sent letters to eight substance use treatment businesses requesting information and documents about their advertising and marketing practices and to understand whether and, if so, how they utilize call centers or call aggregators, websites, and ad optimization.

The need for quality substance use disorder treatment facilities is critical. An estimated 21 million people over the age of 12, or one in 13 people in the United States, are believed to have needed treatment for a substance use disorder in 2016.⁸ Yet, only 3.8 million people received any form of substance use treatment in 2016, and just 2.2 million received treatment at a

³ TEDS data includes admissions to facilities that are licensed or certified by the State substance abuse agency to provide substance abuse treatment and may not include admissions to all private for-profit agencies. See Substance Abuse and Mental Health Services Administration, *Treatment Episode Data Set (TEDS) 2005 – 2015*, available at https://www.dasis.samhsa.gov/dasis2/teds_pubs/2015_teds_rpt_natl.pdf.

⁴ Letter from Greg Walden, Chairman, H. Comm. on Energy & Commerce, et al., to 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>.

⁵ Letters from Greg Walden, Chairman, H. Comm. on Energy & Commerce, et al., to Mr. Thomas J. Betlach (AZ), Dr. Karen Baylor (CA), Dr. Robert Werthwein (CO), Ms. Ute Gazioch (FL), Ms. Allison Bauer (MA), and Ms. Jennifer Smith (PA), (Nov. 17, 2017), available at <https://energycommerce.house.gov/news/letter/letters-departments-six-state-governments-patient-brokering-allegations/>.

⁶ H. Comm. on Energy & Commerce hearing, “*Examining Concerns of Patient Brokering and Addiction Treatment Fraud*,” (Dec. 12, 2017), available at <https://energycommerce.house.gov/hearings/examining-concerns-patient-brokering-addiction-treatment-fraud/>.

⁷ Testimony of Douglas Tieman, President and CEO, Caron Treatment Centers at H. Comm. on Energy & Commerce hearing, “*Examining Concerns of Patient Brokering and Addiction Treatment Fraud*,” (Dec. 12, 2017), available at <http://docs.house.gov/meetings/IF/IF02/20171212/106716/HHRG-115-IF02-Wstate-TiemanD-20171212.pdf>.

⁸ SAMHSA, *supra* note 2.

specialty facility.⁹ Opioid and heroin overdoses continue to plague communities across the country. According to the Substance Abuse and Mental Health Services Administration's (SAMHSA) 2016 National Survey on Drug Use and Health, 11.5 million people over the age of 12 reported misusing prescription pain relievers in the past year.¹⁰ In total, more than 351,000 people have died since 1999 due to an opioid-involved overdose.¹¹ The crisis has become so severe that the average U.S. life expectancy declined in 2016, largely because of an increase in drug overdoses, including opioid overdoses.¹²

The increased demand for treatment has brought with it new concerns about treatment facilities' marketing practices as well as the quality of care patients receive. Patients in need of treatment resources often look for help on the internet, where some providers have used aggressive, and, at times, allegedly deceptive advertising tactics.¹³ Many treatment-focused websites advertise phone hotlines that lead potential clients to call centers or call aggregators. These call centers may appear to be unaffiliated third-party referral services, but, in some cases, they are wholly operated by treatment facilities or are paid by facilities to refer calls. While some centers disclose their relationship with treatment facilities, others do not, and may engage in deceptive marketing tactics to hide the relationship. Reports indicate that call aggregators may refer patients to facilities that do not meet their needs, and once patients enter treatment, they may be vulnerable to exploitation by unscrupulous business owners.¹⁴

Though rates of opioid prescribing are on the decline,¹⁵ the number of people receiving treatment for either heroin or prescription opioids has increased substantially over the last decade.¹⁶ According to SAMHSA's latest Treatment Episode Data Set, opiates were the primary substance for which treatment was sought in more than 526,000 treatment facility admissions in 2015, up from 332,000 primary opiate admissions in 2005.¹⁷

⁹ *Id.*

¹⁰ *Id.*

¹¹ Centers for Disease Control and Prevention, Data Brief 294. Drug Overdose Deaths in the United States, 1999-2016, available at https://www.cdc.gov/nchs/data/databriefs/db294_table.pdf#page=4.

¹² Catherine Roberts, *Opioid Overdoses Are Major Cause Behind Life Expectancy Decline, CDC Report Says*, CONSUMER REPORTS, (Dec. 21, 2017), available at <https://www.consumerreports.org/drug-use/opioid-overdoses-life-expectancy-decline/>.

¹³ Teri Sforza, Tony Saavedra, Lori Basheda, *Rehab Riviera: Addiction advertising can trick you to death*, ORANGE COUNTY REGISTER, (March 2, 2018) available at <https://www.ocregister.com/2018/03/02/rehab-riviera-addiction-advertising-can-trick-you-to-death/>, and Cat Ferguson, *Searching for help: She turned to Google for help getting sober. Then she had to escape a nightmare*, THE VERGE, (Sept. 7, 2017), available at <https://www.theverge.com/2017/9/7/16257412/rehabs-near-me-google-search-scam-florida-treatment-centers>; David Segal, *A doctor with a phone and a mission*, THE NEW YORK TIMES, (Dec. 27, 2017), available at <https://www.nytimes.com/interactive/2017/12/27/business/drug-addiction-ads.html>.

¹⁴ *Id.*

¹⁵ Opioid prescribing rates peaked at 255 million prescriptions in 2012 and have since dropped to 214 million prescriptions in 2016. See Centers for Disease Control and Prevention, U.S. prescribing rate maps, Opioid overdose, (last updated July 31, 2017), available at <https://www.cdc.gov/drugoverdose/maps/rxrate-maps.html>.

¹⁶ SAMSHA, *supra* note 3.

¹⁷ *Id.*

a. **Marketing and Advertising**

The increased demand for substance use disorder treatment has created a large and complex treatment industry, that has remained largely unregulated at the federal level and has wide variability in terms of how facilities are regulated at the state level. Competition for potential patients is significant, with some providers reportedly employing a host of aggressive and sometimes deceptive advertising tactics. A 2016 Palm Beach County, Florida grand jury report on fraud and abuse in Florida's treatment industry highlighted a number of problematic marketing abuses, including false representation of services, false representation of location, and real-time auctioning of patients through clearing houses or lead generators.¹⁸ The report found that deceptive marketing practices "are detrimental to a patient's chances of receiving quality care and the appropriate level of care" and also harm reputable treatment centers.

Some treatment facilities utilize call centers or call aggregators to engage with potential customers. One type of call center functions as an unaffiliated third-party referral service, which routes calls to treatment facilities for a per-call fee. In some instances, these call centers do not speak with potential patients to determine their needs before routing them to the treatment facilities paying for calls. The price per call varies, but the Committee's investigation has found that some call aggregators charge between \$20 to \$40 per call. Other call centers are operated by businesses that also own treatment facilities, and the call centers are used to advertise their own facilities and services. In these cases, the Committee found that some call centers pay bonuses to employees for each successful enrollment of a patient in their treatment facility. While some call centers and websites disclose that they are owned and operated by treatment facilities, others do not clearly list or otherwise disclose their ownership or affiliations. In some instances, the contact information included in online listings for treatment facilities has been altered so that anyone who calls seeking treatment would be funneled to a call center or another treatment facility rather than the facility listed.¹⁹ Those answering the calls could then either encourage a prospective patient to enroll in their treatment programs or collect the person's contact information and sell it to other interested treatment centers.²⁰

In addition, some facilities or companies own and operate multiple websites, domains, or URLs to advertise treatment. Like call centers, the level of disclosure offered by treatment facilities about their ownership of treatment-related websites varies widely.²¹ Some companies advertise solely through branded websites that disclose their treatment facilities and ownership structure. Others develop unbranded websites that may appear to be unaffiliated third-party sites meant to offer resources and helplines. To reach the greatest number of potential clients, some businesses have developed dozens of treatment-related websites. At least one business told the Committee that they developed unbranded websites in order to reach additional potential clients. The Committee has also found multiple examples of treatment industry business URLs that closely mirror other well-established treatment facilities or highly trafficked websites in an effort

¹⁸ Palm Beach County Sober Homes Task Force Report, (Jan. 1, 2017), *available at* http://www.sa15.state.fl.us/stateattorney/SoberHomes/_content/SHTFReport2017.pdf.

¹⁹ Teri Sforza, et al., *supra* note 13.

²⁰ *Id.*

²¹ *Id.*

to capitalize on similar terms or misspellings. Businesses have also indicated they occasionally use television advertisements to promote 1-800 hotlines for treatment facilities.

Online advertising practices in the treatment industry have also come under scrutiny. In 2017, Google began restricting online advertising by treatment providers, with company officials citing “a number of misleading experiences among rehabilitation treatment centers.”²² Online search advertisements can be lucrative and Google was considered one of the largest referral sources for individuals seeking treatment.²³ Before Google suspended treatment industry-related searches within its AdWords keyword auction system, treatment centers could bid to buy online ads that would show up when someone searched for terms like “drug rehab” or “addiction.” Reports indicate that businesses were willing to pay upwards of \$90 a click for specific search terms and AdWords suggested a minimum bid of \$187 per click for the term “drug rehab locations.”²⁴ Google plans to resume treatment industry advertising this year through a partnership with the company LegitScript, which will vet and certify drug and alcohol treatment providers before they are allowed to advertise with Google.²⁵ Through the partnership, LegitScript’s President and Chief Executive Officer said he hopes to provide better information to consumers about “which programs provide genuine treatment and which are, in essence, scams.”²⁶

The issue of ethical marketing has also been of great concern among groups within the treatment industry. The National Association of Addiction Treatment Providers (NAATP) recently adopted updated standards for advertising and marketing. Among the requirements outlined in the association’s new code of ethics: members may not buy or sell patient leads, members may not engage in the practice of patient brokering, and members must be transparent regarding their identities and services.²⁷ NAATP announced in May that it did not renew 70 member facilities who were unable to meet the association’s new standards – a decision that cost the association \$100,000 in lost membership fees.²⁸

²² Cat Ferguson, *Exclusive: Google is cracking down on sketchy rehab ads*, THE VERGE, (Sept. 14, 2017), available at <https://www.theverge.com/2017/9/14/16309752/google-rehabs-near-me-search-adwords-crackdown>.

²³ Michael Corkery, *Google sets limits on addiction treatment ads, citing safety*, THE NEW YORK TIMES, (Sept. 14, 2017), available at <https://www.nytimes.com/2017/09/14/business/google-addiction-treatment-ads.html>.

²⁴ Michael Smith, Jonathan Levin, and Mark Bergen, *Why it took Google so long to end shady rehab center ads*, BLOOMBERG, (Sept. 26, 2017), available at <https://www.bloomberg.com/news/features/2017-09-26/why-it-took-google-so-long-to-end-shady-rehab-center-ads>.

²⁵ LegitScript, *Addiction treatment certification nears end of pre-launch phase*, (July 12, 2018), available at <https://www.legitscript.com/blog/2018/07/addiction-treatment-certification-enters-new-phase/>.

²⁶ John Horton, *LegitScript’s new certification program for addiction treatment providers will help those most vulnerable*, LegitScript, (April 16, 2018), available at <https://www.legitscript.com/blog/2018/04/legitscripts-new-certification-program-for-addiction-treatment-providers-will-help-those-most-vulnerable/>.

²⁷ *Code of Ethics*, National Association of Addiction Treatment Providers (last accessed July 16, 2018), available at <https://www.naatp.org/resources/ethics/code-ethics>.

²⁸ Alcoholism and Drug Abuse Weekly, NAATP leadership: By speaking truth, field will garner public trust, Volume 30, Number 21, (May 28, 2018). On file with the Committee.

b. Concerns within the Substance Use Disorder Treatment Industry

Some have described the treatment industry as the “Wild West,” and ripe for exploitation by unscrupulous business owners.²⁹ Concerns within the industry range from employees who do not have adequate training or education to care for patients, to abusive billing practices, and kickback payments made in exchange for luring patients to facilities.³⁰ Further, there are concerns about a lack of transparency and use of overstated or unqualified success rates. Success rates often do not define what qualifies as a success – be it sobriety for a year, six months, or even a week after leaving treatment.³¹ Further, many success rates are based on self-reporting by patients and can be difficult to verify.

Another concerning practice involves treatment facilities allegedly prioritizing profit over recovery by requiring a patient to undergo costly and medically unnecessary testing that is billed to the patient’s insurance company.³² Few national urine drug testing standards exist, therefore, decisions regarding who should be tested, how often they should be tested, and for which drugs they should be tested are largely left up to providers.³³ For example, there are reports of clinics and labs charging more than \$4,000 for a single urine test, and for treatment facilities to test individuals two or three times each week.³⁴ According to the Healthcare Fraud Prevention Partnership (HFPP), the North American clinical laboratory services market is worth an

²⁹ Teri Sforza et al., *How some Southern California drug rehab centers exploit addiction*, ORANGE COUNTY REGISTER, (May 21, 2017), available at <http://www.ocregister.com/2017/05/21/how-some-southern-california-drug-rehab-centers-exploit-addiction/>; Amy Julia Harris and Shoshana Walter, *Drug users got exploited. Disabled patients got hurt. One woman benefitted from it all.*, THE CHARLOTTE OBSERVER, (May 21, 2018), available at <http://www.charlotteobserver.com/latest-news/article211600539.html>.

³⁰ See, e.g., Paloma Esquivel, *Murder Charges Against Rehab Center are a First in California*, LOS ANGELES TIMES, (Feb. 28, 2016), available at <http://www.latimes.com/local/crime/la-me-rehab-murder-charge-20160228-story.html>; Amy Julia Harris and Shoshana Walter, *Drug users got exploited. Disabled patients got hurt. One woman benefitted from it all.*, THE CHARLOTTE OBSERVER, (May 21, 2018), available at <http://www.charlotteobserver.com/latest-news/article211600539.html>; Christine Stapleton, *2 addiction treatment center owners indicted after reaping \$50 million*, PALM BEACH POST, (June 27, 2018), available at <https://www.mypalmbeachpost.com/news/addiction-treatment-center-owners-indicted-after-reaping-million/3INOb0jWXxYeA2rvVzv5AO/>.

³¹ Christopher Moraff, *Why Drug Rehab is Outdated, Expensive, and Deadly*, THE DAILY BEAST, (May 9, 2016), available at <https://www.thedailybeast.com/why-drug-rehab-is-outdated-expensive-and-deadly>; Melissa Locker, *John Oliver Shines a Light on the Unregulated Rehab Industry on Last Week Tonight*, TIME (May 21, 2018), available at <http://time.com/5285151/john-oliver-rehab-last-week-tonight/>.

³² David Segal, *In Pursuit of Liquid Gold*, THE NEW YORK TIMES, (Dec. 27, 2017), available at <https://www.nytimes.com/interactive/2017/12/27/business/urine-test-cost.html>; Fred Schulte and Elizabeth Lucas, *How Doctors are Getting Rich on Urine Tests for Opioid Patients*, BLOOMBERG, (Nov. 6, 2017), available at <https://www.bloomberg.com/news/features/2017-11-06/how-doctors-are-getting-rich-on-urine-tests-for-opioid-patients>; Cat Ferguson, *Searching for Help*, THE VERGE, (Sept. 7, 2017), available at <https://www.theverge.com/2017/9/7/16257412/rehabs-near-me-google-search-scam-florida-treatment-centers>.

³³ Fred Schulte and Elizabeth Lucas, *How Doctors are Getting Rich on Urine Tests for Opioid Patients*, BLOOMBERG, (Nov. 6, 2017), available at <https://www.bloomberg.com/news/features/2017-11-06/how-doctors-are-getting-rich-on-urine-tests-for-opioid-patients>.

³⁴ David Segal, *In Pursuit of Liquid Gold*, THE NEW YORK TIMES, (Dec. 27, 2017), available at <https://www.nytimes.com/interactive/2017/12/27/business/urine-test-cost.html>.

estimated \$87.3 million.³⁵ The HFPP highlighted both the potential for and examples of fraud and abuse within the market in a recent report. Their concerns include the routine use of definitive or quantitative urine drug testing in place of less expensive qualitative testing, fraudulent use of urine drug testing in sober living homes, and use of “excessively broad panels” to detect the presence of less commonly used substances in order to maximize reimbursements.³⁶

c. Federal and State Efforts to Combat Fraud and Abuse

Despite both the growing need for treatment and the increase in operation of private for-profit treatment facilities,³⁷ the federal government has not been heavily involved in oversight. According to HHS, “[t]he federal government has oversight of opioid treatment programs (OTPs) but does not have oversight authority over other levels of care – states are responsible.”³⁸ Other than for OTPs, there are no federal regulations of substance use disorder treatment facilities, and there is wide variability in terms of how facilities are regulated at the state level.

Several states have taken action to improve oversight of the treatment industry, including in areas related to advertising and marketing. Florida, which has seen an increase in growth of the treatment industry in recent years, passed legislation in 2017 that took aim at the practices of patient brokering and deceptive marketing. For example, the state now bans marketers from contracting with treatment facilities to generate patient referrals or leads through call centers or online advertising without disclosing the identity of the licensed treatment facilities paying the marketer.³⁹ A Tennessee law, which took effect in July, bans operators of alcohol and drug treatment facilities from making false statements in advertising materials about their identity, services, or geographical location.⁴⁰ Like the Florida law, the new Tennessee law also bans marketers from generating patient leads without disclosing which treatment facilities pay them. Tennessee also bans the payment of any commission, rebate, kickback, or bribe to anyone in exchange for the referral or patronage of a patient – a practice similarly banned in Florida.

In addition to Florida and Tennessee, Arizona has also taken steps to reform the state’s substance use disorder treatment industry. Legislation adopted this year in Arizona bans treatment facilities from paying fees or kickbacks to recruit patients and individuals from soliciting or accepting fees to deliver patients.⁴¹ The state also adopted laws that require sober

³⁵ Healthcare Fraud Prevention Partnership, *Examining clinical laboratory services*, (May 2018), available at <https://hfpp.cms.gov/HFPP-White-Papers/HFPP-Clinical-Lab-Services-White-Paper.pdf>.

³⁶ *Id.*

³⁷ The number of patients treated for substance use disorder at private for-profit facilities grew from 328,763 in 2006 to 449,038 in 2016. See Substance Abuse and Mental Health Services Administration, *National Survey of Substance Abuse Treatment Services (N-SSATS): 2016, Data on Substance Abuse Treatment Facilities*, available at https://www.dasis.samhsa.gov/dasis2/nssats/2016_nssats_rpt.pdf.

³⁸ U.S. Dept. of Health & Human Services Response to H. Comm. on Energy & Commerce Letter, (Sept. 12, 2017), available at https://energycommerce.house.gov/wp-content/uploads/2017/07/20170912HHS_Response.pdf.

³⁹ FLA. STAT. § 397.55 (2017).

⁴⁰ 2018 TENN. PUB. CH. 855.

⁴¹ Ken Alltucker, *Arizona’s booming sober-home industry gets new oversight*, Arizona Republic, (April 14, 2018), available at <https://www.azcentral.com/story/money/business/health/2018/04/14/law-provides-new-oversight-arizona-booming-sober-home-industry/513243002/>.

living homes to be licensed by the Arizona Department of Health and Human Services. Legislation is also being considered in California that would ban patient brokering and overhaul the treatment industry by requiring more oversight by the state.⁴²

The U.S. is far from seeing the end of the opioid epidemic. The number of opioid-related overdose deaths continues to grow, as does the number of people in need of treatment for opioid misuse. Those who reach out for help to find substance use disorder treatment should be able to access appropriate care without being taken advantage of or misled. Understanding the scope of advertising and marketing practices within the treatment industry is essential in establishing a baseline for good practices and informing consumers about treatment options that meet their individual needs.

III. ISSUES

The following issues may be examined at the hearing:

- Advertising and marketing practices within the substance use disorder treatment industry;
- Transparency and disclosures within advertising and marketing in the substance use disorder treatment industry;
- Efforts made within the industry to promote ethical advertising and marketing practices; and
- How individuals seeking treatment can identify quality treatment that will meet their needs.

IV. STAFF CONTACTS

If you have any questions regarding this hearing, please contact Brittany Havens, Brighton Haslett, or Andrea Noble of the Committee staff at (202) 225-2927.

⁴² Teri Sforza and Tony Saavedra, *Legislators taking aim at scams in the drug rehab industry*, ORANGE COUNTY REGISTER, (April 24, 2018), available at <https://www.ocregister.com/2018/04/24/legislators-taking-aim-at-scams-in-the-drug-rehab-industry/>.