

HEALTH AND HUMAN SERVICES

Resolution HHS-19-24

A RESOLUTION ON PREVENTION OF LAWSUITS THAT AFFECT PATIENTS USE OF PRESCRIBED MEDICATIONS

WHEREAS, misleading lawsuit advertising is scaring away people from taking their prescribed medications and seeking treatment;

WHEREAS, the American Medical Association has recognized, “fearmongering” lawsuit ads pose a threat to public health;

WHEREAS, unscrupulous firms-often non-attorney “lead generation” companies – have violated patient privacy by obtaining and using private health information to identify and solicit individual to file lawsuits; and

WHEREAS, a person engages in a deceptive trade practice if in advertising legal services the person does any of the following:

- Fails to disclose at the outset of the advertisement: This is a paid advertisement for legal services”;
- Presents an advertisement as a “medical alert, “health alert,” consumer alert,” “public service announcement” or similar term;
- Displays the logo of a federal or state government agency in a manner that suggests affiliation with or the sponsorship of that agency;
- Uses the word “recall” when referring to a product that has not been recalled by a government agency or through an agreement between a manufacturer and government agency;
- Fails to identify the sponsor of the advertisement; or
- Fails to indicate the identity of the attorney or law firm that will represent clients, or how cases will be referred to attorneys or law firm that will represent clients if the sponsor of the advertisement may not represent persons responding to the advertisement.

THEREFORE, BE IT RESOLVED, that the National Black Caucus of State Legislators (NBCSL) affirms that a person shall not use, cause to use, obtain, sell, transfer, or disclose to another person without written authorization protected health information for the purpose of soliciting an individual for legal services and that a violation of this constitutes a (violation of health privacy law) or (deceptive trade practice);

HEALTH AND HUMAN SERVICES

Resolution HHS-19-24

BE IT FURTHER RESOLVED, any words or disclosures shall be clearly legible and, if televised or displayed electronically, shall be displayed for a sufficient time to enable the viewer to easily see and fully read the disclosure or disclaimer and spoken disclosures shall be plainly audible and clearly intelligible and that “this is an advertisement” be included in all medical lawsuit advertisements;

BE IT FURTHER RESOLVED, an advertisement for legal services soliciting clients who may allege an injury from a prescription drug approved by the U.S. Food and Drug Administration shall include the following warning: “Do not stop taking a prescribed medication without first consulting with your doctor. Discontinuing a prescribed medication without your doctors’ advice can result in injury (or death)”;

BE IT FURTHER RESOLVED, an advertisement for a lawsuit soliciting clients who may allege an injury from a prescription drug or medical device approved by the U.S. Food and Drug Administration shall disclose that the drug or medical device remains approved by the U.S. Food and Drug Administration unless the product has been recalled or withdrawn;

BE IT FURTHER RESOLVED, this provision shall not be construed to apply to the use or disclosure of protected health information to an individual’s legal representative in the course of any judicial or administrative proceeding, or as otherwise permitted or required by law; and

BE IT FINALLY RESOLVED, that the NBCSL send a copy of this resolution to the President of the United States, the Vice President of the United States, members of Congress, and other federal and state government officials as appropriate.

SPONSOR: Representative Barbara Ballard (KS)

Committee of Jurisdiction: Health and Human Services Policy Committee

Certified by Committee Chair(s): Representative John King (SC) and Representative Toni Rose (TX)

Ratified in Plenary Session: Ratification Date is November 30, 2018

Ratification is certified by: Representative Gregory W. Porter (IN), President