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HOUSE OF REPRESENTATIVES
COMMITTEE ON
HEALTH CARE SERVICES
BILL RESEARCH & ECONOMIC IMPACT STATEMENT

BILL #: HB 3969

RELATING TO: Health Care

SPONSOR(S): Committee on Health Care Services and Rep. Albright

COMPANION BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

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I. SUMMARY:

The Patient Self-Referral Act of 1992 was created to address issues involved in the referral of a patient by a health care provider for a service or treatment when the health care provider has a financial interest in the service or treatment. It was the finding of the Legislature that "...these referral practices may limit or eliminate competitive alternatives in the health care services market, may result in over utilization of health care services, may increase costs to the health care system, and may adversely affect the quality of health care" (s. 455.654(2), F.S.). By creating the Patient Self-Referral Act, it was the intent of the Legislature "...to provide guidance to health care providers regarding prohibited patient referrals between health care providers and entities providing health care services and to protect the people of Florida from unnecessary and costly health care expenditures" (s. 455.654(2), F.S.).

The First District Court of Appeal has recently interpreted the group practice exception to the Patient Self-Referral Act to mean that a sole provider or member of a group practice may not allow health care providers outside of the group to refer patients to the practice for designated health care services. Any outside referrals would prohibit members of the group from referring its own patients to the group for services.

This bill makes it possible for a sole provider to provide health care services to his own patients and to patients referred to him by health care providers who have no financial interest in the sole provider's practice as long as the services are performed under the direct supervision of the referring health care provider and not less than 50% of the designated health services or other health care items or services are provided for the patients of the sole provider. A sole provider will forfeit this exemption if he accepts a referral from a physician who has an investment interest in or is an investor in the sole provider's practice. Group practices will also be able to provide health care services to their own patients, as well as to patients referred to the practice by health care providers who have no financial interest in the group practice, as long as the services are performed under the direct supervision of the referring health care provider and not less than 50% of the designated health services or other health care items or services are provided for the patients of the group practice. A group practice will forfeit this exemption if a group practice accepts a

referral from a physician who is not a member of the group practice but who has an investment interest in or is an investor in the group practice.

This legislation has no fiscal impact on state and local government.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Section 455.654, F.S., short-titled the Patient Self-Referral Act of 1992, was created to address issues involved in the referral of a patient by a health care provider for a service or treatment when the health care provider has a financial interest in the service or treatment. The statute prohibits any health care provider from referring a patient for the provision of a designated health service to an entity in which the health care provider is an investor. A designated health service is defined as a clinical laboratory service, a physical therapy service, a comprehensive rehabilitation service, a diagnostic imaging service, or certain radiation therapy services.

In addition, health care providers are prevented from referring a patient for any service or item in which the health care provider is an investor unless: the investment interest is in registered securities issued by a publicly held corporation of a specified size; or if no more than 50 percent of the value of the investment interests are held by investors who are in a position to make referrals, and the terms under which the investment interest is offered meet specified conditions.

Certain investment interests are permitted, including an investment interest in: a health service in a rural area; certain debt service instruments; real property resulting in a landlord-tenant relationship; and ownership or lease of a hospital or nursing home.

Certain types of referrals are permitted, as well, including a referral by: a radiologist for diagnostic imaging services; a physician specializing in radiation therapy services for such services; a medical oncologist for drugs, solutions, and supplies to be administered to his patients; a cardiologist for cardiac catheterization services; a pathologist for laboratory tests and pathological examination services; a provider when treating his/her own patients or patients from his/her group practice, when the provider actually provides or supervises the service; a surgeon for professional surgical services of his/her own patients or his group's patients at an ambulatory surgical center; a health care provider for clinical laboratory services related to renal dialysis; or a urologist for lithotripsy services.

Since Florida's Patient Self-Referral Act was passed, there has been some question as to whether providers outside a group practice could refer patients to the group practice without violating the group practice exception. The group practice exception states that orders, recommendations, or plans of care "...by a health care provider who is the sole provider or member of a group practice for designated health services or other health care items or services that are prescribed or provided solely for such referring health care provider's or group practice's own patients, and that are provided or performed by or under the direct supervision of such referring health care provider or group practice" does not constitute a referral by a health care provider (s. 455.654(3)(k)3.f., F.S.).

In June 1997, the First District Court of Appeal narrowly construed the group practice exception in an opinion titled Agency for Health Care Administration v. Wingo. In Wingo, the First District Court held that a group practice that allows any outside referrals to the group's equipment or facilities loses its privilege to the group practice exception.

In reaching its decision, the First District Court of Appeal reviewed a declaratory statement made by the Florida Board of Medicine regarding a group practice that had purchased a magnetic resonance imaging system (MRI) to be used by the patients of the practice. The practice expected some patient referrals for MRIs from physicians outside of the group practice who had no investment interest in the clinic. The board ruled that the group practice could accept MRI referrals from non-group physicians to supplement utilization and still maintain the group practice exception to the Self-Referral Act for its own referrals. In forming its decision, the board agreed with the assertion of the group practice that it should be treated differently under the statute because it was *accepting* patients rather than *referring* them.

The Agency for Health Care Administration (AHCA) appealed to the First District Court of Appeal, contending that the practice forfeited its group practice exception by providing MRI services to patients referred from outside physicians. In its analysis of the group practice exception, the court focused on language which states that group practice referred services must be "...provided solely for such referring health care provider's or group practice's own patients..." (s. 455.654(3)(k)3.f., F.S.).

In overruling the board, the DCA held that the practice may not allow providers outside of the group to refer patients to the practice for MRI services, and any outside referrals would prohibit the group from referring its own patients to the practice for MRI services and destroy the group practice exception entirely. The court concluded that a group practice could lawfully provide MRI services to its own patients only if it prohibited referrals from physicians outside the group practice.

Prior to the Wingo decision, a health care provider who did not have the equipment to perform certain designated health services could send his patient to an outside group practice that performed those designated health services for the sole purpose of those services. The patient remained under the care of the health care provider and did not become a patient of the group practice performing the designated health services. As a result of the Wingo decision, a group practice is prohibited from performing designated health care services for an outside health care provider's patients. If a group practice does provide such services for other health care providers' patients, the group will no longer be able to perform those designated health services on its own patients. The Patient Self-Referral Act defines "designated health services" to mean "clinical laboratory services, physical therapy services, comprehensive rehabilitative services, diagnostic-imaging services, and radiation therapy services" (s. 455.654(3)(c), F.S.).

The referral process from primary care and family practice physicians for more disease-specific diagnostic evaluation is inherent in the practice of medicine. According to the Wingo decision, if a patient is not an established patient of a group practice but is referred to the group practice from an outside physician who has no investment in that practice for the purposes of diagnostic-imaging, the group practice becomes a diagnostic imaging center. As a diagnostic-imaging center, the group practice could no longer perform diagnostic-imaging on its own patients because it would be considered a self-referral.

The intent behind the Patient Self-Referral Act was "...to provide guidance to health care providers regarding prohibited patient referrals between health care providers and entities providing health care services and to protect the people of Florida from unnecessary and costly health care expenditures" (s. 455.654(2), F.S.). The DCA's

interpretation of the statute may put restrictions on a group that might not have been intended to be restricted by the act -- group practices that receive referrals from health care providers who have no financial investment in the practice and who will not gain financially in the referral process.

B. EFFECT OF PROPOSED CHANGES:

A sole provider will be able to provide health care services to his own patients and to patients referred to him by health care providers who have no financial interest in sole provider's practice as long as the services are performed under the direct supervision of the referring health care provider and not less than 50% of the designated health services or other health care items or services are provided for the patients of the sole provider. A sole provider will forfeit this exemption if he accepts a referral from a physician who has an investment interest in or is an investor in the sole provider's practice.

Group practices will be able to provide health care services to their own patients, as well as to patients referred to the practice by health care providers who have no financial interest in the group practice as long as the services are performed under the direct supervision of the referring health care provider and not less than 50% of the designated health services or other health care items or services are provided for the patients of the group practice. A group practice will forfeit this exemption if a group practice accepts a referral from a physician who is not a member of the group practice but who has an investment interest in or is an investor in the group practice.

C. APPLICATION OF PRINCIPLES:

1. <u>Less Government:</u>

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes, this bill limits the authority of the Agency for Health Care Administration to regulate health care providers and health care provider referrals. ACHA and the Department of Health will no longer be able to restrict sole providers and group practices from providing health care services both to their own patients as well as to patients referred to them from health care providers who have no financial investment in the practice.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Yes, sole providers and group practices who were prohibited from doing so before will now be able to provide health care services to their own patients as well as to patients referred to them by health care providers outside the group practice who have no financial interest in the group practice.

Patients who may have been prevented from receiving health care services from their sole providers or group practice can now receive those health care services without forced referral to another health care provider.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

s. 455.654(3)(k), F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1. Amends s. 455.654(3)(k), F.S. , relating to referrals by a health care provider, to clarify that orders, recommendations, or plans of care for a designated health service by a health care provider who is the sole provider or member of a group practice do not constitute a referral if the services are prescribed and provided for not less than 50% of such referring health care provider's or group practices own patients, and that are prescribed or performed by or under direct supervision of the sole provider or group practice. This section also provides that for a group practice, this exemption is forfeited if a group practice accepts a referral from a physician who is not a member of the group practice but who has an investment interest in or is an investor in the group practice; and for a sole provider, this exemption is forfeited if the sole provider accepts a

referral from a physician who has an investment interest in or is an investor in the sole provider's practice.

Section 2. Provides an effective date of October 1 of the year in which it is enacted.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

If the accepted referral practices in this bill are abused, competitive alternatives in the health care services market may be limited, over utilization of health care services may result, costs to the health care system may increase, and the quality of health care may be adversely affected.

2. Direct Private Sector Benefits:

   This bill will allow sole providers and group practices to generate new revenue from patients by providing them with health care services that are now prohibited.

3. Effects on Competition, Private Enterprise and Employment Markets:

   This bill could increase the amount of competition and number of alternative markets by lifting restrictions that patients now face in obtaining health care services.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF FLORIDA CONSTITUTION:

A. APPLICABILITY OF MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 2, 1998, the Committee on Health Care Services passed an amendment to make it possible for sole providers or members of group practices to receive referrals for designated health services or other health care items or services from health care providers outside the group practice as long as not less than 25% of the sole provider's or group practice's designated health services or other health care items or services are provided to the sole provider's or group practice's own patients.

On February 16, 1998, the Committee on Health Care Services moved to reconsider an amendment adopted on February 2, 1998, which inserted 25% in lieu of x%. The Health

Care Services then adopted an amendment to replace x% with 50% and an amendment which provides that for a group practice, the exemption is forfeited if a group practice accepts a referral from a physician who is not a member of the group practice but who has an investment interest in or is an investor in the group practice and that for a sole provider, the exemption is forfeited if the sole provider accepts a referral from a physician who has an investment interest in or is an investor in the sole provider's practice.

VII. SIGNATURES:

COMMITTEE ON HEALTH CARE SERVICES:

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