

Amendment No. 01 (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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ORIGINAL STAMP BELOW

11 The Committee on Governmental Operations offered the
12 following:

14 **Amendment (with title amendment)**

15 Remove from the bill: Everything after the enacting clause
16
17 and insert in lieu thereof:

18 Section 1. Section 455.654, Florida Statutes, 1998
19 Supplement, is amended to read:

20 455.654 Financial arrangements between referring
21 health care providers and providers of health care services.--

22 (1) SHORT TITLE.--This section may be cited as the
23 "Patient Self-Referral Act of 1992."

24 (2) LEGISLATIVE INTENT.--It is recognized by the
25 Legislature that the referral of a patient by a health care
26 provider to a provider of health care services in which the
27 referring health care provider has an investment interest
28 represents a potential conflict of interest. The Legislature
29 finds these referral practices may limit or eliminate
30 competitive alternatives in the health care services market,
31 may result in overutilization of health care services, may

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1 increase costs to the health care system, and may adversely
2 affect the quality of health care. The Legislature also
3 recognizes, however, that it may be appropriate for providers
4 to own entities providing health care services, and to refer
5 patients to such entities, as long as certain safeguards are
6 present in the arrangement. It is the intent of the
7 Legislature to provide guidance to health care providers
8 regarding prohibited patient referrals between health care
9 providers and entities providing health care services and to
10 protect the people of Florida from unnecessary and costly
11 health care expenditures.

12 (3) DEFINITIONS.--For the purpose of this section, the
13 word, phrase, or term:

14 (a) "Board" means any of the following boards relating
15 to the respective professions: the Board of Medicine as
16 created in s. 458.307; the Board of Osteopathic Medicine as
17 created in s. 459.004; the Board of Chiropractic Medicine as
18 created in s. 460.404; the Board of Podiatric Medicine as
19 created in s. 461.004; the Board of Optometry as created in s.
20 463.003; the Board of Pharmacy as created in s. 465.004; and
21 the Board of Dentistry as created in s. 466.004.

22 (b) "Comprehensive rehabilitation services" means
23 services that are provided by health care professionals
24 licensed under part I or part III of chapter 468 or chapter
25 486 to provide speech, occupational, or physical therapy
26 services on an outpatient or ambulatory basis.

27 (c) "Designated health services" means, for purposes
28 of this section, clinical laboratory services, physical
29 therapy services, comprehensive rehabilitative services,
30 diagnostic-imaging services, and radiation therapy services.

31 (d) "Diagnostic imaging services" means magnetic

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1 resonance imaging, nuclear medicine, angiography,
2 arteriography, computed tomography, positron emission
3 tomography, digital vascular imaging, bronchography,
4 lymphangiography, splenography, ultrasound, EEG, EKG, nerve
5 conduction studies and evoked potentials.

6 (e) "Direct supervision" means supervision by a
7 physician who is present in the office suite and immediately
8 available to provide assistance and direction throughout the
9 time services are being performed.

10 (f)(d) "Entity" means any individual, partnership,
11 firm, corporation, or other business entity.

12 (g)(e) "Fair market value" means value in arms length
13 transactions, consistent with the general market value, and,
14 with respect to rentals or leases, the value of rental
15 property for general commercial purposes, not taking into
16 account its intended use, and, in the case of a lease of
17 space, not adjusted to reflect the additional value the
18 prospective lessee or lessor would attribute to the proximity
19 or convenience to the lessor where the lessor is a potential
20 source of patient referrals to the lessee.

21 (h)(f) "Group practice" means a group of two or more
22 health care providers legally organized as a partnership,
23 professional corporation, or similar association:

24 1. In which each health care provider who is a member
25 of the group provides substantially the full range of services
26 which the health care provider routinely provides, including
27 medical care, consultation, diagnosis, or treatment, through
28 the joint use of shared office space, facilities, equipment,
29 and personnel;

30 2. For which substantially all of the services of the
31 health care providers who are members of the group are

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1 provided through the group and are billed in the name of the
2 group and amounts so received are treated as receipts of the
3 group; and

4 3. In which the overhead expenses of and the income
5 from the practice are distributed in accordance with methods
6 previously determined by members of the group.

7 (i)~~(g)~~ "Health care provider" means any physician
8 licensed under chapter 458, chapter 459, chapter 460, or
9 chapter 461, or any health care provider licensed under
10 chapter 463 or chapter 466.

11 (j)~~(h)~~ "Immediate family member" means a health care
12 provider's spouse, child, child's spouse, grandchild,
13 grandchild's spouse, parent, parent-in-law, or sibling.

14 (k)~~(i)~~ "Investment interest" means an equity or debt
15 security issued by an entity, including, without limitation,
16 shares of stock in a corporation, units or other interests in
17 a partnership, bonds, debentures, notes, or other equity
18 interests or debt instruments. The following investment
19 interests shall be excepted from this definition:

20 1. An investment interest in an entity that is the
21 sole provider of designated health services in a rural area;

22 2. An investment interest in notes, bonds, debentures,
23 or other debt instruments issued by an entity which provides
24 designated health services, as an integral part of a plan by
25 such entity to acquire such investor's equity investment
26 interest in the entity, provided that the interest rate is
27 consistent with fair market value, and that the maturity date
28 of the notes, bonds, debentures, or other debt instruments
29 issued by the entity to the investor is not later than October
30 1, 1996.

31 3. An investment interest in real property resulting

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1 in a landlord-tenant relationship between the health care
2 provider and the entity in which the equity interest is held,
3 unless the rent is determined, in whole or in part, by the
4 business volume or profitability of the tenant or exceeds fair
5 market value; or

6 4. An investment interest in an entity which owns or
7 leases and operates a hospital licensed under chapter 395 or a
8 nursing home facility licensed under chapter 400.

9 (l)(j) "Investor" means a person or entity owning a
10 legal or beneficial ownership or investment interest, directly
11 or indirectly, including, without limitation, through an
12 immediate family member, trust, or another entity related to
13 the investor within the meaning of 42 C.F.R. s. 413.17, in an
14 entity.

15 (m) "Outside referral for diagnostic imaging services"
16 means a referral of a patient to a group practice or sole
17 provider for diagnostic imaging services by a physician who is
18 not a member of the group practice or of the sole provider's
19 practice and who does not have an investment interest in the
20 group practice or sole provider's practice, for which the
21 group practice or sole provider billed for both the technical
22 and the professional fee for the patient, and the patient did
23 not become a patient of your group practice or sole provider's
24 practice.

25 (n) "Patient of a group practice" or "patient of a
26 sole provider" means a patient who receives a physical
27 examination, evaluation, diagnosis, or development of a
28 treatment plan if medically necessary by a physician who is a
29 member of the group practice or the sole provider's practice.

30 (o)(k) "Referral" means any referral of a patient by a
31 health care provider for health care services, including,

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1 without limitation:

2 1. The forwarding of a patient by a health care
3 provider to another health care provider or to an entity which
4 provides or supplies designated health services or any other
5 health care item or service; or

6 2. The request or establishment of a plan of care by a
7 health care provider, which includes the provision of
8 designated health services or other health care item or
9 service.

10 3. The following orders, recommendations, or plans of
11 care shall not constitute a referral by a health care
12 provider:

13 a. By a radiologist for diagnostic-imaging services.

14 b. By a physician specializing in the provision of
15 radiation therapy services for such services.

16 c. By a medical oncologist for drugs and solutions to
17 be prepared and administered intravenously to such
18 oncologist's patient, as well as for the supplies and
19 equipment used in connection therewith to treat such patient
20 for cancer and the complications thereof.

21 d. By a cardiologist for cardiac catheterization
22 services.

23 e. By a pathologist for diagnostic clinical laboratory
24 tests and pathological examination services, if furnished by
25 or under the supervision of such pathologist pursuant to a
26 consultation requested by another physician.

27 f. By a health care provider who is the sole provider
28 or member of a group practice for designated health services
29 or other health care items or services that are prescribed or
30 provided solely for such referring health care provider's or
31 group practice's own patients, and that are provided or

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1 performed by or under the direct supervision of such referring
2 health care provider or group practice; provided, however,
3 that effective July 1, 1999, a physician licensed pursuant to
4 chapter 458, chapter 459, chapter 460, or chapter 461 may
5 refer a patient to a sole provider or group practice for
6 diagnostic imaging services, excluding radiation therapy
7 services, for which the sole provider or group practice billed
8 both the technical and the professional fee for or on behalf
9 of the patient, if the referring physician has no investment
10 interest in the practice. The group practice or sole provider
11 may accept no more than 35 percent of their patients receiving
12 diagnostic imaging services from outside referrals, excluding
13 radiation therapy services.

14 g. By a health care provider for services provided by
15 an ambulatory surgical center licensed under chapter 395.

16 h. By a health care provider for diagnostic clinical
17 laboratory services where such services are directly related
18 to renal dialysis.

19 i. By a urologist for lithotripsy services.

20 j. By a dentist for dental services performed by an
21 employee of or health care provider who is an independent
22 contractor with the dentist or group practice of which the
23 dentist is a member.

24 k. By a physician for infusion therapy services to a
25 patient of that physician or a member of that physician's
26 group practice.

27 l. By a nephrologist for renal dialysis services and
28 supplies.

29 (p) "Present in the office suite" means that the
30 physician is actually physically present; provided, however,
31 that the health care provider is considered physically present

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1 during brief unexpected absences as well as during routine
2 absences of a short duration if the absences occur during time
3 periods in which the health care provider is otherwise
4 scheduled and ordinarily expected to be present and the
5 absences do not conflict with any other requirement in the
6 Medicare program for a particular level of health care
7 provider supervision.

8 (q)~~(l)~~ "Rural area" means a county with a population
9 density of no greater than 100 persons per square mile, as
10 defined by the United States Census.

11 (r) "Sole provider" means a health care provider
12 licensed under chapter 458, chapter 459, chapter 460, or
13 chapter 461, who maintains a medical practice separate from
14 any other health care provider and who bills for his or her
15 services separately from the services provided by any other
16 health care provider.

17 (4) REQUIREMENT FOR ACCEPTING OUTSIDE REFERRALS FOR
18 DIAGNOSTIC IMAGING.--

19 (a) A group practice or sole provider accepting
20 outside referrals for diagnostic imaging services is required
21 to comply with the following conditions:

22 1. All equity in the group practice or sole provider's
23 practice accepting outside referrals for diagnostic imaging
24 must be held by the physicians comprising the group practice
25 or the sole provider's practice, each of which must provide at
26 least 75 percent of his professional services to the group.

27 2. The group practice or sole provider accepting
28 outside referrals for diagnostic imaging may not be managed by
29 the same entity or any related entity that either owns,
30 manages, or otherwise has any interest in the group practice
31 or sole provider referring the patient.

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1 3. The group practice or sole provider accepting
2 outside referrals for diagnostic imaging services must bill
3 for both the professional and technical component of the
4 service on behalf of the patient and no portion of the
5 payment, or any type of consideration, either directly or
6 indirectly, may be shared with the referring physician.

7 4. Group practices or sole providers that have a
8 Medicaid provider agreement with the Agency for Health Care
9 Administration must furnish diagnostic imaging services to
10 their Medicaid patients and may not refer a Medicaid recipient
11 to a hospital for outpatient diagnostic imaging services
12 unless the physician furnishes the hospital with documentation
13 demonstrating the medical necessity for such a referral. If
14 necessary, the agency is authorized to seek a federal waiver
15 to implement this provision.

16 5. All group practices and sole providers accepting
17 outside referrals for diagnostic imaging shall annually report
18 to the Agency for Health Care Administration providing the
19 number of outside referrals accepted for diagnostic imaging
20 services and the total number of all patients receiving
21 diagnostic imaging services.

22 (b) If a group practice or sole provider accepts an
23 outside referral for diagnostic imaging services in violation
24 of this subsection or if a group practice or sole provider
25 accepts outside referrals for diagnostic imaging services in
26 excess of the percentage limitation established in
27 subparagraph 3.f. of this subsection, the group practice or
28 sole provider shall be subject to the penalties of subsection
29 (5) of this section.

30 (5)(4) PROHIBITED REFERRALS AND CLAIMS FOR
31 PAYMENT.--Except as provided in this section:

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1 (a) A health care provider may not refer a patient for
2 the provision of designated health services to an entity in
3 which the health care provider is an investor or has an
4 investment interest.

5 (b) A health care provider may not refer a patient for
6 the provision of any other health care item or service to an
7 entity in which the health care provider is an investor
8 unless:

9 1. The provider's investment interest is in registered
10 securities purchased on a national exchange or
11 over-the-counter market and issued by a publicly held
12 corporation:

13 a. Whose shares are traded on a national exchange or
14 on the over-the-counter market; and

15 b. Whose total assets at the end of the corporation's
16 most recent fiscal quarter exceeded \$50 million; or

17 2. With respect to an entity other than a publicly
18 held corporation described in subparagraph 1., and a referring
19 provider's investment interest in such entity, each of the
20 following requirements are met:

21 a. No more than 50 percent of the value of the
22 investment interests are held by investors who are in a
23 position to make referrals to the entity.

24 b. The terms under which an investment interest is
25 offered to an investor who is in a position to make referrals
26 to the entity are no different from the terms offered to
27 investors who are not in a position to make such referrals.

28 c. The terms under which an investment interest is
29 offered to an investor who is in a position to make referrals
30 to the entity are not related to the previous or expected
31 volume of referrals from that investor to the entity.

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1 d. There is no requirement that an investor make
2 referrals or be in a position to make referrals to the entity
3 as a condition for becoming or remaining an investor.

4 3. With respect to either such entity or publicly held
5 corporation:

6 a. The entity or corporation does not loan funds to or
7 guarantee a loan for an investor who is in a position to make
8 referrals to the entity or corporation if the investor uses
9 any part of such loan to obtain the investment interest.

10 b. The amount distributed to an investor representing
11 a return on the investment interest is directly proportional
12 to the amount of the capital investment, including the fair
13 market value of any preoperational services rendered, invested
14 in the entity or corporation by that investor.

15 4. Each board and, in the case of hospitals, the
16 Agency for Health Care Administration, shall encourage the use
17 by licensees of the declaratory statement procedure to
18 determine the applicability of this section or any rule
19 adopted pursuant to this section as it applies solely to the
20 licensee. Boards shall submit to the Agency for Health Care
21 Administration the name of any entity in which a provider
22 investment interest has been approved pursuant to this
23 section, and the Agency for Health Care Administration shall
24 adopt rules providing for periodic quality assurance and
25 utilization review of such entities.

26 (c) No claim for payment may be presented by an entity
27 to any individual, third-party payor, or other entity for a
28 service furnished pursuant to a referral prohibited under this
29 section.

30 (d) If an entity collects any amount that was billed
31 in violation of this section, the entity shall refund such

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1 amount on a timely basis to the payor or individual, whichever
2 is applicable.

3 (e) Any person that presents or causes to be presented
4 a bill or a claim for service that such person knows or should
5 know is for a service for which payment may not be made under
6 paragraph (c), or for which a refund has not been made under
7 paragraph (d), shall be subject to a civil penalty of not more
8 than \$15,000 for each such service to be imposed and collected
9 by the appropriate board.

10 (f) Any health care provider or other entity that
11 enters into an arrangement or scheme, such as a cross-referral
12 arrangement, which the physician or entity knows or should
13 know has a principal purpose of assuring referrals by the
14 physician to a particular entity which, if the physician
15 directly made referrals to such entity, would be in violation
16 of this section, shall be subject to a civil penalty of not
17 more than \$100,000 for each such circumvention arrangement or
18 scheme to be imposed and collected by the appropriate board.

19 (g) A violation of this section by a health care
20 provider shall constitute grounds for disciplinary action to
21 be taken by the applicable board pursuant to s. 458.331(2), s.
22 459.015(2), s. 460.413(2), s. 461.013(2), s. 463.016(2), or s.
23 466.028(2). Any hospital licensed under chapter 395 found in
24 violation of this section shall be subject to the rules
25 adopted by the Agency for Health Care Administration pursuant
26 to s. 395.0185(2).

27 (h) Any hospital licensed under chapter 395 that
28 discriminates against or otherwise penalizes a health care
29 provider for compliance with this act.

30 (i) The provision of paragraph (a) shall not apply to
31 referrals to the offices of radiation therapy centers managed

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1 by an entity or subsidiary or general partner thereof, which
2 performed radiation therapy services at those same offices
3 prior to April 1, 1991, and shall not apply also to referrals
4 for radiation therapy to be performed at no more than one
5 additional office of any entity qualifying for the foregoing
6 exception which, prior to February 1, 1992, had a binding
7 purchase contract on and a nonrefundable deposit paid for a
8 linear accelerator to be used at the additional office. The
9 physical site of the radiation treatment centers affected by
10 this provision may be relocated as a result of the following
11 factors: acts of God; fire; strike; accident; war; eminent
12 domain actions by any governmental body; or refusal by the
13 lessor to renew a lease. A relocation for the foregoing
14 reasons is limited to relocation of an existing facility to a
15 replacement location within the county of the existing
16 facility upon written notification to the Office of Licensure
17 and Certification.

18 (j) A health care provider who meets the requirements
19 of paragraphs (b) and (i) must disclose his or her investment
20 interest to his or her patients as provided in s. 455.701.

21 Section 2. (1) The Agency for Health Care
22 Administration is directed to study issues relating to the
23 need for quality-of-care standards applicable to group
24 practices, hospitals, and health systems providing diagnostic
25 imaging services. Issues to be addressed in the scope of this
26 study include:

27 (a) The parameters of quality of care;

28 (b) The need for periodic inspection of the facilities
29 or the entities providing diagnostic imaging services for the
30 purpose of evaluation of the premises, operation, supervision,
31 and procedures of the entity;

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1 (c) The extent to which requiring group practices
2 providing diagnostic imaging services to participate in
3 nationally recognized accrediting organizations would enhance
4 quality assurance processes; and

5 (d) An assessment of how group practices, hospitals,
6 and health systems providing diagnostic imaging services
7 ensure appropriate utilization of services in order to prevent
8 overutilization of these services.

9 (2) The agency may convene a technical assistance
10 panel for purposes of this study which is representative of
11 group practices providing diagnostic imaging services, group
12 practices, group practices generally, various professional
13 organizations representing providers and hospitals, and
14 representatives of the public.

15 (3) The agency shall submit its findings and
16 recommendations to the Governor, the President of the Senate,
17 and the Speaker of the House of Representatives by January 15,
18 2000.

19 Section 3. The agency shall require registration by
20 all group practices providing diagnostic imaging services,
21 regardless of ownership. Registration information must include
22 the medical specialty of each physician; address and phone
23 number of the group; UPIN number for the group and each group
24 number; and Medicare, Medicaid, and commercial billing numbers
25 for the group. The agency shall complete the registration by
26 December 31, 1999.

27 Section 4. Section 4 of chapter 98-192, Laws of
28 Florida, is amended to read:

29 Section 4. This act shall take effect July 1, 1998,
30 except that the amendment of section 395.701 ~~and 395.7015,~~
31 Florida Statutes, by this act shall take effect only upon the

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1 Agency for Health Care Administration receiving written
2 confirmation from the federal Health Care Financing
3 Administration that the changes contained in such amendments
4 will not adversely affect the use of the remaining assessments
5 as state match for the state's Medicaid program.

6 Section 5. This act shall take effect July 1, 1999.

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9 ===== T I T L E A M E N D M E N T =====

10 And the title is amended as follows:

11 On page 1, lines 2-31,
12 remove from the title of the bill: all of said lines

13

14 and insert in lieu thereof:

15 An act relating to health care; amending s.
16 455.654, F.S.; providing definitions; providing
17 requirements for accepting outside referrals
18 for diagnostic imaging; providing for
19 disciplinary procedures against a group
20 practice or sole provider that accepts an
21 outside referral for diagnostic imaging
22 services in violation of such requirements;
23 providing a fine; requiring the Agency for
24 Health Care Administration to study issues
25 relating to quality care in providing
26 diagnostic imaging services; authorizing the
27 agency to convene a technical assistance panel;
28 requiring a report to the Governor and
29 Legislature; providing for registration of all
30 group practices; prescribing registration
31 information; amending s. 4, ch. 98-192, Laws of

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1 Florida; eliminating requirement that the
2 agency receive written confirmation from the
3 federal Health Care Financing Administration
4 that amendments to ss. 395.701 and 395.7015,
5 F.S., will not adversely affect assessments or
6 state match for the state's Medicaid program;
7 providing an effective date.
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