

1 A bill to be entitled
2 An act relating to health care; amending s.
3 455.654, F.S.; providing definitions; providing
4 requirements for accepting outside referrals
5 for diagnostic imaging; providing for
6 disciplinary procedures against a group
7 practice or sole provider that accepts an
8 outside referral for diagnostic imaging
9 services in violation of such requirements;
10 providing a fine; requiring the Agency for
11 Health Care Administration to study issues
12 relating to quality care in providing
13 diagnostic imaging services; authorizing the
14 agency to convene a technical assistance panel;
15 requiring a report to the Governor and
16 Legislature; providing for registration of all
17 group practices; prescribing registration
18 information; amending s. 4, ch. 98-192, Laws of
19 Florida; eliminating requirement that the
20 agency receive written confirmation from the
21 federal Health Care Financing Administration
22 that the amendment to s. 395.701, F.S., will
23 not adversely affect assessments or state match
24 for the state's Medicaid program; providing an
25 effective date.

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27 Be It Enacted by the Legislature of the State of Florida:

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29 Section 1. Section 455.654, Florida Statutes, 1998
30 Supplement, is amended to read:

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1 455.654 Financial arrangements between referring
2 health care providers and providers of health care services.--

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

5 (2) LEGISLATIVE INTENT.--It is recognized by the
6 Legislature that the referral of a patient by a health care
7 provider to a provider of health care services in which the
8 referring health care provider has an investment interest
9 represents a potential conflict of interest. The Legislature
10 finds these referral practices may limit or eliminate
11 competitive alternatives in the health care services market,
12 may result in overutilization of health care services, may
13 increase costs to the health care system, and may adversely
14 affect the quality of health care. The Legislature also
15 recognizes, however, that it may be appropriate for providers
16 to own entities providing health care services, and to refer
17 patients to such entities, as long as certain safeguards are
18 present in the arrangement. It is the intent of the
19 Legislature to provide guidance to health care providers
20 regarding prohibited patient referrals between health care
21 providers and entities providing health care services and to
22 protect the people of Florida from unnecessary and costly
23 health care expenditures.

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

26 (a) "Board" means any of the following boards relating
27 to the respective professions: the Board of Medicine as
28 created in s. 458.307; the Board of Osteopathic Medicine as
29 created in s. 459.004; the Board of Chiropractic Medicine as
30 created in s. 460.404; the Board of Podiatric Medicine as
31 created in s. 461.004; the Board of Optometry as created in s.

1 463.003; the Board of Pharmacy as created in s. 465.004; and
2 the Board of Dentistry as created in s. 466.004.

3 (b) "Comprehensive rehabilitation services" means
4 services that are provided by health care professionals
5 licensed under part I or part III of chapter 468 or chapter
6 486 to provide speech, occupational, or physical therapy
7 services on an outpatient or ambulatory basis.

8 (c) "Designated health services" means, for purposes
9 of this section, clinical laboratory services, physical
10 therapy services, comprehensive rehabilitative services,
11 diagnostic-imaging services, and radiation therapy services.

12 (d) "Diagnostic imaging services" means magnetic
13 resonance imaging, nuclear medicine, angiography,
14 arteriography, computed tomography, positron emission
15 tomography, digital vascular imaging, bronchography,
16 lymphangiography, splenography, ultrasound, EEG, EKG, nerve
17 conduction studies and evoked potentials.

18 (e) "Direct supervision" means supervision by a
19 physician who is present in the office suite and immediately
20 available to provide assistance and direction throughout the
21 time services are being performed.

22 (f)~~(d)~~ "Entity" means any individual, partnership,
23 firm, corporation, or other business entity.

24 (g)~~(e)~~ "Fair market value" means value in arms length
25 transactions, consistent with the general market value, and,
26 with respect to rentals or leases, the value of rental
27 property for general commercial purposes, not taking into
28 account its intended use, and, in the case of a lease of
29 space, not adjusted to reflect the additional value the
30 prospective lessee or lessor would attribute to the proximity
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1 or convenience to the lessor where the lessor is a potential
2 source of patient referrals to the lessee.

3 (h)~~(f)~~ "Group practice" means a group of two or more
4 health care providers legally organized as a partnership,
5 professional corporation, or similar association:

6 1. In which each health care provider who is a member
7 of the group provides substantially the full range of services
8 which the health care provider routinely provides, including
9 medical care, consultation, diagnosis, or treatment, through
10 the joint use of shared office space, facilities, equipment,
11 and personnel;

12 2. For which substantially all of the services of the
13 health care providers who are members of the group are
14 provided through the group and are billed in the name of the
15 group and amounts so received are treated as receipts of the
16 group; and

17 3. In which the overhead expenses of and the income
18 from the practice are distributed in accordance with methods
19 previously determined by members of the group.

20 (i)~~(g)~~ "Health care provider" means any physician
21 licensed under chapter 458, chapter 459, chapter 460, or
22 chapter 461, or any health care provider licensed under
23 chapter 463 or chapter 466.

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

27 (k)~~(i)~~ "Investment interest" means an equity or debt
28 security issued by an entity, including, without limitation,
29 shares of stock in a corporation, units or other interests in
30 a partnership, bonds, debentures, notes, or other equity

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1 interests or debt instruments. The following investment
2 interests shall be excepted from this definition:

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

5 2. An investment interest in notes, bonds, debentures,
6 or other debt instruments issued by an entity which provides
7 designated health services, as an integral part of a plan by
8 such entity to acquire such investor's equity investment
9 interest in the entity, provided that the interest rate is
10 consistent with fair market value, and that the maturity date
11 of the notes, bonds, debentures, or other debt instruments
12 issued by the entity to the investor is not later than October
13 1, 1996.

14 3. An investment interest in real property resulting
15 in a landlord-tenant relationship between the health care
16 provider and the entity in which the equity interest is held,
17 unless the rent is determined, in whole or in part, by the
18 business volume or profitability of the tenant or exceeds fair
19 market value; or

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

23 ~~(l)(j)~~ "Investor" means a person or entity owning a
24 legal or beneficial ownership or investment interest, directly
25 or indirectly, including, without limitation, through an
26 immediate family member, trust, or another entity related to
27 the investor within the meaning of 42 C.F.R. s. 413.17, in an
28 entity.

29 (m) "Outside referral for diagnostic imaging services"
30 means a referral of a patient to a group practice or sole
31 provider for diagnostic imaging services by a physician who is

1 not a member of the group practice or of the sole provider's
2 practice and who does not have an investment interest in the
3 group practice or sole provider's practice, for which the
4 group practice or sole provider billed for both the technical
5 and the professional fee for the patient, and the patient did
6 not become a patient of your group practice or sole provider's
7 practice.

8 (n) "Patient of a group practice" or "patient of a
9 sole provider" means a patient who receives a physical
10 examination, evaluation, diagnosis, or development of a
11 treatment plan if medically necessary by a physician who is a
12 member of the group practice or the sole provider's practice.

13 (o)~~(k)~~ "Referral" means any referral of a patient by a
14 health care provider for health care services, including,
15 without limitation:

16 1. The forwarding of a patient by a health care
17 provider to another health care provider or to an entity which
18 provides or supplies designated health services or any other
19 health care item or service; or

20 2. The request or establishment of a plan of care by a
21 health care provider, which includes the provision of
22 designated health services or other health care item or
23 service.

24 3. The following orders, recommendations, or plans of
25 care shall not constitute a referral by a health care
26 provider:

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

28 b. By a physician specializing in the provision of
29 radiation therapy services for such services.

30 c. By a medical oncologist for drugs and solutions to
31 be prepared and administered intravenously to such

1 oncologist's patient, as well as for the supplies and
2 equipment used in connection therewith to treat such patient
3 for cancer and the complications thereof.

4 d. By a cardiologist for cardiac catheterization
5 services.

6 e. By a pathologist for diagnostic clinical laboratory
7 tests and pathological examination services, if furnished by
8 or under the supervision of such pathologist pursuant to a
9 consultation requested by another physician.

10 f. By a health care provider who is the sole provider
11 or member of a group practice for designated health services
12 or other health care items or services that are prescribed or
13 provided solely for such referring health care provider's or
14 group practice's own patients, and that are provided or
15 performed by or under the direct supervision of such referring
16 health care provider or group practice; provided, however,
17 that effective July 1, 1999, a physician licensed pursuant to
18 chapter 458, chapter 459, chapter 460, or chapter 461 may
19 refer a patient to a sole provider or group practice for
20 diagnostic imaging services, excluding radiation therapy
21 services, for which the sole provider or group practice billed
22 both the technical and the professional fee for or on behalf
23 of the patient, if the referring physician has no investment
24 interest in the practice. The group practice or sole provider
25 may accept no more than 35 percent of their patients receiving
26 diagnostic imaging services from outside referrals, excluding
27 radiation therapy services.

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

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1 h. By a health care provider for diagnostic clinical
2 laboratory services where such services are directly related
3 to renal dialysis.

4 i. By a urologist for lithotripsy services.

5 j. By a dentist for dental services performed by an
6 employee of or health care provider who is an independent
7 contractor with the dentist or group practice of which the
8 dentist is a member.

9 k. By a physician for infusion therapy services to a
10 patient of that physician or a member of that physician's
11 group practice.

12 l. By a nephrologist for renal dialysis services and
13 supplies.

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(p) "Present in the office suite" means that the
15 physician is actually physically present; provided, however,
16 that the health care provider is considered physically present
17 during brief unexpected absences as well as during routine
18 absences of a short duration if the absences occur during time
19 periods in which the health care provider is otherwise
20 scheduled and ordinarily expected to be present and the
21 absences do not conflict with any other requirement in the
22 Medicare program for a particular level of health care
23 provider supervision.

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

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(r) "Sole provider" means a health care provider
28 licensed under chapter 458, chapter 459, chapter 460, or
29 chapter 461, who maintains a medical practice separate from
30 any other health care provider and who bills for his or her
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1 services separately from the services provided by any other
2 health care provider.

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

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

8 1. All equity in the group practice or sole provider's
9 practice accepting outside referrals for diagnostic imaging
10 must be held by the physicians comprising the group practice
11 or the sole provider's practice, each of which must provide at
12 least 75 percent of his professional services to the group or
13 the group must be incorporated under chapter 617, Florida
14 Statutes, and be exempt under the provisions of the Internal
15 Revenue Code 501(c)(3) and be part of a foundation in
16 existence prior to July 1, 1999 that is created for the
17 purpose of patient care, medical education, and research.

18 2. The group practice or sole provider accepting
19 outside referrals for diagnostic imaging may not be managed by
20 the same entity or any related entity that either owns,
21 manages, or otherwise has any interest in the group practice
22 or sole provider referring the patient.

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

29 4. Group practices or sole providers that have a
30 Medicaid provider agreement with the Agency for Health Care
31 Administration must furnish diagnostic imaging services to

1 their Medicaid patients and may not refer a Medicaid recipient
2 to a hospital for outpatient diagnostic imaging services
3 unless the physician furnishes the hospital with documentation
4 demonstrating the medical necessity for such a referral. If
5 necessary, the agency is authorized to seek a federal waiver
6 to implement this provision.

7 5. All group practices and sole providers accepting
8 outside referrals for diagnostic imaging shall annually report
9 to the Agency for Health Care Administration providing the
10 number of outside referrals accepted for diagnostic imaging
11 services and the total number of all patients receiving
12 diagnostic imaging services.

13 (b) If a group practice or sole provider accepts an
14 outside referral for diagnostic imaging services in violation
15 of this subsection or if a group practice or sole provider
16 accepts outside referrals for diagnostic imaging services in
17 excess of the percentage limitation established in
18 subparagraph 3.f. of this subsection, the group practice or
19 sole provider shall be subject to the penalties of subsection
20 (5) of this section.

21 (5)(4) PROHIBITED REFERRALS AND CLAIMS FOR
22 PAYMENT.--Except as provided in this section:

23 (a) A health care provider may not refer a patient for
24 the provision of designated health services to an entity in
25 which the health care provider is an investor or has an
26 investment interest.

27 (b) A health care provider may not refer a patient for
28 the provision of any other health care item or service to an
29 entity in which the health care provider is an investor
30 unless:
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1 1. The provider's investment interest is in registered
2 securities purchased on a national exchange or
3 over-the-counter market and issued by a publicly held
4 corporation:

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

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

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

13 a. No more than 50 percent of the value of the
14 investment interests are held by investors who are in a
15 position to make referrals to the entity.

16 b. The terms under which an investment interest is
17 offered to an investor who is in a position to make referrals
18 to the entity are no different from the terms offered to
19 investors who are not in a position to make such referrals.

20 c. The terms under which an investment interest is
21 offered to an investor who is in a position to make referrals
22 to the entity are not related to the previous or expected
23 volume of referrals from that investor to the entity.

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

27 3. With respect to either such entity or publicly held
28 corporation:

29 a. The entity or corporation does not loan funds to or
30 guarantee a loan for an investor who is in a position to make
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1 referrals to the entity or corporation if the investor uses
2 any part of such loan to obtain the investment interest.

3 b. The amount distributed to an investor representing
4 a return on the investment interest is directly proportional
5 to the amount of the capital investment, including the fair
6 market value of any preoperational services rendered, invested
7 in the entity or corporation by that investor.

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

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

23 (d) If an entity collects any amount that was billed
24 in violation of this section, the entity shall refund such
25 amount on a timely basis to the payor or individual, whichever
26 is applicable.

27 (e) Any person that presents or causes to be presented
28 a bill or a claim for service that such person knows or should
29 know is for a service for which payment may not be made under
30 paragraph (c), or for which a refund has not been made under
31 paragraph (d), shall be subject to a civil penalty of not more

1 than \$15,000 for each such service to be imposed and collected
2 by the appropriate board.

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

12 (g) A violation of this section by a health care
13 provider shall constitute grounds for disciplinary action to
14 be taken by the applicable board pursuant to s. 458.331(2), s.
15 459.015(2), s. 460.413(2), s. 461.013(2), s. 463.016(2), or s.
16 466.028(2). Any hospital licensed under chapter 395 found in
17 violation of this section shall be subject to the rules
18 adopted by the Agency for Health Care Administration pursuant
19 to s. 395.0185(2).

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

23 (i) The provision of paragraph (a) shall not apply to
24 referrals to the offices of radiation therapy centers managed
25 by an entity or subsidiary or general partner thereof, which
26 performed radiation therapy services at those same offices
27 prior to April 1, 1991, and shall not apply also to referrals
28 for radiation therapy to be performed at no more than one
29 additional office of any entity qualifying for the foregoing
30 exception which, prior to February 1, 1992, had a binding
31 purchase contract on and a nonrefundable deposit paid for a

1 linear accelerator to be used at the additional office. The
 2 physical site of the radiation treatment centers affected by
 3 this provision may be relocated as a result of the following
 4 factors: acts of God; fire; strike; accident; war; eminent
 5 domain actions by any governmental body; or refusal by the
 6 lessor to renew a lease. A relocation for the foregoing
 7 reasons is limited to relocation of an existing facility to a
 8 replacement location within the county of the existing
 9 facility upon written notification to the Office of Licensure
 10 and Certification.

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

14 Section 2. (1) The Agency for Health Care
 15 Administration is directed to study issues relating to the
 16 need for quality-of-care standards applicable to group
 17 practices, hospitals, and health systems providing diagnostic
 18 imaging services. Issues to be addressed in the scope of this
 19 study include:

20 (a) The parameters of quality of care;

21 (b) The need for periodic inspection of the facilities
 22 or the entities providing diagnostic imaging services for the
 23 purpose of evaluation of the premises, operation, supervision,
 24 and procedures of the entity;

25 (c) The extent to which requiring group practices
 26 providing diagnostic imaging services to participate in
 27 nationally recognized accrediting organizations would enhance
 28 quality assurance processes; and

29 (d) An assessment of how group practices, hospitals,
 30 and health systems providing diagnostic imaging services

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1 ensure appropriate utilization of services in order to prevent
2 overutilization of these services.

3 (2) The agency may convene a technical assistance
4 panel for purposes of this study which is representative of
5 group practices providing diagnostic imaging services, group
6 practices, group practices generally, various professional
7 organizations representing providers and hospitals, and
8 representatives of the public.

9 (3) The agency shall submit its findings and
10 recommendations to the Governor, the President of the Senate,
11 and the Speaker of the House of Representatives by January 15,
12 2000.

13 Section 3. The agency shall require registration by
14 all group practices providing diagnostic imaging services,
15 regardless of ownership. Registration information must include
16 the medical specialty of each physician; address and phone
17 number of the group; UPIN number for the group and each group
18 number; and Medicare, Medicaid, and commercial billing numbers
19 for the group. The agency shall complete the registration by
20 December 31, 1999.

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

23 Section 4. This act shall take effect July 1, 1998,
24 except that the amendment of section 395.701 ~~and 395.7015,~~
25 Florida Statutes, by this act shall take effect only upon the
26 Agency for Health Care Administration receiving written
27 confirmation from the federal Health Care Financing
28 Administration that the changes contained in such amendments
29 will not adversely affect the use of the remaining assessments
30 as state match for the state's Medicaid program.

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