

Bill No. CS for SB 2438

Amendment No. \_\_\_\_

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Senator Latvala moved the following amendment:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause

and insert:

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

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

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

(2) LEGISLATIVE INTENT.--It is recognized by the Legislature that the referral of a patient by a health care provider to a provider of health care services in which the referring health care provider has an investment interest represents a potential conflict of interest. The Legislature finds these referral practices may limit or eliminate competitive alternatives in the health care services market, may result in overutilization of health care services, may increase costs to the health care system, and may adversely

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

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

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

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

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

30 (d) "Diagnostic imaging services" means magnetic  
31 resonance imaging, nuclear medicine, angiography,

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

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

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

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

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

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

29 2. For which substantially all of the services of the  
30 health care providers who are members of the group are  
31 provided through the group and are billed in the name of the

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1 group and amounts so received are treated as receipts of the  
2 group; and

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

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

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

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

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

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

30 3. An investment interest in real property resulting  
31 in a landlord-tenant relationship between the health care

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

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

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

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

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

29 (o)(k) "Referral" means any referral of a patient by a  
30 health care provider for health care services, including,  
31 without limitation:

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- 1           1. The forwarding of a patient by a health care
- 2 provider to another health care provider or to an entity which
- 3 provides or supplies designated health services or any other
- 4 health care item or service; or
- 5           2. The request or establishment of a plan of care by a
- 6 health care provider, which includes the provision of
- 7 designated health services or other health care item or
- 8 service.
- 9           3. The following orders, recommendations, or plans of
- 10 care shall not constitute a referral by a health care
- 11 provider:
- 12           a. By a radiologist for diagnostic-imaging services.
- 13           b. By a physician specializing in the provision of
- 14 radiation therapy services for such services.
- 15           c. By a medical oncologist for drugs and solutions to
- 16 be prepared and administered intravenously to such
- 17 oncologist's patient, as well as for the supplies and
- 18 equipment used in connection therewith to treat such patient
- 19 for cancer and the complications thereof.
- 20           d. By a cardiologist for cardiac catheterization
- 21 services.
- 22           e. By a pathologist for diagnostic clinical laboratory
- 23 tests and pathological examination services, if furnished by
- 24 or under the supervision of such pathologist pursuant to a
- 25 consultation requested by another physician.
- 26           f. By a health care provider who is the sole provider
- 27 or member of a group practice for designated health services
- 28 or other health care items or services that are prescribed or
- 29 provided solely for such referring health care provider's or
- 30 group practice's own patients, and that are provided or
- 31 performed by or under the direct supervision of such referring

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

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

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

18 i. By a urologist for lithotripsy services.

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

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

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

28 (p) "Present in the office suite" means that the  
29 physician is actually physically present; provided, however,  
30 that the health care provider is considered physically present  
31 during brief unexpected absences as well as during routine

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

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

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

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

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

21 1. All equity in the group practice or sole provider's  
22 practice accepting outside referrals for diagnostic imaging  
23 must be held by the physicians comprising the group practice  
24 or the sole provider's practice, each of which must provide at  
25 least 75 percent of his professional services to the group or  
26 the group must be incorporated under chapter 617, Florida  
27 Statutes, and be exempt under the provisions of the Internal  
28 Revenue Code 501(c)(3) and be part of a foundation in  
29 existence prior to July 1, 1999 that is created for the  
30 purpose of patient care, medical education, and research.

31 2. The group practice or sole provider accepting



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1 outside referrals for diagnostic imaging may not be managed by  
2 the same entity or any related entity that either owns,  
3 manages, or otherwise has any interest in the group practice  
4 or sole provider referring the patient.

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

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

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

26 (b) If a group practice or sole provider accepts an  
27 outside referral for diagnostic imaging services in violation  
28 of this subsection or if a group practice or sole provider  
29 accepts outside referrals for diagnostic imaging services in  
30 excess of the percentage limitation established in  
31 subparagraph 3.f. of this subsection, the group practice or

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1 sole provider shall be subject to the penalties of subsection  
2 (5) of this section.

3 (5)~~(4)~~ PROHIBITED REFERRALS AND CLAIMS FOR  
4 PAYMENT.--Except as provided in this section:

5 (a) A health care provider may not refer a patient for  
6 the provision of designated health services to an entity in  
7 which the health care provider is an investor or has an  
8 investment interest.

9 (b) A health care provider may not refer a patient for  
10 the provision of any other health care item or service to an  
11 entity in which the health care provider is an investor  
12 unless:

13 1. The provider's investment interest is in registered  
14 securities purchased on a national exchange or  
15 over-the-counter market and issued by a publicly held  
16 corporation:

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

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

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

25 a. No more than 50 percent of the value of the  
26 investment interests are held by investors who are in a  
27 position to make referrals to the entity.

28 b. 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 no different from the terms offered to  
31 investors who are not in a position to make such referrals.

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1           c. The terms under which an investment interest is  
2 offered to an investor who is in a position to make referrals  
3 to the entity are not related to the previous or expected  
4 volume of referrals from that investor to the entity.

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

8           3. With respect to either such entity or publicly held  
9 corporation:

10           a. The entity or corporation does not loan funds to or  
11 guarantee a loan for an investor who is in a position to make  
12 referrals to the entity or corporation if the investor uses  
13 any part of such loan to obtain the investment interest.

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

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

30           (c) No claim for payment may be presented by an entity  
31 to any individual, third-party payor, or other entity for a

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1 service furnished pursuant to a referral prohibited under this  
2 section.

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

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

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

23 (g) A violation of this section by a health care  
24 provider shall constitute grounds for disciplinary action to  
25 be taken by the applicable board pursuant to s. 458.331(2), s.  
26 459.015(2), s. 460.413(2), s. 461.013(2), s. 463.016(2), or s.  
27 466.028(2). Any hospital licensed under chapter 395 found in  
28 violation of this section shall be subject to the rules  
29 adopted by the Agency for Health Care Administration pursuant  
30 to s. 395.0185(2).

31 (h) Any hospital licensed under chapter 395 that

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1 discriminates against or otherwise penalizes a health care  
2 provider for compliance with this act.

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

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

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

31 (a) The parameters of quality of care;

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1           (b) The need for periodic inspection of the facilities  
2 or the entities providing diagnostic imaging services for the  
3 purpose of evaluation of the premises, operation, supervision,  
4 and procedures of the entity;

5           (c) The extent to which requiring group practices  
6 providing diagnostic imaging services to participate in  
7 nationally recognized accrediting organizations would enhance  
8 quality assurance processes; and

9           (d) An assessment of how group practices, hospitals,  
10 and health systems providing diagnostic imaging services  
11 ensure appropriate utilization of services in order to prevent  
12 overutilization of these services.

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

19           (3) The agency shall submit its findings and  
20 recommendations to the Governor, the President of the Senate,  
21 and the Speaker of the House of Representatives by January 15,  
22 2000.

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

31           Section 4. Section 4 of chapter 98-192, Laws of

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1 Florida, is amended to read:

2 Section 4. This act shall take effect July 1, 1998,  
3 except that the amendment of section 395.701 ~~and 395.7015~~,  
4 Florida Statutes, by this act shall take effect only upon the  
5 Agency for Health Care Administration receiving written  
6 confirmation from the federal Health Care Financing  
7 Administration that the changes contained in such amendments  
8 will not adversely affect the use of the remaining assessments  
9 as state match for the state's Medicaid program.

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

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12

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

14 And the title is amended as follows:

15 Delete everything before the enacting clause

16

17 and insert:

18 A bill to be entitled  
19 An act relating to health care; amending s.  
20 455.654, F.S.; providing definitions; providing  
21 requirements for accepting outside referrals  
22 for diagnostic imaging; providing for  
23 disciplinary procedures against a group  
24 practice or sole provider that accepts an  
25 outside referral for diagnostic imaging  
26 services in violation of such requirements;  
27 providing a fine; requiring the Agency for  
28 Health Care Administration to study issues  
29 relating to quality care in providing  
30 diagnostic imaging services; authorizing the  
31 agency to convene a technical assistance panel;

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1           requiring a report to the Governor and  
2           Legislature; providing for registration of all  
3           group practices; prescribing registration  
4           information; amending s. 4, ch. 98-192, Laws of  
5           Florida; eliminating requirement that the  
6           agency receive written confirmation from the  
7           federal Health Care Financing Administration  
8           that the amendment to s. 395.701, F.S., will  
9           not adversely affect assessments or state match  
10          for the state's Medicaid program; providing an  
11          effective date.

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