

By the Committee on Health, Aging and Long-Term Care; and  
Senator Latvala

317-2198-99

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; authorizing group practices and  
19          sole practitioners to accept a prescribed  
20          percentage of their patients from outside  
21          referrals for a specified time; requiring the  
22          Agency for Health Care Administration in  
23          conjunction with the Medicaid Fraud Unit of the  
24          Office of the Attorney General to study certain  
25          specified business activities and arrangements  
26          of providers of clinical laboratory services  
27          for kidney dialysis; requiring a report;  
28          amending s. 4, ch. 98-192, Laws of Florida;  
29          eliminating requirement that the agency receive  
30          written confirmation from the federal Health  
31          Care Financing Administration that amendments

1 to ss. 395.701 and 395.7015, F.S., will not  
2 adversely affect assessments or state match for  
3 the state's Medicaid program; providing an  
4 effective date.  
5

6 Be It Enacted by the Legislature of the State of Florida:  
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8 Section 1. Section 455.654, Florida Statutes, 1998  
9 Supplement, is amended to read:

10 455.654 Financial arrangements between referring  
11 health care providers and providers of health care services.--

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

14 (2) LEGISLATIVE INTENT.--It is recognized by the  
15 Legislature that the referral of a patient by a health care  
16 provider to a provider of health care services in which the  
17 referring health care provider has an investment interest  
18 represents a potential conflict of interest. The Legislature  
19 finds these referral practices may limit or eliminate  
20 competitive alternatives in the health care services market,  
21 may result in overutilization of health care services, may  
22 increase costs to the health care system, and may adversely  
23 affect the quality of health care. The Legislature also  
24 recognizes, however, that it may be appropriate for providers  
25 to own entities providing health care services, and to refer  
26 patients to such entities, as long as certain safeguards are  
27 present in the arrangement. It is the intent of the  
28 Legislature to provide guidance to health care providers  
29 regarding prohibited patient referrals between health care  
30 providers and entities providing health care services and to  
31

1 protect the people of Florida from unnecessary and costly  
2 health care expenditures.

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

5 (a) "Board" means any of the following boards relating  
6 to the respective professions: the Board of Medicine as  
7 created in s. 458.307; the Board of Osteopathic Medicine as  
8 created in s. 459.004; the Board of Chiropractic Medicine as  
9 created in s. 460.404; the Board of Podiatric Medicine as  
10 created in s. 461.004; the Board of Optometry as created in s.  
11 463.003; the Board of Pharmacy as created in s. 465.004; and  
12 the Board of Dentistry as created in s. 466.004.

13 (b) "Comprehensive rehabilitation services" means  
14 services that are provided by health care professionals  
15 licensed under part I or part III of chapter 468 or chapter  
16 486 to provide speech, occupational, or physical therapy  
17 services on an outpatient or ambulatory basis.

18 (c) "Designated health services" means, for purposes  
19 of this section, clinical laboratory services, physical  
20 therapy services, comprehensive rehabilitative services,  
21 diagnostic-imaging services, and radiation therapy services.

22 (d) "Diagnostic imaging services" means magnetic  
23 resonance imaging, nuclear medicine, angiography,  
24 arteriography, computed tomography, positron emission  
25 tomography, digital vascular imaging, bronchography,  
26 lymphangiography, splenography, ultrasound, EEG, EKG, nerve  
27 conduction studies, and evoked potentials.

28 (e) "Direct supervision" means supervision by a  
29 physician who is present in the office suite and immediately  
30 available to provide assistance and direction throughout the  
31 time services are being performed.

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

3           (g)~~(e)~~ "Fair market value" means value in arms length  
4 transactions, consistent with the general market value, and,  
5 with respect to rentals or leases, the value of rental  
6 property for general commercial purposes, not taking into  
7 account its intended use, and, in the case of a lease of  
8 space, not adjusted to reflect the additional value the  
9 prospective lessee or lessor would attribute to the proximity  
10 or convenience to the lessor where the lessor is a potential  
11 source of patient referrals to the lessee.

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

15           1. In which each health care provider who is a member  
16 of the group provides substantially the full range of services  
17 which the health care provider routinely provides, including  
18 medical care, consultation, diagnosis, or treatment, through  
19 the joint use of shared office space, facilities, equipment,  
20 and personnel;

21           2. For which substantially all of the services of the  
22 health care providers who are members of the group are  
23 provided through the group and are billed in the name of the  
24 group and amounts so received are treated as receipts of the  
25 group; and

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

29           (i)~~(g)~~ "Health care provider" means any physician  
30 licensed under chapter 458, chapter 459, chapter 460, or  
31

1 chapter 461, or any health care provider licensed under  
2 chapter 463 or chapter 466.

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

6 (k)~~(i)~~ "Investment interest" means an equity or debt  
7 security issued by an entity, including, without limitation,  
8 shares of stock in a corporation, units or other interests in  
9 a partnership, bonds, debentures, notes, or other equity  
10 interests or debt instruments. The following investment  
11 interests shall be excepted from this definition:

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

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

23 3. An investment interest in real property resulting  
24 in a landlord-tenant relationship between the health care  
25 provider and the entity in which the equity interest is held,  
26 unless the rent is determined, in whole or in part, by the  
27 business volume or profitability of the tenant or exceeds fair  
28 market value; or

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

1           ~~(l)(j)~~ "Investor" means a person or entity owning a  
2 legal or beneficial ownership or investment interest, directly  
3 or indirectly, including, without limitation, through an  
4 immediate family member, trust, or another entity related to  
5 the investor within the meaning of 42 C.F.R. s. 413.17, in an  
6 entity.

7           (m) "Outside referral for diagnostic imaging services"  
8 means a referral of a patient to a group practice or sole  
9 provider for diagnostic imaging services by a physician who is  
10 not a member of the group practice or of the sole provider's  
11 practice and who does not have an investment interest in the  
12 group practice or sole provider's practice, for which the  
13 group practice or sole provider billed for both the technical  
14 and the professional fee for the patient, and the patient did  
15 not become a patient of your group practice or sole provider's  
16 practice.

17           (n) "Patient of a group practice" or "patient of a  
18 sole provider" means a patient who receives a physical  
19 examination, evaluation, diagnosis, and development of a  
20 treatment plan if medically necessary by a physician who is a  
21 member of the group practice or the sole practitioner's  
22 practice.

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

26           1. The forwarding of a patient by a health care  
27 provider to another health care provider or to an entity which  
28 provides or supplies designated health services or any other  
29 health care item or service; or

30           2. The request or establishment of a plan of care by a  
31 health care provider, which includes the provision of

1 designated health services or other health care item or  
2 service.

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

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

7 b. By a physician specializing in the provision of  
8 radiation therapy services for such services.

9 c. By a medical oncologist for drugs and solutions to  
10 be prepared and administered intravenously to such  
11 oncologist's patient, as well as for the supplies and  
12 equipment used in connection therewith to treat such patient  
13 for cancer and the complications thereof.

14 d. By a cardiologist for cardiac catheterization  
15 services.

16 e. By a pathologist for diagnostic clinical laboratory  
17 tests and pathological examination services, if furnished by  
18 or under the supervision of such pathologist pursuant to a  
19 consultation requested by another physician.

20 f. By a health care provider who is the sole provider  
21 or member of a group practice for designated health services  
22 or other health care items or services that are prescribed or  
23 provided solely for such referring health care provider's or  
24 group practice's own patients, and that are provided or  
25 performed by or under the direct supervision of such referring  
26 health care provider or group practice; provided, however,  
27 that effective July 1, 1999, a physician licensed pursuant to  
28 chapter 458, chapter 459, chapter 460, or chapter 461 may  
29 refer a patient to a sole practitioner or group practice for  
30 diagnostic imaging services, excluding radiation therapy  
31 services, for which the sole practitioner or group practice

1 billed both the technical and the professional fee for or on  
2 behalf of the patient, if the referring physician has no  
3 investment interest in the practice. The group practice or  
4 sole practitioner may accept no more than 15 percent of their  
5 patients receiving diagnostic imaging services from outside  
6 referrals, excluding radiation therapy services.

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

9 h. By a health care provider for diagnostic clinical  
10 laboratory services where such services are directly related  
11 to renal dialysis.

12 i. By a urologist for lithotripsy services.

13 j. By a dentist for dental services performed by an  
14 employee of or health care provider who is an independent  
15 contractor with the dentist or group practice of which the  
16 dentist is a member.

17 k. By a physician for infusion therapy services to a  
18 patient of that physician or a member of that physician's  
19 group practice.

20 l. By a nephrologist for renal dialysis services and  
21 supplies.

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



1           ~~(q)(1)~~ "Rural area" means a county with a population  
2 density of no greater than 100 persons per square mile, as  
3 defined by the United States Census.

4           (r) "Sole provider" means a health care provider  
5 licensed under chapter 458, chapter 459, chapter 460, or  
6 chapter 461, who maintains a medical practice separate from  
7 any other health care provider and who bills for his or her  
8 services separately from the services provided by any other  
9 health care provider.

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

12           (a) A group practice or sole practitioner accepting  
13 outside referrals for diagnostic imaging services is required  
14 to comply with the following conditions:

15           1. Diagnostic imaging services must be provided  
16 exclusively by a group practice physician or by a full-time or  
17 part-time employee of the group practice or of the sole  
18 provider's practice.

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

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

29           4. The group practice or sole provider accepting  
30 outside referrals for diagnostic imaging services must bill  
31 for both the professional and technical component of the

1 service on behalf of the patient and no portion of the  
2 payment, or any type of consideration, either directly or  
3 indirectly, may be shared with the referring physician.

4 5. Group practices or sole providers that have a  
5 Medicaid provider agreement with the Agency for Health Care  
6 Administration must furnish diagnostic imaging services to  
7 their Medicaid patients and may not refer a Medicaid recipient  
8 to a hospital for outpatient diagnostic imaging services  
9 unless the physician furnishes the hospital with documentation  
10 demonstrating the medical necessity for such a referral.

11 6. All group practices and sole practitioners  
12 accepting outside referrals for diagnostic imaging shall  
13 report annually to the Agency for Health Care Administration  
14 providing the number of outside referrals accepted for  
15 diagnostic imaging services and the total number of all  
16 patients receiving diagnostic imaging services.

17 (b) If a group practice or sole provider accepts an  
18 outside referral for diagnostic imaging services in violation  
19 of this subsection or if a group practice or sole provider  
20 accepts outside referrals for diagnostic imaging services in  
21 excess of the percentage limitation established in  
22 subparagraph (a)2. of this subsection, the group practice or  
23 the sole provider shall be subject to the penalties in  
24 subsection (5).

25 (5)(4) PROHIBITED REFERRALS AND CLAIMS FOR  
26 PAYMENT.--Except as provided in this section:

27 (a) A health care provider may not refer a patient for  
28 the provision of designated health services to an entity in  
29 which the health care provider is an investor or has an  
30 investment interest.

31

1 (b) A health care provider may not refer a patient for  
2 the provision of any other health care item or service to an  
3 entity in which the health care provider is an investor  
4 unless:

5 1. The provider's investment interest is in registered  
6 securities purchased on a national exchange or  
7 over-the-counter market and issued by a publicly held  
8 corporation:

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

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

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

17 a. No more than 50 percent of the value of the  
18 investment interests are held by investors who are in a  
19 position to make referrals to the entity.

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

24 c. 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 not related to the previous or expected  
27 volume of referrals from that investor to the entity.

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

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1           3. With respect to either such entity or publicly held  
2 corporation:

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

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

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

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

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

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

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

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

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

28           (i) The provision of paragraph (a) shall not apply to  
29 referrals to the offices of radiation therapy centers managed  
30 by an entity or subsidiary or general partner thereof, which  
31 performed radiation therapy services at those same offices

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

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

19 Section 2. (1) The Agency for Health Care  
20 Administration is directed to study issues relating to the  
21 need for quality-of-care standards applicable to group  
22 practices, hospitals, and health systems providing diagnostic  
23 imaging services. Issues to be addressed in the scope of this  
24 study include, but are not limited to:

25 (a) The parameters of quality of care;

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

30 (c) The extent to which requiring group practices  
31 providing diagnostic imaging services to participate in

1 nationally recognized accrediting organizations would enhance  
2 quality assurance processes; and

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

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

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

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

25 Section 4. Notwithstanding the provisions of section  
26 455.564, Florida Statutes, 1998 Supplement, upon such time as  
27 the Agency for Health Care Administration adopts and  
28 implements rules recommended by the study, group practices and  
29 sole practitioners may accept up to 25 percent of their  
30 patients from outside referrals for diagnostic imaging.

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1           Section 5. The Agency for Health Care Administration,  
2 in conjunction with the Medicaid Fraud Division of the Office  
3 of the Attorney General, shall conduct a detailed study and  
4 analysis of clinical laboratory services for kidney dialysis  
5 patients in the State of Florida. The study shall include, but  
6 not be limited to, an analysis of the past and present  
7 utilization rates of clinical laboratory services for dialysis  
8 patients; financial arrangements among kidney dialysis  
9 centers, their medical directors, any business relationships  
10 and affiliations with clinical laboratories, and any  
11 self-referral to clinical laboratories; the quality and  
12 responsiveness of clinical laboratory services for dialysis  
13 patients in Florida; and the average annual revenue for  
14 dialysis patients for clinical laboratory services for the  
15 past 10 years. The agency shall report its findings to the  
16 Legislature by February 1, 2000.

17           Section 6. Section 4 of chapter 98-192, Laws of  
18 Florida, is amended to read:

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

27           Section 7. This act shall take effect July 1, 1999.  
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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
2 COMMITTEE SUBSTITUTE FOR  
3 Senate Bill 2438

4 The bill amends the Patient Self-Referral Act of 1992 to  
5 provide requirements for a sole practitioner or a group  
6 practice to accept outside referrals for diagnostic imaging  
7 services, defines additional terms used in the Act, and  
8 revises the definition of the term "referral" to allow an  
9 exception to the group practice exception to prohibited  
10 referrals under the Act for acceptance of referrals for  
11 diagnostic imaging services. It authorizes group practices and  
12 sole practitioners to accept up to 15 percent of their  
13 patients from outside referrals for diagnostic imaging  
14 services, effective July 1, 1999, and up to 25 percent of  
15 their patients for such services once the Agency for Health  
16 Care Administration adopts and implements rules recommended by  
17 a study the Agency must submit by January 15, 2000. Group  
18 practices providing diagnostic imaging services must be  
19 registered with the Agency by December 31, 1999, regardless of  
20 who owns the group practice.

21 The bill directs the Agency to study the need for  
22 quality-of-care standards applicable to group practices,  
23 hospitals, and health systems that provide diagnostic imaging  
24 services, addressing certain specified issues, and submit its  
25 findings and recommendations by January 15, 2000. The Agency,  
26 is also required, in conjunction with the Medicaid Fraud  
27 Division of the Office of the Attorney General, to conduct a  
28 detailed study and analysis of clinical laboratory services  
29 for kidney dialysis patients. The Agency must submit a report  
30 of its findings to the Legislature by February 1, 2000.

31 The contingency in the effective date of legislation enacted  
during the 1998 legislative Session that repealed the Public  
Medical Assistance Trust Fund assessment on freestanding  
radiation therapy centers and exempted hospital outpatient  
radiation therapy centers from the same assessment is deleted  
from law.