

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

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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The Committee on Elder & Long-Term Care offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause

and insert:

Section 1. Paragraph (a) of subsection (3) of section 400.235, Florida Statutes, is amended to read:

400.235 Nursing home quality and licensure status; Gold Seal Program.--

(3)(a)1. The Gold Seal Program shall be developed and implemented by the Governor's Panel on Excellence in Long-Term Care, which shall operate under the authority of the Executive Office of the Governor. For the purposes of staggering the terms of the panel members and notwithstanding the conditions of the original appointments, the terms of all panel members expire September 30, 2002. The panel shall be composed of the following members appointed effective October 1, 2002:

a. A consumer advocate for senior citizens, appointed by the Governor to serve a 4-year term.

b. Two persons having expertise in the field of

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- 1 quality management, service delivery excellence, or public
2 sector accountability, appointed by the Governor to serve a
3 3-year term.
- 4 c. A consumer advocate for senior citizens, appointed
5 by the Secretary of Elderly Affairs to serve a 4-year term.
- 6 d. An active member of a nursing facility family and
7 resident care council, appointed by the Secretary of Elderly
8 Affairs to serve a 1-year term.
- 9 e. A member of the University Consortium on Aging,
10 appointed by the Secretary of Elderly Affairs to serve a
11 2-year term.
- 12 f. The State Long-Term Care Ombudsman.
- 13 g. A consumer advocate for senior citizens, appointed
14 by the Florida Life Care Residents Association to serve a
15 3-year term.
- 16 h. A consumer advocate for senior citizens, appointed
17 by the Secretary of Health to serve a 2-year term.
- 18 i. A consumer advocate for senior citizens, appointed
19 by the Secretary of Health Care Administration to serve a
20 4-year term.
- 21 j. The Deputy Secretary for Medicaid of the Agency for
22 Health Care Administration.
- 23 k. One person appointed by the Florida Association of
24 Homes for the Aging to serve a 1-year term.
- 25 l. One person appointed by the Florida Health Care
26 Association to serve a 2-year term.
- 27 m. A member of the Florida Silver Hair Legislature,
28 appointed by the Florida Silver Hair Legislature to serve a
29 1-year term.
- 30 n. A member of the Florida State Council of Senior
31 Citizens, appointed by the Florida State Council of Senior

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1 Citizens to serve a 2-year term.

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3 Thereafter, each panel member, except one appointed under
4 subparagraph f. or subparagraph j., shall be appointed to
5 serve a 4-year term.~~The panel shall be composed of three~~
6 ~~persons appointed by the Governor, to include a consumer~~
7 ~~advocate for senior citizens and two persons with expertise in~~
8 ~~the fields of quality management, service delivery excellence,~~
9 ~~or public sector accountability; three persons appointed by~~
10 ~~the Secretary of Elderly Affairs, to include an active member~~
11 ~~of a nursing facility family and resident care council and a~~
12 ~~member of the University Consortium on Aging; the State~~
13 ~~Long-Term Care Ombudsman; one person appointed by the Florida~~
14 ~~Life Care Residents Association; one person appointed by the~~
15 ~~Secretary of Health; two persons appointed by the Secretary of~~
16 ~~Health Care Administration; one person appointed by the~~
17 ~~Florida Association of Homes for the Aging; and one person~~
18 ~~appointed by the Florida Health Care Association.~~Vacancies on
19 the panel shall be filled in the same manner as the original
20 appointments. A panel member may not be appointed to serve
21 more than two consecutive 4-year terms.

22 2. Panel members shall select the panel chairperson by
23 a majority vote at the panel's first meeting after all panel
24 members have been appointed.

25 3. For purposes of this paragraph, the term "consumer
26 advocate for senior citizens" means a person who:

27 a. Receives no money from the nursing home industry,
28 or from any attorney or law firm that derives 10 percent or
29 more of its revenue representing nursing home facilities or
30 nursing home residents or their representatives in resident
31 rights cases, in the form of wages, contributions, or gifts

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1 and has no relatives who receive such wages, contributions, or
2 gifts;

3 b. Is not an employee of the Agency for Health Care
4 Administration, the Department of Health, or the Department of
5 Elderly Affairs; and

6 c. Is either a member of an organized senior advocacy
7 group or has had or currently has a relative in a nursing
8 home.

9 Section 2. Section 400.4195, Florida Statutes, is
10 amended to read:

11 400.4195 Rebates prohibited; penalties.--

12 (1) Except as provided in subsection (2), it is
13 unlawful for any assisted living facility, or any person or
14 agency employed by or contracting with the facility, licensed
15 under this part to contract or promise to pay or receive any
16 commission, bonus, kickback, or rebate or engage in any
17 split-fee arrangement in any form whatsoever with any health
18 care practitioner, health care facility, or other physician,
19 surgeon, organization, agency, or person, either directly or
20 indirectly, for residents referred to an assisted living
21 facility licensed under this part.

22 (2) A facility may employ or contract with persons or
23 agencies to market the facility for a fee or commission based
24 on the volume or value of referrals to the facility, provided
25 that:

26 (a) The facility is not subject to the provisions of
27 42 U.S.C. s. 1320a-7b;

28 (b) Payment to the contract provider is made under a
29 nonexclusive contract;

30 (c) The contract provider represents multiple
31 facilities with different owners;

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1 (d) The employee or contract provider clearly
2 indicates to all clients prior to referral that he or she
3 represents and is being compensated by the facility, in
4 addition to all other facilities represented by the person or
5 agency; and

6 (e) The employee or contract provider also is not a
7 health care practitioner in a position to make referrals to an
8 assisted living facility or employed by a health care facility
9 or any other organization or agency in a position to make
10 referrals to an assisted living facility or does not have an
11 ownership interest in an assisted living facility.

12 (3) A person or agency independent of and not under
13 contract with a the facility may provide placement or referral
14 services for a fee to individuals seeking assistance in
15 finding a suitable facility; however, any fee paid for
16 placement or referral services must be paid by the individual
17 looking for a facility, not by the facility.

18 (4)(2) A violation of this section shall be considered
19 patient brokering and is punishable as provided in s. 817.505.

20 Section 3. Paragraph (j) is added to subsection (3) of
21 section 817.505, Florida Statutes, to read:

22 817.505 Patient brokering prohibited; exceptions;
23 penalties.--

24 (3) This section shall not apply to:

25 (a) Any discount, payment, waiver of payment, or
26 payment practice not prohibited by 42 U.S.C. s. 1320a-7b(b) or
27 regulations promulgated thereunder.

28 (b) Any payment, compensation, or financial
29 arrangement within a group practice as defined in s. 456.053,
30 provided such payment, compensation, or arrangement is not to
31 or from persons who are not members of the group practice.

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1 (c) Payments to a health care provider or health care
2 facility for professional consultation services.

3 (d) Commissions, fees, or other remuneration lawfully
4 paid to insurance agents as provided under the insurance code.

5 (e) Payments by a health insurer who reimburses,
6 provides, offers to provide, or administers health, mental
7 health, or substance abuse goods or services under a health
8 benefit plan.

9 (f) Payments to or by a health care provider or health
10 care facility, or a health care provider network entity, that
11 has contracted with a health insurer, a health care purchasing
12 group, or the Medicare or Medicaid program to provide health,
13 mental health, or substance abuse goods or services under a
14 health benefit plan when such payments are for goods or
15 services under the plan. However, nothing in this section
16 affects whether a health care provider network entity is an
17 insurer required to be licensed under the Florida Insurance
18 Code.

19 (g) Insurance advertising gifts lawfully permitted
20 under s. 626.9541(1)(m).

21 (h) Commissions or fees paid to a nurse registry
22 licensed under s. 400.506 for referring persons providing
23 health care services to clients of the nurse registry.

24 (i) Payments by a health care provider or health care
25 facility to a health, mental health, or substance abuse
26 information service that provides information upon request and
27 without charge to consumers about providers of health care
28 goods or services to enable consumers to select appropriate
29 providers or facilities, provided that such information
30 service:

31 1. Does not attempt through its standard questions for

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1 solicitation of consumer criteria or through any other means
2 to steer or lead a consumer to select or consider selection of
3 a particular health care provider or health care facility;

4 2. Does not provide or represent itself as providing
5 diagnostic or counseling services or assessments of illness or
6 injury and does not make any promises of cure or guarantees of
7 treatment;

8 3. Does not provide or arrange for transportation of a
9 consumer to or from the location of a health care provider or
10 health care facility; and

11 4. Charges and collects fees from a health care
12 provider or health care facility participating in its services
13 that are set in advance, are consistent with the fair market
14 value for those information services, and are not based on the
15 potential value of a patient or patients to a health care
16 provider or health care facility or of the goods or services
17 provided by the health care provider or health care facility.

18 (j) Services as authorized in s. 400.4195(2).

19 Section 4. This act shall take effect upon becoming a
20 law.

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

24 And the title is amended as follows:

25 On page 1, line 10 after ";"

26
27 insert: amending s. 817.505, F.S.; providing that payment of
28 referral fees by assisted living facilities under certain
29 circumstances is not considered patient brokering;

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