

By the Council for Healthy Communities and Representatives
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1 A bill to be entitled
2 An act relating to nursing homes and related
3 health care facilities; amending s. 400.235,
4 F.S.; revising membership and terms of office
5 of the Governor's Panel on Excellence in
6 Long-Term Care; providing for selection of a
7 panel chairperson; amending s. 400.4195, F.S.;
8 providing conditions under which the
9 prohibition against payment of referral fees by
10 assisted living facilities does not apply;
11 authorizing the Agency for Health Care
12 Administration to adopt rules; amending s.
13 817.505, F.S.; providing that certain penalties
14 for patient brokering do not apply under such
15 conditions; providing an effective date.

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

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19 Section 1. Paragraph (a) of subsection (3) of section
20 400.235, Florida Statutes, is amended to read:

21 400.235 Nursing home quality and licensure status;
22 Gold Seal Program.--

23 (3)(a)1. The Gold Seal Program shall be developed and
24 implemented by the Governor's Panel on Excellence in Long-Term
25 Care, which shall operate under the authority of the Executive
26 Office of the Governor. The panel shall be composed of the
27 following members:

28 a. A consumer advocate for senior citizens, appointed
29 by the Governor.

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- 1 b. Two persons having expertise in the field of
2 quality management, service-delivery excellence, or
3 public-sector accountability, appointed by the Governor.
- 4 c. A consumer advocate for senior citizens, appointed
5 by the Secretary of Elderly Affairs.
- 6 d. An active member of a nursing facility family and
7 resident care council, appointed by the Secretary of Elderly
8 Affairs.
- 9 e. A member of the University Consortium on Aging,
10 appointed by the Secretary of Elderly Affairs.
- 11 f. The State Long-Term Care Ombudsman.
- 12 g. A consumer advocate for senior citizens, appointed
13 by the Florida Life Care Residents Association.
- 14 h. A consumer advocate for senior citizens, appointed
15 by the Secretary of Health.
- 16 i. A consumer advocate for senior citizens, appointed
17 by the Secretary of the Agency for Health Care Administration.
- 18 j. The Deputy Secretary for Medicaid of the Agency for
19 Health Care Administration.
- 20 k. One person appointed by the Florida Association of
21 Homes for the Aging.
- 22 l. One person appointed by the Florida Health Care
23 Association.
- 24 m. A member of the Florida Silver Hair Legislature,
25 appointed by the Florida Silver Hair Legislature.
- 26 n. A member of the Florida Alliance for Retired
27 Americans, appointed by the Florida Alliance for Retired
28 Americans.
- 29 o. An attorney with expertise in elder law, appointed
30 by The Florida Bar.
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1 Persons serving on the panel on the effective date of this act
2 shall continue to serve and, for terms beginning October 1,
3 2002, persons shall be appointed according to the criteria
4 described in sub-subparagraphs m., n., and o. However, for the
5 dual purpose of staggering the terms of the members and
6 maintaining continuity, the terms of the panel members serving
7 on the effective date of this act who were appointed according
8 to the criteria described in sub-subparagraphs b., d., g., i.,
9 and k. expire September 30, 2002, and terms of the panel
10 members serving on the effective date of this act who were
11 appointed according to the criteria described in
12 sub-subparagraphs a., c., e., h., and l. expire September 30,
13 2003. Thereafter, each appointive member shall be appointed
14 for a 4-year term in the same manner as the original
15 appointment. A person may not be appointed to serve more than
16 two consecutive 4-year terms. However, an appointee serving on
17 the effective date of this act is not eligible for
18 reappointment.

19 2. At the panel's first meeting after all panel
20 members have been appointed, the panel members shall, by a
21 majority vote, select a panel chairperson to serve a 3-year
22 term.

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

25 a. Does not receive more than 20 percent of his or her
26 personal income from any business involved in the delivery of
27 long-term care services, from any attorney or law firm that
28 represents nursing home facilities or nursing home residents
29 in personal injury actions, or from any affiliated membership
30 organizations or corporations;

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

4 c. Is either a member of an organized senior advocacy
5 group or has had or currently has a relative in a nursing
6 home.~~three persons appointed by the Governor, to include a~~
7 ~~consumer advocate for senior citizens and two persons with~~
8 ~~expertise in the fields of quality management, service~~
9 ~~delivery excellence, or public sector accountability; three~~
10 ~~persons appointed by the Secretary of Elderly Affairs, to~~
11 ~~include an active member of a nursing facility family and~~
12 ~~resident care council and a member of the University~~
13 ~~Consortium on Aging; the State Long-Term Care Ombudsman; one~~
14 ~~person appointed by the Florida Life Care Residents~~
15 ~~Association; one person appointed by the Secretary of Health;~~
16 ~~two persons appointed by the Secretary of Health Care~~
17 ~~Administration; one person appointed by the Florida~~
18 ~~Association of Homes for the Aging; and one person appointed~~
19 ~~by the Florida Health Care Association. Vacancies on the panel~~
20 ~~shall be filled in the same manner as the original~~
21 ~~appointments.~~

22 Section 2. Section 400.4195, Florida Statutes, is
23 amended to read:

24 400.4195 Rebates prohibited; penalties.--

25 (1) Except as provided in subsection (2), it is
26 unlawful for any assisted living facility, or any person or
27 agency employed by or contracting with the facility,~~licensed~~
28 ~~under this part~~ to contract or promise to pay or receive any
29 commission, bonus, kickback, or rebate or engage in any
30 split-fee arrangement in any form whatsoever with any health
31 care practitioner, health care facility, or other physician,

1 ~~surgeon, organization, agency, or person, either directly or~~
2 ~~indirectly, for residents referred to an assisted living~~
3 ~~facility licensed under this part.~~

4 (2) A facility may employ or contract with persons or
5 agencies to market the facility for a fee or commission not
6 based on the volume or value of referrals. Fees or commissions
7 may be based on the volume or value of referrals to the
8 facility when: ~~provided~~

9 (a) The facility is not subject to the provisions of
10 42 U.S.C. s. 1320a-7b;

11 (b) Payment to the contract provider is made under a
12 nonexclusive contract;

13 (c) The contract provider represents multiple
14 facilities with different owners;

15 (d) The employee or contract provider clearly
16 indicates to all clients prior to referral that he or she
17 represents and is being compensated by the facility, in
18 addition to all other facilities represented by the person or
19 agency;

20 (e) The employee or contract provider:

21 1. Is not a health care practitioner, or an employee,
22 vendor, or other contract provider of a health care facility,
23 in a position to make referrals to an assisted living
24 facility;

25 2. Is not employed by a health care facility, social
26 service agency, or any other organization or agency in a
27 position to make referrals to an assisted living facility;

28 3. Does not have an ownership interest in an assisted
29 living facility;

30 4. Does not contract with or pay a health care
31 facility, or its employees, vendors, or other contract

1 providers, for access to internal or external processes for
2 discharge of seniors to assisted living facilities; and
3 5. Cannot offer the client or referral any money or
4 gift of value as an enticement for services;
5 (f) A level 2 background screening must be conducted
6 for the contract provider or related employees for the
7 purposes of conducting screening under chapter 435;
8 (g) Referral is made to a duly licensed facility; and
9 (h) The contract does not require either the facility
10 or the individual being referred to use any other services
11 affiliated with or owned in whole or in part by the contract
12 provider.
13 (3) A person or agency independent of and not under
14 contract with a the facility may provide placement or referral
15 services for a fee to individuals seeking assistance in
16 finding a suitable facility; however, any fee paid for
17 placement or referral services must be paid by the individual
18 looking for a facility, not by the facility.
19 (4) The agency shall adopt rules pursuant to ss.
20 120.536(1) and 120.54 to implement this section.
21 (5)(2) A violation of this section shall be considered
22 patient brokering and is punishable as provided in s. 817.505.
23 Section 3. Paragraph (j) is added to subsection (3) of
24 section 817.505, Florida Statutes, to read:
25 817.505 Patient brokering prohibited; exceptions;
26 penalties.--
27 (3) This section shall not apply to:
28 (j) Services as authorized in s. 400.4195(2).
29 Section 4. This act shall take effect upon becoming a
30 law.
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