

Bill No. CS for SB 276

Amendment No. Barcode 241048

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

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13 **Senate Amendment (with title amendment)**

14 On page 4, line 14, through
15 page 5, line 27, delete those lines

16
17 and insert:

18 Section 2. Section 400.4195, Florida Statutes, is
19 amended to read:

20 400.4195 Rebates prohibited; penalties.--

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

31 (2)(a) A facility may employ or contract with persons

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1 or agencies to market the facility for a fee or commission not
2 based on the volume or value of referrals to the facility.

3 Fees or commissions may be based on the volume or value of
4 referrals to the facility when:

5 (1) The payment is not subject to the provisions of 42
6 U.S.C. s. 1320a-7b;

7 (2) Payment to the contract provider is made under a
8 nonexclusive contract;

9 (3) The contract provider represents multiple
10 facilities with different owners; ~~provided~~

11 (4) The employee or contract provider clearly
12 indicates to all clients prior to referral that he or she
13 represents and is being compensated by the facility, in
14 addition to all other facilities represented by the person or
15 agency;

16 5. The employee or contract provider:

17 a. Is not a health care practitioner or employee,
18 vendor, or other contract provider of a health care facility
19 in a position to make referrals to an assisted living
20 facility;

21 b. Is not employed by a health care facility, social
22 service agency, or any other organization in a position to
23 make referrals to an assisted living facility;

24 c. Does not have an ownership interest in an assisted
25 living facility and is not related to a person with an
26 ownership interest in an assisted living facility;

27 d. Does not contract with or pay a health care
28 facility, its employees, vendors, or other contract providers
29 for access to internal or external processes for discharge of
30 disabled persons over the age of 18 or frail and elderly
31 persons to assisted living facilities;

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1 e. Cannot offer the client or referral any money or
2 gift of value as an enticement for services;

3 6. A level 2 background screening must be conducted
4 for the contract provider or related employees for the
5 purposes of conducting screening under chapter 435;

6 7. Referral is made to a licensed facility;

7 8. The contract does not require the facility or the
8 individual being referred to use any other services affiliated
9 with or owned in whole or in part by the contract provider;

10 9. The person referred remains a resident of the
11 facility for at least 90 days.

12 (b) As used in this section, the term:

13 1. "Facility" means an assisted living facility, as
14 defined in s. 400.402;

15 2. "Contract provider" means a person, agency,
16 organization, or corporation that contracts with a facility to
17 market that facility to potential residents;

18 3. "Health care facility" means the office of a health
19 care practitioner, a hospital licensed under chapter 395, a
20 long-term care hospital licensed under chapter 395 which meets
21 the requirements of 42 CFR s. 412.23(e), a skilled nursing
22 facility, a hospice, as defined in part IV of chapter 400, an
23 intermediate care facility for the developmentally disabled
24 licensed under chapter 393, or a community mental health
25 center licensed under chapter 394. A facility relying solely
26 on spiritual means through prayer for healing is not a health
27 care facility;

28 4. "Health care practitioner" means a medical doctor
29 licensed under chapter 458, a doctor of osteopathy licensed
30 under chapter 459, a doctor of chiropractic medicine licensed
31 under chapter 460, a doctor of podiatric medicine licensed

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1 under chapter 461, a doctor of dentistry licensed under
2 chapter 466, or another health care professional regulated by
3 the Department of Health;

4 (c)1. All contract providers must register with the
5 agency. If the agency determines that a contract provider does
6 not meet the requirements of this section, the registration
7 shall be denied. If a registrant fails to comply with this
8 section, the agency may revoke or suspend the registration.

9 2. As part of the registration process, the agency may
10 adopt by rule requirements for:

11 a. Reporting of activity by a contract provider; and

12 b. A process by which consumers or facilities may
13 register a complaint with the agency alleging a violation of
14 this section.

15 3. The agency may adopt by rule any necessary fee
16 structure to cover the cost of administering the registration
17 and reporting requirements.

18 (d)1. If the agency finds that any ground exists for
19 the revocation or suspension of a contract provider's
20 registration, the agency may, in lieu of revocation or
21 suspension, impose a fine upon the contract provider.

22 a. With respect to any nonwillful violation, the fine
23 may not exceed \$1,000 per violation, not to exceed a total of
24 \$10,000 for all nonwillful violations arising out of the same
25 action.

26 b. With respect to any knowing and willful violation,
27 the fine may not exceed \$10,000 for each violation, not to
28 exceed a total of \$100,000 for all knowing and willful
29 violations arising out of the same action.

30 2. The agency must adopt by rule penalty categories
31 that specify varying ranges of monetary fines for willful and

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1 nonwillful violations.

2 3. The agency may also refer the contract provider to
3 the appropriate law enforcement agency for enforcement under
4 subsection (5).

5 (3) A person or agency independent of and not under
6 contract with a ~~the~~ facility may provide placement or referral
7 services for a fee to individuals seeking assistance in
8 finding a suitable facility; however, any fee paid for
9 placement or referral services must be paid by the individual
10 looking for a facility, not by the facility.

11 (4) The agency shall adopt rules to implement this
12 section.

13 (5)(2) A violation of this section shall be considered
14 patient brokering and is punishable as provided in s. 817.505.

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

17 817.505 Patient brokering prohibited; exceptions;
18 penalties.--

19 (3) This section shall not apply to:

20 (j) Services authorized in s. 400.4195(2).

21 Section 4. This act shall take effect upon becoming a
22 law.

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

26 And the title is amended as follows:

27 On page 1, line 10, after the semicolon

28
29 insert:

30 authorizing the Agency for Health Care
31 Administration to adopt rules; amending s.

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1 817.505, F.S.; providing that certain penalties
2 for patient brokering do not apply under such
3 conditions;
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