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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 elder-law attorney appointed 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 persons shall be appointed
3 according to the criteria described in sub-subparagraphs m.,
4 n., and o. for terms beginning October 1, 2002; however, for
5 the 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. Panel members shall select the panel chairperson to
20 serve a 3-year term by a majority vote at the panel's first
21 meeting after all panel members have been appointed.

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

24 a. Does not receive more than 20 percent of his or her
25 personal income from any business involved in the delivery of
26 long-term care services, from any attorney or law firm that
27 represents nursing home facilities or nursing home residents
28 in personal injury actions, or from any affiliated membership
29 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) A facility may employ or contract with persons
5 or agencies to market the facility for a fee or commission not
6 based on the volume or value of referrals to the facility.
7 Fees or commissions may be based on the volume or value of
8 referrals to the facility when:

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

11 2. Payment to the contract provider is made under a
12 nonexclusive contract;

13 3. The contract provider represents multiple
14 facilities with different owners; ~~provided~~

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

19 5. The employee or contract provider:

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

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

27 c. Does not have an ownership interest in an assisted
28 living facility and is not related to a person with an
29 ownership interest in an assisted living facility;

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

1 for access to internal or external processes for discharge of
2 disabled persons over the age of 18 or frail and elderly
3 persons to assisted living facilities;
4 e. Cannot offer the client or referral any money or
5 gift of value as an enticement for services;
6 6. A level 2 background screening must be conducted
7 for the contract provider or related employees for the
8 purposes of conducting screening under chapter 435;
9 7. Referral is made to a licensed facility;
10 8. The contract does not require the facility or the
11 individual being referred to use any other services affiliated
12 with or owned in whole or in part by the contract provider;
13 9. The person referred remains a resident of the
14 facility for at least 90 days.
15 (b) As used in this section, the term:
16 1. "Facility" means an assisted living facility, as
17 defined in s. 400.402, which is not part of a continuing care
18 facility licensed under chapter 651;
19 2. "Contract provider" means a person, agency,
20 organization, or corporation that contracts with a facility to
21 market that facility to potential residents;
22 3. "Health care facility" means the office of a health
23 care practitioner, a hospital licensed under chapter 395, a
24 long-term care hospital licensed under chapter 395 which meets
25 the requirements of 42 CFR s. 412.23(e), a skilled nursing
26 facility, a hospice, as defined in part IV of chapter 400, an
27 intermediate care facility for the developmentally disabled
28 licensed under chapter 393, or a community mental health
29 center licensed under chapter 394. A facility relying solely
30 on spiritual means through prayer for healing is not a health
31 care facility;

1 4. "Health care practitioner" means a medical doctor
2 licensed under chapter 458, a doctor of osteopathy licensed
3 under chapter 459, a doctor of chiropractic medicine licensed
4 under chapter 460, a doctor of podiatric medicine licensed
5 under chapter 461, a doctor of dentistry licensed under
6 chapter 466, or another health care professional regulated by
7 the Department of Health;

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

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

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

16 b. A process by which consumers or facilities may
17 register a complaint with the agency alleging a violation of
18 this section.

19 3. The agency may adopt by rule any necessary fee
20 structure to cover the cost of administering the registration
21 and reporting requirements.

22 (d)1. If the agency finds that any ground exists for
23 the revocation or suspension of a contract provider's
24 registration, the agency may, in lieu of revocation or
25 suspension, impose a fine upon the contract provider.

26 a. With respect to any nonwillful violation, the fine
27 may not exceed \$1,000 per violation, not to exceed a total of
28 \$10,000 for all nonwillful violations arising out of the same
29 action.

30 b. With respect to any knowing and willful violation,
31 the fine may not exceed \$10,000 for each violation, not to

1 exceed a total of \$100,000 for all knowing and willful
2 violations arising out of the same action.

3 2. The agency must adopt by rule penalty categories
4 that specify varying ranges of monetary fines for willful and
5 nonwillful violations.

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

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

15 (4) The agency shall adopt rules to implement this
16 section.

17 (5)~~(2)~~ A violation of this section shall be considered
18 patient brokering and is punishable as provided in s. 817.505.

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

21 817.505 Patient brokering prohibited; exceptions;
22 penalties.--

23 (3) This section shall not apply to:

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

25 Section 4. This act shall take effect upon becoming a
26 law.

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