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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/21/2009	.	
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The Committee on Judiciary (Fasano) recommended the following:

1 **Senate Amendment to Amendment (304236) (with title**
2 **amendment)**

3
4 Delete lines 181 - 196

5 and insert:

6 Section 5. Subsection (6) of section 400.474, Florida
7 Statutes, is amended to read:

8 400.474 Administrative penalties.—

9 (6) The agency may deny, revoke, or suspend the license of
10 a home health agency and shall impose a fine of \$5,000 against a
11 home health agency that:

12 (a) Gives remuneration for staffing services to:



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13 1. Another home health agency with which it has formal or
14 informal patient-referral transactions or arrangements; or

15 2. A health services pool with which it has formal or
16 informal patient-referral transactions or arrangements,

17
18 unless the home health agency has activated its comprehensive
19 emergency management plan in accordance with s. 400.492. This
20 paragraph does not apply to a Medicare-certified home health
21 agency that provides fair market value remuneration for staffing
22 services to a non-Medicare-certified home health agency that is
23 part of a continuing care facility licensed under chapter 651
24 for providing services to its own residents if each resident
25 receiving home health services pursuant to this arrangement
26 attests in writing that he or she made a decision without
27 influence from staff of the facility to select, from a list of
28 Medicare-certified home health agencies provided by the
29 facility, that Medicare-certified home health agency to provide
30 the services.

31 (b) Provides services to residents in an assisted living
32 facility for which the home health agency does not receive fair
33 market value remuneration.

34 (c) Provides staffing to an assisted living facility for
35 which the home health agency does not receive fair market value
36 remuneration.

37 (d) Fails to provide the agency, upon request, with copies
38 of all contracts with assisted living facilities which were
39 executed within 5 years before the request.

40 (e) Gives remuneration to a case manager, discharge
41 planner, facility-based staff member, or third-party vendor who



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42 is involved in the discharge planning process of a facility
43 licensed under chapter 395, chapter 429, or this chapter from
44 whom the home health agency receives referrals.

45 (f) Fails to submit to the agency, within 15 days after the
46 end of each calendar quarter, a written report that includes the
47 following data based on data as it existed on the last day of
48 the quarter:

49 1. The number of insulin-dependent diabetic patients
50 receiving insulin-injection services from the home health
51 agency;

52 2. The number of patients receiving both home health
53 services from the home health agency and hospice services;

54 3. The number of patients receiving home health services
55 from that home health agency; and

56 4. The names and license numbers of nurses whose primary
57 job responsibility is to provide home health services to
58 patients and who received remuneration from the home health
59 agency in excess of \$25,000 during the calendar quarter.

60 (g) Gives cash, or its equivalent, to a Medicare or
61 Medicaid beneficiary.

62 (h) Has more than one medical director contract in effect
63 at one time or more than one medical director contract and one
64 contract with a physician-specialist whose services are mandated
65 for the home health agency in order to qualify to participate in
66 a federal or state health care program at one time.

67 (i) Gives remuneration to a physician without a medical
68 director contract being in effect. The contract must:

69 1. Be in writing and signed by both parties;

70 2. Provide for remuneration that is at fair market value



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71 for an hourly rate, which must be supported by invoices
72 submitted by the medical director describing the work performed,
73 the dates on which that work was performed, and the duration of
74 that work; and

75 3. Be for a term of at least 1 year.

76

77 The hourly rate specified in the contract may not be increased
78 during the term of the contract. The home health agency may not
79 execute a subsequent contract with that physician which has an
80 increased hourly rate and covers any portion of the term that
81 was in the original contract.

82 (j) Gives remuneration to:

83 1. A physician, and the home health agency is in violation
84 of paragraph (h) or paragraph (i);

85 2. A member of the physician's office staff; or

86 3. An immediate family member of the physician,

87

88 if the home health agency has received a patient referral in the
89 preceding 12 months from that physician or physician's office
90 staff.

91 (k) Fails to provide to the agency, upon request, copies of
92 all contracts with a medical director which were executed within
93 5 years before the request.

94 (l) Demonstrates a pattern of billing the Medicaid program
95 for services to Medicaid recipients which are medically
96 unnecessary. A pattern may be demonstrated by a showing of at
97 least two medically unnecessary services.

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99 Nothing in paragraph (e) or paragraph (j) shall be interpreted



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100 as applying to or precluding any discount, compensation, waiver
101 of payment, or payment practice permitted by 52 U.S.C. s. 1320a-
102 7b(b) or regulations adopted thereunder, including 42 C.F.R. s.
103 1001.952, or by 42 U.S.C. s. 1395nn or regulations adopted
104 thereunder.

105

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

107 And the title is amended as follows:

108 Delete line 3221

109 and insert:

110 medically unnecessary services; providing that certain
111 administrative penalties do not apply to or preclude
112 certain discounts, compensations, waivers of payment,
113 or payment practices; amending s. 400.506,