

By Senator Grimsley

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1 A bill to be entitled
2 An act relating to financial arrangements between
3 referring health care providers and providers of
4 health care services; amending s. 456.053, F.S.;
5 providing an exception to the prohibition against the
6 referral by a health care provider of a patient for
7 the provision of designated health services to an
8 entity in which the provider has an investment
9 interest; increasing the threshold of a qualifying
10 corporation's asset valuation; providing an effective
11 date.

12
13 Be It Enacted by the Legislature of the State of Florida:

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15 Section 1. Subsection (5) of section 456.053, Florida
16 Statutes, is amended to read:

17 456.053 Financial arrangements between referring health
18 care providers and providers of health care services.—

19 (5) PROHIBITED REFERRALS AND CLAIMS FOR PAYMENT.—Except as
20 provided in this section:

21 (a) A health care provider may not refer a patient for the
22 provision of designated health services to an entity in which
23 the health care provider is an investor or has an investment
24 interest unless the provider's investment interest is in
25 registered securities purchased on a national exchange or over-
26 the-counter market and issued by a publicly held corporation:

27 1. Whose shares are traded on a national exchange or over-
28 the-counter market;

29 2. Whose total assets at the end of the corporation's most

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30 recent fiscal quarter exceeded \$75 million; and

31 3. Which does not loan funds or guarantee a loan to a
32 health care provider who is in a position to make referrals to
33 the corporation if the provider uses any part of such loan to
34 obtain the investment interest.

35
36 This paragraph may not be deemed to otherwise serve as a safe
37 harbor or contravene any other provision of state law
38 prohibiting or regulating referrals, kickbacks, rebates, or
39 patient brokering. A health care provider's investment interests
40 in registered securities of publicly held corporations must be
41 purchased on a national exchange or over-the-counter market
42 under normal terms and conditions without discount, incentive,
43 gifts, or future options.

44 (b) A health care provider may not refer a patient for the
45 provision of any other health care item or service to an entity
46 in which the health care provider is an investor unless:

47 1. The provider's investment interest is in registered
48 securities purchased on a national exchange or over-the-counter
49 market and issued by a publicly held corporation:

50 a. Whose shares are traded on a national exchange or on the
51 over-the-counter market; and

52 b. Whose total assets at the end of the corporation's most
53 recent fiscal quarter exceeded \$75 million ~~\$50 million~~; or

54 2. With respect to an entity other than a publicly held
55 corporation described in subparagraph 1., and a referring
56 provider's investment interest in such entity, each of the
57 following requirements are met:

58 a. No more than 50 percent of the value of the investment

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59 interests are held by investors who are in a position to make
60 referrals to the entity.

61 b. The terms under which an investment interest is offered
62 to an investor who is in a position to make referrals to the
63 entity are no different from the terms offered to investors who
64 are not in a position to make such referrals.

65 c. The terms under which an investment interest is offered
66 to an investor who is in a position to make referrals to the
67 entity are not related to the previous or expected volume of
68 referrals from that investor to the entity.

69 d. There is no requirement that an investor make referrals
70 or be in a position to make referrals to the entity as a
71 condition for becoming or remaining an investor.

72 3. With respect to either such entity or publicly held
73 corporation:

74 a. The entity or corporation does not loan funds to or
75 guarantee a loan for an investor who is in a position to make
76 referrals to the entity or corporation if the investor uses any
77 part of such loan to obtain the investment interest.

78 b. The amount distributed to an investor representing a
79 return on the investment interest is directly proportional to
80 the amount of the capital investment, including the fair market
81 value of any preoperational services rendered, invested in the
82 entity or corporation by that investor.

83 (c)4- Each board and, in the case of hospitals, the Agency
84 for Health Care Administration, shall encourage the use by
85 licensees of the declaratory statement procedure to determine
86 the applicability of this section or any rule adopted pursuant
87 to this section as it applies solely to the licensee. Boards

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88 shall submit to the Agency for Health Care Administration the
89 name of any entity in which a provider investment interest has
90 been approved pursuant to this section.

91 (d)~~(e)~~ A claim for payment may not ~~No claim for payment may~~
92 be presented by an entity to any individual, third-party payor,
93 or other entity for a service furnished pursuant to a referral
94 prohibited under this section.

95 (e)~~(d)~~ If an entity collects any amount that was billed in
96 violation of this section, the entity shall refund such amount
97 on a timely basis to the payor or individual, whichever is
98 applicable.

99 (f)~~(e)~~ Any person who ~~that~~ presents or causes to be
100 presented a bill or a claim for service that such person knows
101 or should know is for a service for which payment may not be
102 made under paragraph (d) ~~(e)~~, or for which a refund has not been
103 made under paragraph (e) ~~(d)~~, shall be subject to a civil
104 penalty of not more than \$15,000 for each such service to be
105 imposed and collected by the appropriate board.

106 (g)~~(f)~~ Any health care provider or other entity that enters
107 into an arrangement or scheme, such as a cross-referral
108 arrangement, which the physician or entity knows or should know
109 has a principal purpose of assuring referrals by the physician
110 to a particular entity which, if the physician directly made
111 referrals to such entity, would be in violation of this section,
112 shall be subject to a civil penalty of not more than \$100,000
113 for each such circumvention arrangement or scheme to be imposed
114 and collected by the appropriate board.

115 (h)~~(g)~~ A violation of this section by a health care
116 provider shall constitute grounds for disciplinary action to be

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117 taken by the applicable board pursuant to s. 458.331(2), s.
118 459.015(2), s. 460.413(2), s. 461.013(2), s. 463.016(2), or s.
119 466.028(2). Any hospital licensed under chapter 395 found in
120 violation of this section shall be subject to s. 395.0185(2).

121 (i)-(h) A ~~Any~~ hospital licensed under chapter 395 may not
122 discriminate ~~that discriminates~~ against or otherwise penalize
123 ~~penalizes~~ a health care provider for compliance with this
124 subsection ~~act~~.

125 (j)-(i) The provision of paragraph (a) does ~~shall~~ not apply
126 to referrals to the offices of radiation therapy centers managed
127 by an entity or subsidiary or general partner thereof, which
128 performed radiation therapy services at those same offices prior
129 to April 1, 1991, and does ~~shall~~ not apply ~~also~~ to referrals for
130 radiation therapy to be performed at no more than one additional
131 office of any entity qualifying for the foregoing exception
132 which, prior to February 1, 1992, had a binding purchase
133 contract on and a nonrefundable deposit paid for a linear
134 accelerator to be used at the additional office. The physical
135 site of the radiation treatment centers affected by this
136 provision may be relocated as a result of the following factors:
137 acts of God; fire; strike; accident; war; eminent domain actions
138 by any governmental body; or refusal by the lessor to renew a
139 lease. A relocation for the foregoing reasons is limited to
140 relocation of an existing facility to a replacement location
141 within the county of the existing facility upon written
142 notification to the Office of Licensure and Certification.

143 (k)-(j) A health care provider who has an investment
144 interest in an entity to which he or she refers one or more
145 patients for the provision of designated health services in

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146 compliance with ~~meets~~ the requirements of paragraph ~~paragraphs~~
147 (a), paragraph (b), or paragraph (j) ~~and (i)~~ must disclose his
148 or her investment interest to his or her patients as provided in
149 s. 456.052.

150 Section 2. This act shall take effect July 1, 2016.