

1                                   A bill to be entitled  
 2           An act relating to ethical marketing practices for  
 3           substance abuse services; amending s. 397.305, F.S.;  
 4           providing legislative intent; amending s. 397.311,  
 5           F.S.; providing definitions; creating s. 397.335,  
 6           F.S.; prohibiting substance abuse treatment providers  
 7           and operators of recovery residences from engaging in  
 8           certain marketing practices; providing criminal and  
 9           civil penalties for engaging in such practices;  
 10          providing for the deposit of civil penalties into a  
 11          certain trust fund; amending s. 397.501, F.S.;  
 12          providing a right to a safe living environment for  
 13          certain individuals; amending s. 501.2077, F.S.;  
 14          defining the term "disabling condition"; revising  
 15          definitions; amending s. 817.505, F.S.; adding  
 16          recovery residences as entities prohibited from  
 17          patient brokering; defining the term "recovery  
 18          residence"; amending ss. 212.055, 397.416, and  
 19          440.102, F.S.; conforming cross-references; providing  
 20          an effective date.

21  
 22   Be It Enacted by the Legislature of the State of Florida:

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 24           Section 1. Subsection (10) is added to section 397.305,  
 25   Florida Statutes, to read:  
 26           397.305 Legislative findings, intent, and purpose.—

27 (10) It is the intent of the Legislature to ensure that  
 28 treatment and recovery support for individuals who are impaired  
 29 by substance abuse are offered in an ethical and professional  
 30 manner that includes the use of ethical marketing practices to  
 31 ensure the protection of this vulnerable population.

32 Section 2. Subsections (12) through (20) of section  
 33 397.311, Florida Statutes, are renumbered as subsections (13)  
 34 through (21), respectively, present subsection (21) is  
 35 renumbered as subsection (23), present subsection (23) is  
 36 renumbered as subsection (26), present subsection (24) is  
 37 renumbered as subsection (25), present subsections (25) through  
 38 (45) are renumbered as subsections (27) through (47),  
 39 respectively, and new subsections (12) and (24) are added to  
 40 that section, to read:

41 397.311 Definitions.—As used in this chapter, except part  
 42 VIII, the term:

43 (12) "Disabling condition" means:

44 (a) A diagnosable substance abuse disorder, serious mental  
 45 illness, developmental disability, specific learning disability,  
 46 or chronic physical illness or disability, or the co-occurrence  
 47 of two or more of these conditions.

48 (b) An educational deficiency that substantially affects a  
 49 person's ability to read and comprehend the terms of a  
 50 contractual agreement to which he or she is a party.

51 (24) "Marketing practices" includes all statements made or  
 52 information disseminated to the public, whether oral, written,

53 printed, or otherwise, which are intended to market or advertise  
54 substance abuse treatment services or recovery support.

55 Section 3. Section 397.335, Florida Statutes, is created  
56 to read:

57 397.335 Prohibition of unethical marketing practices.—The  
58 Legislature recognizes that individuals with substance abuse  
59 disorders have disabling conditions that make them vulnerable to  
60 fraudulent marketing practices. To protect the health, safety,  
61 and welfare of the general public and this vulnerable  
62 population, substance abuse treatment providers and operators of  
63 recovery residences may not engage in the following marketing  
64 practices:

65 (1) Making false or misleading statements or providing  
66 false or misleading information about their products, goods,  
67 services, or geographical location in marketing or advertising  
68 materials or media or on their respective websites.

69 (2) Including on their respective websites coding that  
70 provides false information or surreptitiously directs the reader  
71 to another website.

72 (3) Soliciting, receiving, or making an attempt to solicit  
73 or receive a commission, bonus, rebate, kickback, or bribe,  
74 directly or indirectly, in cash or in kind, or engaging or  
75 making an attempt to engage in a split-fee arrangement in return  
76 for an acceptance or acknowledgment of treatment from a health  
77 care provider, health care facility, or recovery residence. A  
78 violation of this subsection is a violation of the prohibition

79 on patient brokering and is subject to criminal penalties under  
 80 s. 817.505.

81  
 82 A violation of this section is a violation of the Florida  
 83 Deceptive and Unfair Trade Practices Act under part II of  
 84 chapter 501 and is subject to a civil penalty of not more than  
 85 \$5,000 for each willful violation. A provider or operator who  
 86 willfully uses, or has willfully used, a method, act, or  
 87 practice in violation of this section which victimizes or  
 88 attempts to victimize a person with a disabling condition is  
 89 liable for a civil penalty of not more than \$15,000 for each  
 90 violation if the provider or operator knew or should have known  
 91 that such conduct was unfair or deceptive. Civil penalties  
 92 collected under this section must be deposited in the Substance  
 93 Abuse Impairment Provider Licensing Trust Fund.

94 Section 4. Subsections (9) and (10) of section 397.501,  
 95 Florida Statutes, are renumbered as subsections (10) and (11),  
 96 respectively, and a new subsection (9) is added to that section,  
 97 to read:

98 397.501 Rights of individuals.—Individuals receiving  
 99 substance abuse services from any service provider are  
 100 guaranteed protection of the rights specified in this section,  
 101 unless otherwise expressly provided, and service providers must  
 102 ensure the protection of such rights.

103 (9) RIGHT TO SAFE LIVING ENVIRONMENT.—Each individual  
 104 receiving treatment services in a residential treatment facility

105 or living in a recovery residence has the right to a safe living  
 106 environment free from drugs, alcohol, harassment, abuse, and  
 107 harm.

108 Section 5. Section 501.2077, Florida Statutes, is amended  
 109 to read:

110 501.2077 Violations involving senior citizen, person who  
 111 has a disabling condition ~~disability~~, military servicemember, or  
 112 the spouse or dependent child of a military servicemember; civil  
 113 penalties; presumption.—

114 (1) As used in this section, the term:

115 (a) "Disabling condition" means:

116 1. A diagnosable substance abuse disorder, serious mental  
 117 illness, developmental disability, specific learning disability,  
 118 or chronic physical illness or disability, or the co-occurrence  
 119 of two or more of these conditions.

120 2. An educational deficiency that substantially affects a  
 121 person's ability to read and comprehend the terms of a  
 122 contractual agreement to which he or she is a party.

123 (b) "Major life activities" means functions associated  
 124 with the normal activities of independent daily living, such as  
 125 caring for one's self, performing manual tasks, walking, seeing,  
 126 hearing, speaking, breathing, learning, and working.

127 ~~(b) "Mental or educational impairment" means:~~

128 1. ~~A mental or psychological disorder or specific learning~~  
 129 ~~disability.~~

130 2. ~~An educational deficiency that substantially affects a~~

131 ~~person's ability to read and comprehend the terms of any~~  
132 ~~contractual agreement entered into.~~

133 (c) "Military servicemember" means a person who is on  
134 active duty in, or a veteran of, the United States Armed Forces.

135 1. "Active duty" has the same meaning as provided in s.  
136 250.01.

137 2. "Veteran" has the same meaning as provided in s. 1.01.

138 (d) "Person who has a disabling condition ~~disability~~"  
139 means a person who has a mental or educational impairment that  
140 substantially limits one or more major life activities.

141 (e) "Senior citizen" means a person who is 60 years of age  
142 or older.

143 (2) A person who is willfully using, or has willfully  
144 used, a method, act, or practice in violation of this part which  
145 victimizes or attempts to victimize a senior citizen or a person  
146 who has a disabling condition ~~disability~~ is liable for a civil  
147 penalty of not more than \$15,000 for each such violation if she  
148 or he knew or should have known that her or his conduct was  
149 unfair or deceptive.

150 (3) A person who is willfully using, or has willfully  
151 used, a method, act, or practice in violation of this part  
152 directed at a military servicemember or the spouse or dependent  
153 child of a military servicemember is liable for a civil penalty  
154 of not more than \$15,000 for each such violation if she or he  
155 knew or should have known that her or his conduct was unfair or  
156 deceptive.

157 (4) An order of restitution or reimbursement based on a  
 158 violation of this part committed against a senior citizen, a  
 159 person who has a disabling condition ~~disability~~, a military  
 160 servicemember, or the spouse or dependent child of a military  
 161 servicemember has priority over the imposition of civil  
 162 penalties for such violations pursuant to this section.

163 (5) Civil penalties collected pursuant to this section  
 164 shall be deposited into the Legal Affairs Revolving Trust Fund  
 165 of the Department of Legal Affairs and allocated solely to the  
 166 Department of Legal Affairs for the purpose of preparing and  
 167 distributing consumer education materials, programs, and  
 168 seminars to benefit senior citizens, persons who have a  
 169 disabling condition ~~disability~~, and military servicemembers or  
 170 to further enforcement efforts.

171 Section 6. Subsection (1) of section 817.505, Florida  
 172 Statutes, is amended, and paragraph (d) is added to subsection  
 173 (2) of that section, to read:

174 817.505 Patient brokering prohibited; exceptions;  
 175 penalties.—

176 (1) It is unlawful for any person, including any health  
 177 care provider, ~~or~~ health care facility, or recovery residence,  
 178 to:

179 (a) Offer or pay any commission, bonus, rebate, kickback,  
 180 or bribe, directly or indirectly, in cash or in kind, or engage  
 181 in any split-fee arrangement, in any form whatsoever, to induce  
 182 the referral of patients or patronage to or from a health care

183 provider, ~~or~~ health care facility, or recovery residence;

184 (b) Solicit or receive any commission, bonus, rebate,  
 185 kickback, or bribe, directly or indirectly, in cash or in kind,  
 186 or engage in any split-fee arrangement, in any form whatsoever,  
 187 in return for referring patients or patronage to or from a  
 188 health care provider, ~~or~~ health care facility, or recovery  
 189 residence;

190 (c) Solicit or receive any commission, bonus, rebate,  
 191 kickback, or bribe, directly or indirectly, in cash or in kind,  
 192 or engage in any split-fee arrangement, in any form whatsoever,  
 193 in return for the acceptance or acknowledgment of treatment from  
 194 a health care provider, ~~or~~ health care facility, or recovery  
 195 residence; or

196 (d) Aid, abet, advise, or otherwise participate in the  
 197 conduct prohibited under paragraph (a), paragraph (b), or  
 198 paragraph (c).

199 (2) For the purposes of this section, the term:

200 (d) "Recovery residence" means a residential dwelling unit  
 201 or other form of group housing which is offered or advertised by  
 202 a person or entity through any form of communication, including  
 203 oral, written, electronic, or print media, as a residence that  
 204 provides a peer-supported, alcohol-free, and drug-free living  
 205 environment.

206 Section 7. Paragraph (e) of subsection (5) of section  
 207 212.055, Florida Statutes, is amended to read:

208 212.055 Discretionary sales surtaxes; legislative intent;



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209 authorization and use of proceeds.—It is the legislative intent  
210 that any authorization for imposition of a discretionary sales  
211 surtax shall be published in the Florida Statutes as a  
212 subsection of this section, irrespective of the duration of the  
213 levy. Each enactment shall specify the types of counties  
214 authorized to levy; the rate or rates which may be imposed; the  
215 maximum length of time the surtax may be imposed, if any; the  
216 procedure which must be followed to secure voter approval, if  
217 required; the purpose for which the proceeds may be expended;  
218 and such other requirements as the Legislature may provide.  
219 Taxable transactions and administrative procedures shall be as  
220 provided in s. 212.054.

221 (5) COUNTY PUBLIC HOSPITAL SURTAX.—Any county as defined  
222 in s. 125.011(1) may levy the surtax authorized in this  
223 subsection pursuant to an ordinance either approved by  
224 extraordinary vote of the county commission or conditioned to  
225 take effect only upon approval by a majority vote of the  
226 electors of the county voting in a referendum. In a county as  
227 defined in s. 125.011(1), for the purposes of this subsection,  
228 "county public general hospital" means a general hospital as  
229 defined in s. 395.002 which is owned, operated, maintained, or  
230 governed by the county or its agency, authority, or public  
231 health trust.

232 (e) A governing board, agency, or authority shall be  
233 chartered by the county commission upon this act becoming law.  
234 The governing board, agency, or authority shall adopt and

235 | implement a health care plan for indigent health care services.  
236 | The governing board, agency, or authority shall consist of no  
237 | more than seven and no fewer than five members appointed by the  
238 | county commission. The members of the governing board, agency,  
239 | or authority shall be at least 18 years of age and residents of  
240 | the county. No member may be employed by or affiliated with a  
241 | health care provider or the public health trust, agency, or  
242 | authority responsible for the county public general hospital.  
243 | The following community organizations shall each appoint a  
244 | representative to a nominating committee: the South Florida  
245 | Hospital and Healthcare Association, the Miami-Dade County  
246 | Public Health Trust, the Dade County Medical Association, the  
247 | Miami-Dade County Homeless Trust, and the Mayor of Miami-Dade  
248 | County. This committee shall nominate between 10 and 14 county  
249 | citizens for the governing board, agency, or authority. The  
250 | slate shall be presented to the county commission and the county  
251 | commission shall confirm the top five to seven nominees,  
252 | depending on the size of the governing board. Until such time as  
253 | the governing board, agency, or authority is created, the funds  
254 | provided for in subparagraph (d)2. shall be placed in a  
255 | restricted account set aside from other county funds and not  
256 | disbursed by the county for any other purpose.

257 |       1. The plan shall divide the county into a minimum of four  
258 | and maximum of six service areas, with no more than one  
259 | participant hospital per service area. The county public general  
260 | hospital shall be designated as the provider for one of the

261 service areas. Services shall be provided through participants'  
262 primary acute care facilities.

263 2. The plan and subsequent amendments to it shall fund a  
264 defined range of health care services for both indigent persons  
265 and the medically poor, including primary care, preventive care,  
266 hospital emergency room care, and hospital care necessary to  
267 stabilize the patient. For the purposes of this section,  
268 "stabilization" means stabilization as defined in s. 397.311(43)  
269 ~~s. 397.311(41)~~. Where consistent with these objectives, the plan  
270 may include services rendered by physicians, clinics, community  
271 hospitals, and alternative delivery sites, as well as at least  
272 one regional referral hospital per service area. The plan shall  
273 provide that agreements negotiated between the governing board,  
274 agency, or authority and providers shall recognize hospitals  
275 that render a disproportionate share of indigent care, provide  
276 other incentives to promote the delivery of charity care to draw  
277 down federal funds where appropriate, and require cost  
278 containment, including, but not limited to, case management.  
279 From the funds specified in subparagraphs (d)1. and 2. for  
280 indigent health care services, service providers shall receive  
281 reimbursement at a Medicaid rate to be determined by the  
282 governing board, agency, or authority created pursuant to this  
283 paragraph for the initial emergency room visit, and a per-member  
284 per-month fee or capitation for those members enrolled in their  
285 service area, as compensation for the services rendered  
286 following the initial emergency visit. Except for provisions of

287 emergency services, upon determination of eligibility,  
288 enrollment shall be deemed to have occurred at the time services  
289 were rendered. The provisions for specific reimbursement of  
290 emergency services shall be repealed on July 1, 2001, unless  
291 otherwise reenacted by the Legislature. The capitation amount or  
292 rate shall be determined prior to program implementation by an  
293 independent actuarial consultant. ~~In no event shall such~~  
294 Reimbursement rates may not exceed the Medicaid rate. The plan  
295 must also provide that any hospitals owned and operated by  
296 government entities on or after the effective date of this act  
297 must, as a condition of receiving funds under this subsection,  
298 afford public access equal to that provided under s. 286.011 as  
299 to any meeting of the governing board, agency, or authority the  
300 subject of which is budgeting resources for the retention of  
301 charity care, as that term is defined in the rules of the Agency  
302 for Health Care Administration. The plan shall also include  
303 innovative health care programs that provide cost-effective  
304 alternatives to traditional methods of service and delivery  
305 funding.

306 3. The plan's benefits shall be made available to all  
307 county residents currently eligible to receive health care  
308 services as indigents or medically poor as defined in paragraph  
309 (4) (d).

310 4. Eligible residents who participate in the health care  
311 plan shall receive coverage for a period of 12 months or the  
312 period extending from the time of enrollment to the end of the

313 current fiscal year, per enrollment period, whichever is less.

314 5. At the end of each fiscal year, the governing board,  
 315 agency, or authority shall prepare an audit that reviews the  
 316 budget of the plan, delivery of services, and quality of  
 317 services~~7~~ and makes recommendations to increase the plan's  
 318 efficiency. The audit shall take into account participant  
 319 hospital satisfaction with the plan and assess the amount of  
 320 poststabilization patient transfers requested, and accepted or  
 321 denied, by the county public general hospital.

322 Section 8. Section 397.416, Florida Statutes, is amended  
 323 to read:

324 397.416 Substance abuse treatment services; qualified  
 325 professional.—Notwithstanding any other provision of law, a  
 326 person who was certified through a certification process  
 327 recognized by the former Department of Health and Rehabilitative  
 328 Services before January 1, 1995, may perform the duties of a  
 329 qualified professional with respect to substance abuse treatment  
 330 services as defined in this chapter, and need not meet the  
 331 certification requirements contained in s. 397.311(32) ~~s.~~  
 332 ~~397.311(30)~~.

333 Section 9. Paragraphs (d) and (g) of subsection (1) of  
 334 section 440.102, Florida Statutes, are amended to read:

335 440.102 Drug-free workplace program requirements.—The  
 336 following provisions apply to a drug-free workplace program  
 337 implemented pursuant to law or to rules adopted by the Agency  
 338 for Health Care Administration:

339 (1) DEFINITIONS.—Except where the context otherwise  
340 requires, as used in this act:

341 (d) "Drug rehabilitation program" means a service  
342 provider, established pursuant to s. 397.311(41) ~~s. 397.311(39)~~,  
343 that provides confidential, timely, and expert identification,  
344 assessment, and resolution of employee drug abuse.

345 (g) "Employee assistance program" means an established  
346 program capable of providing expert assessment of employee  
347 personal concerns; confidential and timely identification  
348 services with regard to employee drug abuse; referrals of  
349 employees for appropriate diagnosis, treatment, and assistance;  
350 and followup services for employees who participate in the  
351 program or require monitoring after returning to work. If, in  
352 addition to the above activities, an employee assistance program  
353 provides diagnostic and treatment services, these services shall  
354 in all cases be provided by service providers pursuant to s.  
355 397.311(41) ~~s. 397.311(39)~~.

356 Section 10. This act shall take effect July 1, 2016.