



448396

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
01/21/2016	.	
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	.	

The Committee on Children, Families, and Elder Affairs (Ring) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (10) is added to section 397.305,
Florida Statutes, to read:

397.305 Legislative findings, intent, and purpose.—

(10) It is the intent of the Legislature to ensure that
treatment and recovery support for individuals who are impaired
by substance abuse disorders are offered in an ethical and



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11 professional manner that includes the use of ethical marketing
12 practices to ensure the protection of this vulnerable
13 population.

14 Section 2. Present subsections (12) through (20) of section
15 397.311, Florida Statutes, are redesignated as subsections (13)
16 through (21), respectively, present subsection (21) of that
17 section is redesignated as subsection (23), present subsection
18 (23) of that section is redesignated as subsection (26), present
19 subsection (24) of that section is redesignated as subsection
20 (25), present subsections (25) through (42) of that section are
21 redesignated as subsections (27) through (44), respectively,
22 present subsections (43) through (45) of that section are
23 redesignated as subsections (46) through (48), respectively, and
24 new subsections (12), (24), and (45) are added to that section,
25 to read:

26 397.311 Definitions.—As used in this chapter, except part
27 VIII, the term:

28 (12) "Disabling condition" means:

29 (a) A diagnosable substance abuse disorder, serious mental
30 illness, developmental disability, specific learning disability,
31 or chronic physical illness or disability, or the co-occurrence
32 of two or more of these conditions.

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

36 (24) "Marketing practices" means all statements made or
37 information disseminated to the public, whether oral, written,
38 printed, or otherwise, which are intended to market, advertise,
39 or entice an individual toward a particular substance abuse



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40 treatment or recovery support program licensed under this
41 chapter.

42 (45) "Substance abuse lead generator" means a call center
43 or similar marketing entity that is contractually engaged by a
44 substance abuse treatment provider licensed under this chapter
45 to identify and cultivate prospective patient interest in a
46 particular substance abuse treatment program or recovery
47 residence.

48 Section 3. Section 397.335, Florida Statutes, is created to
49 read:

50 397.335 Prohibition of unethical marketing practices.—The
51 Legislature recognizes that individuals with substance abuse
52 disorders have disabling conditions that put them at risk of
53 being vulnerable to fraudulent marketing practices. To protect
54 the health, safety, and welfare of this vulnerable population,
55 substance abuse treatment providers licensed under this chapter
56 and operators of recovery residences may not engage in the
57 following marketing practices:

58 (1) Making false or misleading statements or providing
59 false or misleading information about their products, goods,
60 services, or geographical location in their marketing,
61 advertising materials, or media or on their respective websites.

62 (2) Including on their respective websites coding that
63 provides false information or surreptitiously directs the reader
64 to another website.

65 (3) Soliciting or receiving a commission, benefit, bonus,
66 rebate, kickback, or bribe, directly or indirectly, in cash or
67 in kind, or engaging or making an attempt to engage in a split-
68 fee arrangement in return for a referral or an acceptance or



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69 acknowledgment of treatment from a health care provider, health
70 care facility, or recovery residence. A violation of this
71 subsection is a violation of the prohibition on patient
72 brokering and is subject to criminal penalties under s. 817.505.
73 This subsection does not apply to referrals from recovery
74 residences to other recovery residences.

75 (4) Entering into a marketing contract with a substance
76 abuse lead generator that engages in marketing through a call
77 center, unless the call center discloses the following to the
78 caller so that he or she can make an informed health care
79 decision:

80 (a) The substance abuse treatment programs it represents.

81 (b) Clear and concise instructions that allow the caller to
82 easily access a list of licensed substance abuse treatment
83 agencies, both public and private, on the department website.

84
85 A substance abuse treatment provider licensed under this chapter
86 which is operating as a partial hospitalization or an outpatient
87 program, including an intensive outpatient program, may not
88 offer a prospective patient free or reduced rent at a recovery
89 residence to induce the prospective patient to choose it as the
90 patient's provider and may not make a direct or an indirect
91 payment to a recovery residence for a patient's housing or other
92 housing-related services. A provider or operator that violates
93 this section commits a violation of the Florida Deceptive and
94 Unfair Trade Practices Act under s. 501.2077(2). The Department
95 of Children and Families shall submit copies of findings related
96 to violations by entities licensed and regulated under this
97 chapter to the Department of Legal Affairs.



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98 Section 4. Present subsections (9) and (10) of section
99 397.501, Florida Statutes, are redesignated as subsections (10)
100 and (11), respectively, and a new subsection (9) is added to
101 that section, to read:

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

107 (9) RIGHT TO SAFE LIVING ENVIRONMENT.—Each individual
108 receiving treatment services in a residential treatment facility
109 or living in a recovery residence has the right to a safe living
110 environment free from drugs, alcohol, harassment, abuse, and
111 harm.

112 Section 5. Paragraphs (a) and (i) of subsection (3) of
113 section 456.053, Florida Statutes, are amended, present
114 paragraph (o) of that subsection is redesignated as paragraph
115 (q), present paragraph (p) of that subsection is redesignated as
116 paragraph (o), present paragraphs (q) and (r) of that subsection
117 are redesignated as paragraphs (r) and (s), respectively, a new
118 paragraph (p) is added to that subsection, paragraph (g) of
119 subsection (5) of that section is amended, a new paragraph (k)
120 is added to that subsection, and subsection (6) is added to that
121 section, to read:

122 456.053 Financial arrangements between referring health
123 care providers and providers of health care services.—

124 (3) DEFINITIONS.—For the purpose of this section, the word,
125 phrase, or term:

126 (a) "Board" means any of the following boards relating to



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127 the respective professions: the Board of Medicine as created in
128 s. 458.307; the Board of Osteopathic Medicine as created in s.
129 459.004; the Board of Chiropractic Medicine as created in s.
130 460.404; the Board of Podiatric Medicine as created in s.
131 461.004; the Board of Optometry as created in s. 463.003; the
132 Board of Pharmacy as created in s. 465.004; ~~and~~ the Board of
133 Dentistry as created in s. 466.004; and the Board of Clinical
134 Social Work, Marriage and Family Therapy, and Mental Health
135 Counseling as created in s. 491.004.

136 (i) "Health care provider" means any physician licensed
137 under chapter 458, chapter 459, chapter 460, or chapter 461, or
138 any health care provider licensed under chapter 463, ~~or~~ chapter
139 466, or chapter 491.

140 (p) "Recovery residence" means a residential dwelling unit
141 or other form of group housing that is offered or advertised
142 through any means, including oral, written, electronic, or
143 printed means, and by any person or entity as a residence that
144 provides a peer-supported, alcohol-free, and drug-free living
145 environment.

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

148 (g) A violation of this section by a health care provider
149 constitutes ~~shall constitute~~ grounds for disciplinary action ~~to~~
150 ~~be taken~~ by the applicable board pursuant to s. 458.331(2), s.
151 459.015(2), s. 460.413(2), s. 461.013(2), s. 463.016(2), ~~or~~ s.
152 466.028(2), or s. 491.009(2). Any hospital licensed under
153 chapter 395 found in violation of this section is ~~shall be~~
154 subject to s. 395.0185(2). A substance abuse treatment provider
155 licensed under chapter 397 found in violation of this section is



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156 subject to the penalties imposed under ss. 397.415 and 397.461.

157 (k) A substance abuse treatment provider licensed under
158 chapter 397 which is operating as a partial hospitalization or
159 an outpatient program, including an intensive outpatient
160 program, may not offer a prospective patient free or reduced
161 rent at a recovery residence to induce the prospective patient
162 to choose it as the patient's provider.

163 (6) EXCEPTIONS TO PROHIBITED REFERRALS.—The prohibitions in
164 paragraphs (5) (a) and (b) do not apply to referrals made by
165 substance abuse treatment providers licensed under chapter 397,
166 any health care service entities owned by such providers or in
167 which such providers have a financial interest, or subsidiaries
168 of those health care service entities, to recovery residences or
169 laboratory testing services in which any of such providers,
170 entities or subsidiaries have a financial interest if the
171 financial interest is clearly stated:

172 (a) In writing to patients, clients, consumers, and
173 facility residents.

174 (b) On marketing or advertising materials, including any
175 information disseminated to the public, whether oral, written,
176 printed, or otherwise, which is intended to market or advertise
177 substance abuse treatment services or recovery support.

178 (c) On a posted notice that can be easily read by patients
179 in a common area at the substance abuse treatment facility in
180 which the referring provider has a financial interest.

181 Section 6. Section 501.2077, Florida Statutes, is amended
182 to read:

183 501.2077 Violations involving senior citizen, person who
184 has a disabling condition ~~disability~~, military servicemember, or



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185 the spouse or dependent child of a military servicemember; civil
186 penalties; presumption.—

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

188 (a) “Disabling condition” means:

189 1. A diagnosable substance abuse disorder, serious mental
190 illness, developmental disability, specific learning disability,
191 or chronic physical illness or disability, or the co-occurrence
192 of two or more of these conditions.

193 2. An educational deficiency that substantially affects a
194 person’s ability to read and comprehend the terms of a
195 contractual agreement to which he or she is a party.

196 (b) “Major life activities” means functions associated with
197 the normal activities of independent daily living, such as
198 caring for one’s self, performing manual tasks, walking, seeing,
199 hearing, speaking, breathing, learning, and working.

200 ~~(b) “Mental or educational impairment” means:~~

201 ~~1. A mental or psychological disorder or specific learning~~
202 ~~disability.~~

203 ~~2. An educational deficiency that substantially affects a~~
204 ~~person’s ability to read and comprehend the terms of any~~
205 ~~contractual agreement entered into.~~

206 (c) “Military servicemember” means a person who is on
207 active duty in, or a veteran of, the United States Armed Forces.

208 1. “Active duty” has the same meaning as provided in s.
209 250.01.

210 2. “Veteran” has the same meaning as provided in s. 1.01.

211 (d) “Person who has a disabling condition ~~disability~~” means
212 a person who has a mental or educational impairment that
213 substantially limits one or more major life activities.



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

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

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

229 (4) An order of restitution or reimbursement based on a
230 violation of this part committed against a senior citizen, a
231 person who has a disabling condition ~~disability~~, a military
232 servicemember, or the spouse or dependent child of a military
233 servicemember has priority over the imposition of civil
234 penalties for such violations pursuant to this section.

235 (5) Civil penalties collected pursuant to this section
236 shall be deposited into the Legal Affairs Revolving Trust Fund
237 of the Department of Legal Affairs and allocated solely to the
238 Department of Legal Affairs for the purpose of preparing and
239 distributing consumer education materials, programs, and
240 seminars to benefit senior citizens, persons who have a
241 disabling condition ~~disability~~, and military servicemembers or
242 to further enforcement efforts.



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243 Section 7. Subsection (1) of section 817.505, Florida
244 Statutes, is amended, and paragraph (d) is added to subsection
245 (2) of that section, to read:

246 817.505 Patient brokering prohibited; exceptions;
247 penalties.—

248 (1) It is unlawful for any person, including any health
249 care provider, ~~or~~ health care facility, or recovery residence,
250 to:

251 (a) Offer or pay any commission, bonus, rebate, kickback,
252 or bribe, directly or indirectly, in cash or in kind, or engage
253 in any split-fee arrangement, in any form whatsoever, to induce
254 the referral of patients or patronage to or from a health care
255 provider, ~~or~~ health care facility, or recovery residence;

256 (b) Solicit or receive any commission, benefit, bonus,
257 rebate, kickback, or bribe, directly or indirectly, in cash or
258 in kind, or engage in any split-fee arrangement, in any form
259 whatsoever, in return for referring patients or patronage to or
260 from a health care provider, ~~or~~ health care facility, or
261 recovery residence;

262 (c) Solicit or receive any commission, benefit, bonus,
263 rebate, kickback, or bribe, directly or indirectly, in cash or
264 in kind, or engage in any split-fee arrangement, in any form
265 whatsoever, in return for the acceptance or acknowledgment of
266 treatment from a health care provider, ~~or~~ health care facility,
267 or recovery residence; or

268 (d) Aid, abet, advise, or otherwise participate in the
269 conduct prohibited under paragraph (a), paragraph (b), or
270 paragraph (c).

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272 This subsection does not apply to referrals from recovery
273 residences to other recovery residences.

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

275 (d) "Recovery residence" means a residential dwelling unit
276 or other form of group housing that is offered or advertised
277 through any means, including oral, written, electronic, or
278 printed means, and by any person or entity as a residence that
279 provides a peer-supported, alcohol-free, and drug-free living
280 environment.

281 Section 8. Paragraph (e) of subsection (5) of section
282 212.055, Florida Statutes, is amended to read:

283 212.055 Discretionary sales surtaxes; legislative intent;
284 authorization and use of proceeds.—It is the legislative intent
285 that any authorization for imposition of a discretionary sales
286 surtax shall be published in the Florida Statutes as a
287 subsection of this section, irrespective of the duration of the
288 levy. Each enactment shall specify the types of counties
289 authorized to levy; the rate or rates which may be imposed; the
290 maximum length of time the surtax may be imposed, if any; the
291 procedure which must be followed to secure voter approval, if
292 required; the purpose for which the proceeds may be expended;
293 and such other requirements as the Legislature may provide.
294 Taxable transactions and administrative procedures shall be as
295 provided in s. 212.054.

296 (5) COUNTY PUBLIC HOSPITAL SURTAX.—Any county as defined in
297 s. 125.011(1) may levy the surtax authorized in this subsection
298 pursuant to an ordinance either approved by extraordinary vote
299 of the county commission or conditioned to take effect only upon
300 approval by a majority vote of the electors of the county voting



301 in a referendum. In a county as defined in s. 125.011(1), for
302 the purposes of this subsection, "county public general
303 hospital" means a general hospital as defined in s. 395.002
304 which is owned, operated, maintained, or governed by the county
305 or its agency, authority, or public health trust.

306 (e) A governing board, agency, or authority shall be
307 chartered by the county commission upon this act becoming law.
308 The governing board, agency, or authority shall adopt and
309 implement a health care plan for indigent health care services.
310 The governing board, agency, or authority shall consist of no
311 more than seven and no fewer than five members appointed by the
312 county commission. The members of the governing board, agency,
313 or authority shall be at least 18 years of age and residents of
314 the county. No member may be employed by or affiliated with a
315 health care provider or the public health trust, agency, or
316 authority responsible for the county public general hospital.
317 The following community organizations shall each appoint a
318 representative to a nominating committee: the South Florida
319 Hospital and Healthcare Association, the Miami-Dade County
320 Public Health Trust, the Dade County Medical Association, the
321 Miami-Dade County Homeless Trust, and the Mayor of Miami-Dade
322 County. This committee shall nominate between 10 and 14 county
323 citizens for the governing board, agency, or authority. The
324 slate shall be presented to the county commission and the county
325 commission shall confirm the top five to seven nominees,
326 depending on the size of the governing board. Until such time as
327 the governing board, agency, or authority is created, the funds
328 provided for in subparagraph (d)2. shall be placed in a
329 restricted account set aside from other county funds and not



330 disbursed by the county for any other purpose.

331 1. The plan shall divide the county into a minimum of four
332 and maximum of six service areas, with no more than one
333 participant hospital per service area. The county public general
334 hospital shall be designated as the provider for one of the
335 service areas. Services shall be provided through participants'
336 primary acute care facilities.

337 2. The plan and subsequent amendments to it shall fund a
338 defined range of health care services for both indigent persons
339 and the medically poor, including primary care, preventive care,
340 hospital emergency room care, and hospital care necessary to
341 stabilize the patient. For the purposes of this section,
342 "stabilization" means stabilization as defined in s. 397.311(43)
343 ~~s. 397.311(41)~~. Where consistent with these objectives, the plan
344 may include services rendered by physicians, clinics, community
345 hospitals, and alternative delivery sites, as well as at least
346 one regional referral hospital per service area. The plan shall
347 provide that agreements negotiated between the governing board,
348 agency, or authority and providers shall recognize hospitals
349 that render a disproportionate share of indigent care, provide
350 other incentives to promote the delivery of charity care to draw
351 down federal funds where appropriate, and require cost
352 containment, including, but not limited to, case management.
353 From the funds specified in subparagraphs (d)1. and 2. for
354 indigent health care services, service providers shall receive
355 reimbursement at a Medicaid rate to be determined by the
356 governing board, agency, or authority created pursuant to this
357 paragraph for the initial emergency room visit, and a per-member
358 per-month fee or capitation for those members enrolled in their



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359 service area, as compensation for the services rendered
360 following the initial emergency visit. Except for provisions of
361 emergency services, upon determination of eligibility,
362 enrollment shall be deemed to have occurred at the time services
363 were rendered. The provisions for specific reimbursement of
364 emergency services shall be repealed on July 1, 2001, unless
365 otherwise reenacted by the Legislature. The capitation amount or
366 rate shall be determined prior to program implementation by an
367 independent actuarial consultant. ~~In no event shall such~~
368 Reimbursement rates may not exceed the Medicaid rate. The plan
369 must also provide that any hospitals owned and operated by
370 government entities on or after the effective date of this act
371 must, as a condition of receiving funds under this subsection,
372 afford public access equal to that provided under s. 286.011 as
373 to any meeting of the governing board, agency, or authority the
374 subject of which is budgeting resources for the retention of
375 charity care, as that term is defined in the rules of the Agency
376 for Health Care Administration. The plan shall also include
377 innovative health care programs that provide cost-effective
378 alternatives to traditional methods of service and delivery
379 funding.

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

384 4. Eligible residents who participate in the health care
385 plan shall receive coverage for a period of 12 months or the
386 period extending from the time of enrollment to the end of the
387 current fiscal year, per enrollment period, whichever is less.



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388 5. At the end of each fiscal year, the governing board,
389 agency, or authority shall prepare an audit that reviews the
390 budget of the plan, and the delivery of services, and quality of
391 services, and makes recommendations to increase the plan's
392 efficiency. The audit shall take into account participant
393 hospital satisfaction with the plan and assess the amount of
394 poststabilization patient transfers requested, and accepted or
395 denied, by the county public general hospital.

396 Section 9. Section 397.416, Florida Statutes, is amended to
397 read:

398 397.416 Substance abuse treatment services; qualified
399 professional.—Notwithstanding any other provision of law, a
400 person who was certified through a certification process
401 recognized by the former Department of Health and Rehabilitative
402 Services before January 1, 1995, may perform the duties of a
403 qualified professional with respect to substance abuse treatment
404 services as defined in this chapter, and need not meet the
405 certification requirements contained in s. 397.311(32) ~~s.~~
406 ~~397.311(30)~~.

407 Section 10. Paragraphs (d) and (g) of subsection (1) of
408 section 440.102, Florida Statutes, are amended to read:

409 440.102 Drug-free workplace program requirements.—The
410 following provisions apply to a drug-free workplace program
411 implemented pursuant to law or to rules adopted by the Agency
412 for Health Care Administration:

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

415 (d) "Drug rehabilitation program" means a service provider,
416 established pursuant to s. 397.311(41) ~~s. 397.311(39)~~, that



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417 provides confidential, timely, and expert identification,
418 assessment, and resolution of employee drug abuse.

419 (g) "Employee assistance program" means an established
420 program capable of providing expert assessment of employee
421 personal concerns; confidential and timely identification
422 services with regard to employee drug abuse; referrals of
423 employees for appropriate diagnosis, treatment, and assistance;
424 and followup services for employees who participate in the
425 program or require monitoring after returning to work. If, in
426 addition to the above activities, an employee assistance program
427 provides diagnostic and treatment services, these services shall
428 in all cases be provided by service providers pursuant to s.
429 397.311(41) ~~s. 397.311(39)~~.

430 Section 11. This act shall take effect July 1, 2016.

431
432 ===== T I T L E A M E N D M E N T =====

433 And the title is amended as follows:

434 Delete everything before the enacting clause
435 and insert:

436 A bill to be entitled

437 An act relating to ethical marketing practices for
438 substance abuse services; amending s. 397.305, F.S.;
439 providing legislative intent; amending s. 397.311,
440 F.S.; defining terms; creating s. 397.335, F.S.;
441 prohibiting substance abuse treatment providers and
442 operators of recovery residences from engaging in
443 certain marketing practices; providing applicability;
444 providing that the violation of the prohibition
445 against certain unethical marketing practices by a



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446 provider or operator is a violation of the Florida
447 Deceptive and Unfair Trade Practices Act; requiring
448 the Department of Children and Families to submit
449 certain findings to the Department of Legal Affairs;
450 amending s. 397.501, F.S.; providing a right to a safe
451 living environment for certain individuals; amending
452 s. 456.053, F.S.; defining terms; providing
453 applicability; providing penalties for violations of
454 prohibitions against certain referrals; prohibiting a
455 substance abuse treatment provider from making certain
456 offers; providing an exemption to the prohibition
457 against referrals; amending s. 501.2077, F.S.;

458 defining the term "disabling condition"; expanding the
459 Florida Deceptive and Unfair Trade Practices Act to
460 include protections for people with diagnosable
461 substance abuse disorders and other disabling
462 conditions and civil penalties for those who commit
463 violations against such people; revising definitions;
464 amending s. 817.505, F.S.; adding recovery residences
465 as entities prohibited from patient brokering;
466 providing that it is unlawful for a person to solicit
467 or receive benefits under certain circumstances;
468 providing applicability; defining the term "recovery
469 residence"; amending ss. 212.055, 397.416, and
470 440.102, F.S.; conforming cross-references; providing
471 an effective date.