

By Senator Clemens

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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.; defining terms; creating s. 397.335, F.S.;
6 prohibiting substance abuse treatment providers and
7 operators of recovery residences from engaging in
8 certain marketing practices; providing criminal and
9 civil penalties for engaging in such practices;
10 providing that the violation of the prohibition
11 against certain unethical marketing practices by a
12 provider or operator is a violation of the Florida
13 Deceptive and Unfair Trade Practices Act; providing
14 for the deposit of civil penalties into a certain
15 trust fund; amending s. 397.501, F.S.; providing a
16 right to a safe living environment for certain
17 individuals; amending s. 456.053, F.S.; defining
18 terms; providing applicability; providing penalties
19 for violations of prohibitions against certain
20 referrals; prohibiting a substance abuse treatment
21 provider from making certain offers; providing an
22 exemption to the prohibition against referrals;
23 amending s. 501.2077, F.S.; defining the term
24 "disabling condition"; expanding the Florida Deceptive
25 and Unfair Trade Practices Act to include protections
26 for people with diagnosable substance abuse disorders
27 and other disabling conditions and civil penalties for
28 those who commit violations against such people;
29 revising definitions; amending s. 817.505, F.S.;
30 adding recovery residences as entities prohibited from
31 patient brokering; providing that it is unlawful for a
32 person to solicit or receive benefits under certain

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33 circumstances; defining the term "recovery residence";
34 amending ss. 212.055, 397.416, and 440.102, F.S.;
35 conforming cross-references; providing an effective
36 date.

37
38 Be It Enacted by the Legislature of the State of Florida:

39
40 Section 1. Subsection (10) is added to section 397.305,
41 Florida Statutes, to read:

42 397.305 Legislative findings, intent, and purpose.—

43 (10) It is the intent of the Legislature to ensure that
44 treatment and recovery support for individuals who are impaired
45 by substance abuse disorders are offered in an ethical and
46 professional manner that includes the use of ethical marketing
47 practices to ensure the protection of this vulnerable
48 population.

49 Section 2. Present subsections (12) through (20) of section
50 397.311, Florida Statutes, are redesignated as subsections (13)
51 through (21), respectively, present subsection (21) of that
52 section is redesignated as subsection (23), present subsection
53 (23) of that section is redesignated as subsection (26), present
54 subsection (24) of that section is redesignated as subsection
55 (25), present subsections (25) through (42) of that section are
56 redesignated as subsections (27) through (44), respectively,
57 present subsections (43) through (45) of that section are
58 redesignated as subsections (46) through (48), respectively, and
59 new subsections (12), (24), and (45) are added to that section,
60 to read:

61 397.311 Definitions.—As used in this chapter, except part

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62 VIII, the term:

63 (12) "Disabling condition" means:

64 (a) A diagnosable substance abuse disorder, serious mental
65 illness, developmental disability, specific learning disability,
66 or chronic physical illness or disability, or the co-occurrence
67 of two or more of these conditions.

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

71 (24) "Marketing practices" means all statements made or
72 information disseminated to the public, whether oral, written,
73 printed, or otherwise, which are intended to market, advertise,
74 or entice an individual toward a particular substance abuse
75 treatment or recovery support program licensed under this
76 chapter.

77 (45) "Substance abuse lead generator" means a call center
78 or similar marketing entity that is contractually engaged by a
79 substance abuse treatment provider licensed under this chapter
80 to identify and cultivate prospective patient interest in a
81 particular substance abuse treatment program or recovery
82 residence.

83 Section 3. Section 397.335, Florida Statutes, is created to
84 read:

85 397.335 Prohibition of unethical marketing practices.—The
86 Legislature recognizes that individuals with substance abuse
87 disorders have disabling conditions that put them at risk of
88 being vulnerable to fraudulent marketing practices. To protect
89 the health, safety, and welfare of this vulnerable population,
90 substance abuse treatment providers licensed under this chapter

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91 and operators of recovery residences may not engage in the
92 following marketing practices:

93 (1) Making false or misleading statements or providing
94 false or misleading information about their products, goods,
95 services, or geographical location in their marketing,
96 advertising materials, or media or on their respective websites.

97 (2) Including on their respective websites coding that
98 provides false information or surreptitiously directs the reader
99 to another website.

100 (3) Soliciting, receiving, or making an attempt to solicit
101 or receive a commission, benefit, bonus, rebate, kickback, or
102 bribe, directly or indirectly, in cash or in kind, or engaging
103 or making an attempt to engage in a split-fee arrangement in
104 return for a referral or an acceptance or acknowledgment of
105 treatment from a health care provider, health care facility, or
106 recovery residence. A violation of this subsection is a
107 violation of the prohibition on patient brokering and is subject
108 to criminal penalties under s. 817.505.

109 (4) Predatory practices, including soliciting prospective
110 patients with substance abuse conditions at community or support
111 group meetings or treatment programs.

112 (5) Entering into a marketing contract with a substance
113 abuse lead generator that engages in marketing through a call
114 center, unless the call center discloses the following to the
115 caller so that he or she can make an informed health care
116 decision:

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

118 (b) Clear and concise instructions that allow the caller to
119 easily access a list of licensed substance abuse treatment

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120 agencies, both public and private, on the department website.

121

122 A substance abuse treatment provider licensed under this chapter
123 which is operating as a partial hospitalization or intensive
124 outpatient program may not offer a prospective patient free or
125 reduced rent at a recovery residence to entice the prospective
126 patient to choose it as the patient's provider and may not make
127 a direct or an indirect payment to a recovery residence for a
128 patient's housing or other housing-related services. A provider
129 or operator that violates this section commits a violation of
130 the Florida Deceptive and Unfair Trade Practices Act under s.
131 501.2077(2) and is subject to a civil penalty of not more than
132 \$5,000 for each willful violation. A provider or operator that
133 willfully uses, or has willfully used, a method, act, or
134 practice in violation of this section which victimizes or
135 attempts to victimize a person with a disabling condition is
136 liable for a civil penalty of not more than \$15,000 for each
137 violation if the provider or operator knew or should have known
138 that such conduct was unfair or deceptive. Civil penalties
139 collected under this section must be deposited in the Substance
140 Abuse Impairment Provider Licensing Trust Fund to partially fund
141 the implementation and administration of this section.

142 Section 4. Present subsections (9) and (10) of section
143 397.501, Florida Statutes, are redesignated as subsections (10)
144 and (11), respectively, and a new subsection (9) is added to
145 that section, to read:

146 397.501 Rights of individuals.—Individuals receiving
147 substance abuse services from any service provider are
148 guaranteed protection of the rights specified in this section,

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149 unless otherwise expressly provided, and service providers must
150 ensure the protection of such rights.

151 (9) RIGHT TO SAFE LIVING ENVIRONMENT.—Each individual
152 receiving treatment services in a residential treatment facility
153 or living in a recovery residence has the right to a safe living
154 environment free from drugs, alcohol, harassment, abuse, and
155 harm.

156 Section 5. Paragraphs (a) and (i) of subsection (3) of
157 section 456.053, Florida Statutes, are amended, present
158 paragraph (o) of that subsection is redesignated as paragraph
159 (q), present paragraph (p) of that subsection is redesignated as
160 paragraph (o), present paragraphs (q) and (r) of that subsection
161 are redesignated as paragraphs (r) and (s), respectively, a new
162 paragraph (p) is added to that subsection, paragraph (g) of
163 subsection (5) of that section is amended, a new paragraph (k)
164 is added to that subsection, and subsection (6) is added to that
165 section, to read:

166 456.053 Financial arrangements between referring health
167 care providers and providers of health care services.—

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

170 (a) "Board" means any of the following boards relating to
171 the respective professions: the Board of Medicine as created in
172 s. 458.307; the Board of Osteopathic Medicine as created in s.
173 459.004; the Board of Chiropractic Medicine as created in s.
174 460.404; the Board of Podiatric Medicine as created in s.
175 461.004; the Board of Optometry as created in s. 463.003; the
176 Board of Pharmacy as created in s. 465.004; ~~and~~ the Board of
177 Dentistry as created in s. 466.004; and the Board of Clinical

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178 Social Work, Marriage and Family Therapy, and Mental Health
 179 Counseling as created in s. 491.004.

180 (i) "Health care provider" means any physician licensed
 181 under chapter 458, chapter 459, chapter 460, or chapter 461, or
 182 any health care provider licensed under chapter 463, ~~or~~ chapter
 183 466, or chapter 491.

184 (p) "Recovery residence" means a residential dwelling unit
 185 or other form of group housing that is offered or advertised by
 186 a person or entity through any form of communication, including
 187 oral, written, electronic, or print media, as a residence that
 188 provides a peer-supported, alcohol-free, and drug-free living
 189 environment.

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

192 (g) A violation of this section by a health care provider
 193 constitutes ~~shall constitute~~ grounds for disciplinary action ~~to~~
 194 ~~be taken~~ by the applicable board pursuant to s. 458.331(2), s.
 195 459.015(2), s. 460.413(2), s. 461.013(2), s. 463.016(2), ~~or~~ s.
 196 466.028(2), or s. 491.009(2). Any hospital licensed under
 197 chapter 395 found in violation of this section is ~~shall be~~
 198 subject to s. 395.0185(2). A substance abuse treatment provider
 199 licensed under chapter 397 found in violation of this section is
 200 subject to the penalties imposed under ss. 397.415 and 397.461.

201 (k) A substance abuse treatment provider licensed under
 202 chapter 397 which is operating as a partial hospitalization or
 203 intensive outpatient program may not offer a prospective patient
 204 free or reduced rent at a recovery residence to entice the
 205 prospective patient to choose it as the patient's provider.

206 (6) EXCEPTIONS TO PROHIBITED REFERRALS.—The prohibitions in

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207 paragraphs (5) (a) and (b) do not apply to referrals made by
208 substance abuse treatment providers licensed under chapter 397,
209 any health care service entities owned by such providers or in
210 which such providers have a financial interest, or subsidiaries
211 of those health care service entities, to recovery residences or
212 laboratory testing services in which any of such providers,
213 entities or subsidiaries have a financial interest if the
214 financial interest is clearly stated:

215 (a) In writing to patients, clients, consumers, and
216 facility residents.

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

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

224 Section 6. Section 501.2077, Florida Statutes, is amended
225 to read:

226 501.2077 Violations involving senior citizen, person who
227 has a disabling condition ~~disability~~, military servicemember, or
228 the spouse or dependent child of a military servicemember; civil
229 penalties; presumption.—

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

231 (a) "Disabling condition" means:

232 1. A diagnosable substance abuse disorder, serious mental
233 illness, developmental disability, specific learning disability,
234 or chronic physical illness or disability, or the co-occurrence
235 of two or more of these conditions.

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

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

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

244 ~~1. A mental or psychological disorder or specific learning~~
245 ~~disability.~~

246 ~~2. An educational deficiency that substantially affects a~~
247 ~~person's ability to read and comprehend the terms of any~~
248 ~~contractual agreement entered into.~~

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

251 1. "Active duty" has the same meaning as provided in s.
252 250.01.

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

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

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

259 (2) A person who is willfully using, or has willfully used,
260 a method, act, or practice in violation of this part which
261 victimizes or attempts to victimize a senior citizen or a person
262 who has a disabling condition ~~disability~~ is liable for a civil
263 penalty of not more than \$15,000 for each such violation if she
264 or he knew or should have known that her or his conduct was

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265 unfair or deceptive.

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

272 (4) An order of restitution or reimbursement based on a
273 violation of this part committed against a senior citizen, a
274 person who has a disabling condition ~~disability~~, a military
275 servicemember, or the spouse or dependent child of a military
276 servicemember has priority over the imposition of civil
277 penalties for such violations pursuant to this section.

278 (5) Civil penalties collected pursuant to this section
279 shall be deposited into the Legal Affairs Revolving Trust Fund
280 of the Department of Legal Affairs and allocated solely to the
281 Department of Legal Affairs for the purpose of preparing and
282 distributing consumer education materials, programs, and
283 seminars to benefit senior citizens, persons who have a
284 disabling condition ~~disability~~, and military servicemembers or
285 to further enforcement efforts.

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

289 817.505 Patient brokering prohibited; exceptions;
290 penalties.—

291 (1) It is unlawful for any person, including any health
292 care provider, ~~or~~ health care facility, or recovery residence,
293 to:

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

299 (b) Solicit or receive any commission, benefit, bonus,
300 rebate, kickback, or bribe, directly or indirectly, in cash or
301 in kind, or engage in any split-fee arrangement, in any form
302 whatsoever, in return for referring patients or patronage to or
303 from a health care provider, ~~or~~ health care facility, or
304 recovery residence;

305 (c) Solicit or receive any commission, benefit, bonus,
306 rebate, kickback, or bribe, directly or indirectly, in cash or
307 in kind, or engage in any split-fee arrangement, in any form
308 whatsoever, in return for the acceptance or acknowledgment of
309 treatment from a health care provider, ~~or~~ health care facility,
310 or recovery residence; or

311 (d) Aid, abet, advise, or otherwise participate in the
312 conduct prohibited under paragraph (a), paragraph (b), or
313 paragraph (c).

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

315 (d) "Recovery residence" means a residential dwelling unit
316 or other form of group housing that is offered or advertised by
317 a person or entity through any form of communication, including
318 oral, written, electronic, or print media, as a residence that
319 provides a peer-supported, alcohol-free, and drug-free living
320 environment.

321 Section 8. Paragraph (e) of subsection (5) of section
322 212.055, Florida Statutes, is amended to read:

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323 212.055 Discretionary sales surtaxes; legislative intent;
324 authorization and use of proceeds.—It is the legislative intent
325 that any authorization for imposition of a discretionary sales
326 surtax shall be published in the Florida Statutes as a
327 subsection of this section, irrespective of the duration of the
328 levy. Each enactment shall specify the types of counties
329 authorized to levy; the rate or rates which may be imposed; the
330 maximum length of time the surtax may be imposed, if any; the
331 procedure which must be followed to secure voter approval, if
332 required; the purpose for which the proceeds may be expended;
333 and such other requirements as the Legislature may provide.
334 Taxable transactions and administrative procedures shall be as
335 provided in s. 212.054.

336 (5) COUNTY PUBLIC HOSPITAL SURTAX.—Any county as defined in
337 s. 125.011(1) may levy the surtax authorized in this subsection
338 pursuant to an ordinance either approved by extraordinary vote
339 of the county commission or conditioned to take effect only upon
340 approval by a majority vote of the electors of the county voting
341 in a referendum. In a county as defined in s. 125.011(1), for
342 the purposes of this subsection, "county public general
343 hospital" means a general hospital as defined in s. 395.002
344 which is owned, operated, maintained, or governed by the county
345 or its agency, authority, or public health trust.

346 (e) A governing board, agency, or authority shall be
347 chartered by the county commission upon this act becoming law.
348 The governing board, agency, or authority shall adopt and
349 implement a health care plan for indigent health care services.
350 The governing board, agency, or authority shall consist of no
351 more than seven and no fewer than five members appointed by the

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352 county commission. The members of the governing board, agency,
353 or authority shall be at least 18 years of age and residents of
354 the county. No member may be employed by or affiliated with a
355 health care provider or the public health trust, agency, or
356 authority responsible for the county public general hospital.
357 The following community organizations shall each appoint a
358 representative to a nominating committee: the South Florida
359 Hospital and Healthcare Association, the Miami-Dade County
360 Public Health Trust, the Dade County Medical Association, the
361 Miami-Dade County Homeless Trust, and the Mayor of Miami-Dade
362 County. This committee shall nominate between 10 and 14 county
363 citizens for the governing board, agency, or authority. The
364 slate shall be presented to the county commission and the county
365 commission shall confirm the top five to seven nominees,
366 depending on the size of the governing board. Until such time as
367 the governing board, agency, or authority is created, the funds
368 provided for in subparagraph (d)2. shall be placed in a
369 restricted account set aside from other county funds and not
370 disbursed by the county for any other purpose.

371 1. The plan shall divide the county into a minimum of four
372 and maximum of six service areas, with no more than one
373 participant hospital per service area. The county public general
374 hospital shall be designated as the provider for one of the
375 service areas. Services shall be provided through participants'
376 primary acute care facilities.

377 2. The plan and subsequent amendments to it shall fund a
378 defined range of health care services for both indigent persons
379 and the medically poor, including primary care, preventive care,
380 hospital emergency room care, and hospital care necessary to

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381 stabilize the patient. For the purposes of this section,
382 "stabilization" means stabilization as defined in s. 397.311(43)
383 ~~s. 397.311(41)~~. Where consistent with these objectives, the plan
384 may include services rendered by physicians, clinics, community
385 hospitals, and alternative delivery sites, as well as at least
386 one regional referral hospital per service area. The plan shall
387 provide that agreements negotiated between the governing board,
388 agency, or authority and providers shall recognize hospitals
389 that render a disproportionate share of indigent care, provide
390 other incentives to promote the delivery of charity care to draw
391 down federal funds where appropriate, and require cost
392 containment, including, but not limited to, case management.
393 From the funds specified in subparagraphs (d)1. and 2. for
394 indigent health care services, service providers shall receive
395 reimbursement at a Medicaid rate to be determined by the
396 governing board, agency, or authority created pursuant to this
397 paragraph for the initial emergency room visit, and a per-member
398 per-month fee or capitation for those members enrolled in their
399 service area, as compensation for the services rendered
400 following the initial emergency visit. Except for provisions of
401 emergency services, upon determination of eligibility,
402 enrollment shall be deemed to have occurred at the time services
403 were rendered. The provisions for specific reimbursement of
404 emergency services shall be repealed on July 1, 2001, unless
405 otherwise reenacted by the Legislature. The capitation amount or
406 rate shall be determined prior to program implementation by an
407 independent actuarial consultant. ~~In no event shall such~~
408 Reimbursement rates may not exceed the Medicaid rate. The plan
409 must also provide that any hospitals owned and operated by

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410 government entities on or after the effective date of this act
411 must, as a condition of receiving funds under this subsection,
412 afford public access equal to that provided under s. 286.011 as
413 to any meeting of the governing board, agency, or authority the
414 subject of which is budgeting resources for the retention of
415 charity care, as that term is defined in the rules of the Agency
416 for Health Care Administration. The plan shall also include
417 innovative health care programs that provide cost-effective
418 alternatives to traditional methods of service and delivery
419 funding.

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

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

428 5. At the end of each fiscal year, the governing board,
429 agency, or authority shall prepare an audit that reviews the
430 budget of the plan, and the ~~delivery of services,~~ and quality of
431 services, and makes recommendations to increase the plan's
432 efficiency. The audit shall take into account participant
433 hospital satisfaction with the plan and assess the amount of
434 poststabilization patient transfers requested, and accepted or
435 denied, by the county public general hospital.

436 Section 9. Section 397.416, Florida Statutes, is amended to
437 read:

438 397.416 Substance abuse treatment services; qualified

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439 professional.—Notwithstanding any other provision of law, a
440 person who was certified through a certification process
441 recognized by the former Department of Health and Rehabilitative
442 Services before January 1, 1995, may perform the duties of a
443 qualified professional with respect to substance abuse treatment
444 services as defined in this chapter, and need not meet the
445 certification requirements contained in s. 397.311(32) ~~s.~~
446 ~~397.311(30)~~.

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

449 440.102 Drug-free workplace program requirements.—The
450 following provisions apply to a drug-free workplace program
451 implemented pursuant to law or to rules adopted by the Agency
452 for Health Care Administration:

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

455 (d) “Drug rehabilitation program” means a service provider,
456 established pursuant to s. 397.311(41) ~~s. 397.311(39)~~, that
457 provides confidential, timely, and expert identification,
458 assessment, and resolution of employee drug abuse.

459 (g) “Employee assistance program” means an established
460 program capable of providing expert assessment of employee
461 personal concerns; confidential and timely identification
462 services with regard to employee drug abuse; referrals of
463 employees for appropriate diagnosis, treatment, and assistance;
464 and followup services for employees who participate in the
465 program or require monitoring after returning to work. If, in
466 addition to the above activities, an employee assistance program
467 provides diagnostic and treatment services, these services shall

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468 in all cases be provided by service providers pursuant to s.
469 397.311(41) ~~s. 397.311(39)~~.

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