

By the Committee on Children, Families, and Elder Affairs; and
Senator Clemens

586-02375-16

20161138c1

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

586-02375-16

20161138c1

32 or receive benefits under certain circumstances;
33 providing applicability; defining the term "recovery
34 residence"; amending ss. 212.055, 397.416, and
35 440.102, F.S.; conforming cross-references; providing
36 an effective 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:

586-02375-16

20161138c1

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

586-02375-16

20161138c1

90 substance abuse treatment providers licensed under this chapter
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 or receiving a commission, benefit, bonus,
101 rebate, kickback, or bribe, directly or indirectly, in cash or
102 in kind, or engaging or making an attempt to engage in a split-
103 fee arrangement in return for a referral or an acceptance or
104 acknowledgment of treatment from a health care provider, health
105 care facility, or recovery residence. A violation of this
106 subsection is a violation of the prohibition on patient
107 brokering and is subject to criminal penalties under s. 817.505.
108 This subsection does not apply to referrals from recovery
109 residences to other recovery residences.

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

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

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

586-02375-16

20161138c1

119
120 A substance abuse treatment provider licensed under this chapter
121 which is operating as a partial hospitalization or an outpatient
122 program, including an intensive outpatient program, may not
123 offer a prospective patient free or reduced rent at a recovery
124 residence to induce the prospective patient to choose it as the
125 patient's provider and may not make a direct or an indirect
126 payment to a recovery residence for a patient's housing or other
127 housing-related services. A provider or operator that violates
128 this section commits a violation of the Florida Deceptive and
129 Unfair Trade Practices Act under s. 501.2077(2). The Department
130 of Children and Families shall submit copies of findings related
131 to violations by entities licensed and regulated under this
132 chapter to the Department of Legal Affairs.

133 Section 4. Present subsections (9) and (10) of section
134 397.501, Florida Statutes, are redesignated as subsections (10)
135 and (11), respectively, and a new subsection (9) is added to
136 that section, to read:

137 397.501 Rights of individuals.—Individuals receiving
138 substance abuse services from any service provider are
139 guaranteed protection of the rights specified in this section,
140 unless otherwise expressly provided, and service providers must
141 ensure the protection of such rights.

142 (9) RIGHT TO SAFE LIVING ENVIRONMENT.—Each individual
143 receiving treatment services in a residential treatment facility
144 or living in a recovery residence has the right to a safe living
145 environment free from drugs, alcohol, harassment, abuse, and
146 harm.

147 Section 5. Paragraphs (a) and (i) of subsection (3) of

586-02375-16

20161138c1

148 section 456.053, Florida Statutes, are amended, present
149 paragraph (o) of that subsection is redesignated as paragraph
150 (q), present paragraph (p) of that subsection is redesignated as
151 paragraph (o), present paragraphs (q) and (r) of that subsection
152 are redesignated as paragraphs (r) and (s), respectively, a new
153 paragraph (p) is added to that subsection, paragraph (g) of
154 subsection (5) of that section is amended, a new paragraph (k)
155 is added to that subsection, and subsection (6) is added to that
156 section, to read:

157 456.053 Financial arrangements between referring health
158 care providers and providers of health care services.—

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

161 (a) "Board" means any of the following boards relating to
162 the respective professions: the Board of Medicine as created in
163 s. 458.307; the Board of Osteopathic Medicine as created in s.
164 459.004; the Board of Chiropractic Medicine as created in s.
165 460.404; the Board of Podiatric Medicine as created in s.
166 461.004; the Board of Optometry as created in s. 463.003; the
167 Board of Pharmacy as created in s. 465.004; ~~and~~ the Board of
168 Dentistry as created in s. 466.004; and the Board of Clinical
169 Social Work, Marriage and Family Therapy, and Mental Health
170 Counseling as created in s. 491.004.

171 (i) "Health care provider" means any physician licensed
172 under chapter 458, chapter 459, chapter 460, or chapter 461, or
173 any health care provider licensed under chapter 463, ~~or~~ chapter
174 466, or chapter 491.

175 (p) "Recovery residence" means a residential dwelling unit
176 or other form of group housing that is offered or advertised

586-02375-16

20161138c1

177 through any means, including oral, written, electronic, or
178 printed means, and by any person or entity as a residence that
179 provides a peer-supported, alcohol-free, and drug-free living
180 environment.

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

183 (g) A violation of this section by a health care provider
184 constitutes ~~shall constitute~~ grounds for disciplinary action ~~to~~
185 ~~be taken~~ by the applicable board pursuant to s. 458.331(2), s.
186 459.015(2), s. 460.413(2), s. 461.013(2), s. 463.016(2), ~~or~~ s.
187 466.028(2), or s. 491.009(2). Any hospital licensed under
188 chapter 395 found in violation of this section is ~~shall be~~
189 subject to s. 395.0185(2). A substance abuse treatment provider
190 licensed under chapter 397 found in violation of this section is
191 subject to the penalties imposed under ss. 397.415 and 397.461.

192 (k) A substance abuse treatment provider licensed under
193 chapter 397 which is operating as a partial hospitalization or
194 an outpatient program, including an intensive outpatient
195 program, may not offer a prospective patient free or reduced
196 rent at a recovery residence to induce the prospective patient
197 to choose it as the patient's provider.

198 (6) EXCEPTIONS TO PROHIBITED REFERRALS.—The prohibitions in
199 paragraphs (5) (a) and (b) do not apply to referrals made by
200 substance abuse treatment providers licensed under chapter 397,
201 any health care service entities owned by such providers or in
202 which such providers have a financial interest, or subsidiaries
203 of those health care service entities, to recovery residences or
204 laboratory testing services in which any of such providers,
205 entities or subsidiaries have a financial interest if the

586-02375-16

20161138c1

206 financial interest is clearly stated:

207 (a) In writing to patients, clients, consumers, and
208 facility residents.

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

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

216 Section 6. Section 501.2077, Florida Statutes, is amended
217 to read:

218 501.2077 Violations involving senior citizen, person who
219 has a disabling condition ~~disability~~, military servicemember, or
220 the spouse or dependent child of a military servicemember; civil
221 penalties; presumption.—

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

223 (a) "Disabling condition" means:

224 1. A diagnosable substance abuse disorder, serious mental
225 illness, developmental disability, specific learning disability,
226 or chronic physical illness or disability, or the co-occurrence
227 of two or more of these conditions.

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

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

586-02375-16

20161138c1

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

236 ~~1. A mental or psychological disorder or specific learning~~
237 ~~disability.~~

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

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

243 1. "Active duty" has the same meaning as provided in s.
244 250.01.

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

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

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

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

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

586-02375-16

20161138c1

264 (4) An order of restitution or reimbursement based on a
265 violation of this part committed against a senior citizen, a
266 person who has a disabling condition ~~disability~~, a military
267 servicemember, or the spouse or dependent child of a military
268 servicemember has priority over the imposition of civil
269 penalties for such violations pursuant to this section.

270 (5) Civil penalties collected pursuant to this section
271 shall be deposited into the Legal Affairs Revolving Trust Fund
272 of the Department of Legal Affairs and allocated solely to the
273 Department of Legal Affairs for the purpose of preparing and
274 distributing consumer education materials, programs, and
275 seminars to benefit senior citizens, persons who have a
276 disabling condition ~~disability~~, and military servicemembers or
277 to further enforcement efforts.

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

281 817.505 Patient brokering prohibited; exceptions;
282 penalties.—

283 (1) It is unlawful for any person, including any health
284 care provider, ~~or~~ health care facility, or recovery residence,
285 to:

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

291 (b) Solicit or receive any commission, benefit, bonus,
292 rebate, kickback, or bribe, directly or indirectly, in cash or

586-02375-16

20161138c1

293 in kind, or engage in any split-fee arrangement, in any form
294 whatsoever, in return for referring patients or patronage to or
295 from a health care provider, ~~or~~ health care facility, or
296 recovery residence;

297 (c) Solicit or receive any commission, benefit, bonus,
298 rebate, kickback, or bribe, directly or indirectly, in cash or
299 in kind, or engage in any split-fee arrangement, in any form
300 whatsoever, in return for the acceptance or acknowledgment of
301 treatment from a health care provider, ~~or~~ health care facility,
302 or recovery residence; or

303 (d) Aid, abet, advise, or otherwise participate in the
304 conduct prohibited under paragraph (a), paragraph (b), or
305 paragraph (c).

306
307 This subsection does not apply to referrals from recovery
308 residences to other recovery residences.

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

310 (d) "Recovery residence" means a residential dwelling unit
311 or other form of group housing that is offered or advertised
312 through any means, including oral, written, electronic, or
313 printed means, and by any person or entity as a residence that
314 provides a peer-supported, alcohol-free, and drug-free living
315 environment.

316 Section 8. Paragraph (e) of subsection (5) of section
317 212.055, Florida Statutes, is amended to read:

318 212.055 Discretionary sales surtaxes; legislative intent;
319 authorization and use of proceeds.—It is the legislative intent
320 that any authorization for imposition of a discretionary sales
321 surtax shall be published in the Florida Statutes as a

586-02375-16

20161138c1

322 subsection of this section, irrespective of the duration of the
323 levy. Each enactment shall specify the types of counties
324 authorized to levy; the rate or rates which may be imposed; the
325 maximum length of time the surtax may be imposed, if any; the
326 procedure which must be followed to secure voter approval, if
327 required; the purpose for which the proceeds may be expended;
328 and such other requirements as the Legislature may provide.
329 Taxable transactions and administrative procedures shall be as
330 provided in s. 212.054.

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

341 (e) A governing board, agency, or authority shall be
342 chartered by the county commission upon this act becoming law.
343 The governing board, agency, or authority shall adopt and
344 implement a health care plan for indigent health care services.
345 The governing board, agency, or authority shall consist of no
346 more than seven and no fewer than five members appointed by the
347 county commission. The members of the governing board, agency,
348 or authority shall be at least 18 years of age and residents of
349 the county. No member may be employed by or affiliated with a
350 health care provider or the public health trust, agency, or

586-02375-16

20161138c1

351 authority responsible for the county public general hospital.
352 The following community organizations shall each appoint a
353 representative to a nominating committee: the South Florida
354 Hospital and Healthcare Association, the Miami-Dade County
355 Public Health Trust, the Dade County Medical Association, the
356 Miami-Dade County Homeless Trust, and the Mayor of Miami-Dade
357 County. This committee shall nominate between 10 and 14 county
358 citizens for the governing board, agency, or authority. The
359 slate shall be presented to the county commission and the county
360 commission shall confirm the top five to seven nominees,
361 depending on the size of the governing board. Until such time as
362 the governing board, agency, or authority is created, the funds
363 provided for in subparagraph (d)2. shall be placed in a
364 restricted account set aside from other county funds and not
365 disbursed by the county for any other purpose.

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

372 2. The plan and subsequent amendments to it shall fund a
373 defined range of health care services for both indigent persons
374 and the medically poor, including primary care, preventive care,
375 hospital emergency room care, and hospital care necessary to
376 stabilize the patient. For the purposes of this section,
377 "stabilization" means stabilization as defined in s. 397.311(43)
378 ~~s. 397.311(41)~~. Where consistent with these objectives, the plan
379 may include services rendered by physicians, clinics, community

586-02375-16

20161138c1

380 hospitals, and alternative delivery sites, as well as at least
381 one regional referral hospital per service area. The plan shall
382 provide that agreements negotiated between the governing board,
383 agency, or authority and providers shall recognize hospitals
384 that render a disproportionate share of indigent care, provide
385 other incentives to promote the delivery of charity care to draw
386 down federal funds where appropriate, and require cost
387 containment, including, but not limited to, case management.
388 From the funds specified in subparagraphs (d)1. and 2. for
389 indigent health care services, service providers shall receive
390 reimbursement at a Medicaid rate to be determined by the
391 governing board, agency, or authority created pursuant to this
392 paragraph for the initial emergency room visit, and a per-member
393 per-month fee or capitation for those members enrolled in their
394 service area, as compensation for the services rendered
395 following the initial emergency visit. Except for provisions of
396 emergency services, upon determination of eligibility,
397 enrollment shall be deemed to have occurred at the time services
398 were rendered. The provisions for specific reimbursement of
399 emergency services shall be repealed on July 1, 2001, unless
400 otherwise reenacted by the Legislature. The capitation amount or
401 rate shall be determined prior to program implementation by an
402 independent actuarial consultant. ~~In no event shall such~~
403 Reimbursement rates may not exceed the Medicaid rate. The plan
404 must also provide that any hospitals owned and operated by
405 government entities on or after the effective date of this act
406 must, as a condition of receiving funds under this subsection,
407 afford public access equal to that provided under s. 286.011 as
408 to any meeting of the governing board, agency, or authority the

586-02375-16

20161138c1

409 subject of which is budgeting resources for the retention of
410 charity care, as that term is defined in the rules of the Agency
411 for Health Care Administration. The plan shall also include
412 innovative health care programs that provide cost-effective
413 alternatives to traditional methods of service and delivery
414 funding.

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

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

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

431 Section 9. Section 397.416, Florida Statutes, is amended to
432 read:

433 397.416 Substance abuse treatment services; qualified
434 professional.—Notwithstanding any other provision of law, a
435 person who was certified through a certification process
436 recognized by the former Department of Health and Rehabilitative
437 Services before January 1, 1995, may perform the duties of a

586-02375-16

20161138c1

438 qualified professional with respect to substance abuse treatment
439 services as defined in this chapter, and need not meet the
440 certification requirements contained in s. 397.311(32) ~~s.~~
441 ~~397.311(30)~~.

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

444 440.102 Drug-free workplace program requirements.—The
445 following provisions apply to a drug-free workplace program
446 implemented pursuant to law or to rules adopted by the Agency
447 for Health Care Administration:

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

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

454 (g) "Employee assistance program" means an established
455 program capable of providing expert assessment of employee
456 personal concerns; confidential and timely identification
457 services with regard to employee drug abuse; referrals of
458 employees for appropriate diagnosis, treatment, and assistance;
459 and followup services for employees who participate in the
460 program or require monitoring after returning to work. If, in
461 addition to the above activities, an employee assistance program
462 provides diagnostic and treatment services, these services shall
463 in all cases be provided by service providers pursuant to s.
464 397.311(41) ~~s. 397.311(39)~~.

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