STORAGE NAME: h2231a.go
DATE: April 21, 1999

HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GOVERNMENTAL OPERATIONS
ANALYSIS

BILL #: HB 2231 (PCB HCS 99-08)

RELATING TO: Health Care Services

SPONSOR(S): Committee on Health Care Services and Representative Peaden

COMPANION BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) HEALTH CARE SERVICES YEAS 17 NAYS 1
(2) GOVERNMENTAL OPERATIONS YEAS 6 NAYS 0
(3)
(4)

I. SUMMARY:

HB 2231 addresses health care services, the "Patient Self-Referral Act of 1992," and Wingo-related issues. The bill:

- Amends the "Patient Self-Referral Act of 1992" to add definitions for specific terms.

- Authorizes referrals to sole providers and group practices for diagnostic imaging services under certain circumstances.
  - Authorizes sole providers and group practices that relied on declaratory statements issued by the Board of Medicine in 1993 or in 1995 relating to referrals under the Patient Self-Referral Act and that have accepted outside referrals for diagnostic imaging services to continue to do so, provided the sole providers and group practices submit to AHCA certain referral pattern data, for period October 1, 1996, to September 30, 1997, and documentation of reliance upon the Board of Medicine declaratory statements. Based on the information submitted, AHCA will determine an acceptable level of outside referrals for diagnostic imaging services and notify sole providers and group practices that they may accept outside referrals for diagnostic imaging services, so long as the annual percentage does not exceed the maximum established by AHCA.
  - All other group practices or sole providers not approved under the above process may accept for diagnostic imaging services no more than 15 percent of the total number of patients who receive diagnostic imaging services from the sole provider or group practice, provided other applicable requirements are met. This provision shall stand repealed effective July 1, 2001, unless earlier amended by the Legislature.
  - Establishes criteria which all sole providers and group practices accepting outside referrals for diagnostic imaging services must meet, and imposes penalties for submitting false information or violation of these provisions.

- Amends the Patient Brokering Act to update the definition of "health care provider or health care facility" to include reference to licensure by the Department of Health, and to update reference to the Department of Children and Family Services.

- Directs AHCA to conduct two studies and report back to the Governor and the Legislature regarding:
  - By January 15, 2000, the need to establish quality of care standards relating to group practices that provide designated health care services. Specifies study topics, and authorizes AHCA to convene a technical assistance panel for this purpose.
  - By December 15, 2000, outpatient designated health care services, and referral patterns for such services. Specifies study topics, including a requirement that group practices register with the agency, and a determination as to whether there are items of outpatient service that should be exempted from the Patient Self-Referral Act of 1992.

- Provides for a July 1, 1999, effective date.

Note. On April 21, 1999, the Committee on Governmental Operations adopted a strike-everything amendment which substantially amended the bill. See Part VI Amendments of the analysis for details.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

The Patient Self-Referral Act of 1992

Section 455.654, F.S., short-titled the "Patient Self-Referral Act of 1992," was created to address issues involved in the referral of a patient by a health care provider for a service or treatment when the health care provider has a financial interest in the service or treatment. The statute prohibits any health care provider from referring a patient for the provision of a designated health service to an entity in which the health care provider is an investor. A designated health service is defined as a clinical laboratory service, a physical therapy service, a comprehensive rehabilitation service, a diagnostic imaging service, or certain radiation therapy services.

In addition, health care providers are prevented from referring a patient for any service or item in which the health care provider is an investor unless: the investment interest is in registered securities issued by a publicly held corporation of a specified size; or if no more than 50 percent of the value of the investment interests are held by investors who are in a position to make referrals, and the terms under which the investment interest is offered meet specified conditions.

Certain investment interests are permitted, including an investment interest in: a health service in a rural area; certain debt service instruments; real property resulting in a landlord-tenant relationship; and ownership or lease of a hospital or nursing home.

Certain types of referrals are permitted, as well, including a referral by: a radiologist for diagnostic imaging services; a physician specializing in radiation therapy services for such services; a medical oncologist for drugs, solutions, and supplies to be administered to his patients; a cardiologist for cardiac catheterization services; a pathologist for laboratory tests and pathological examination services; a provider when treating his/her own patients or patients from his/her group practice, when the provider actually provides or supervises the service; a surgeon for professional surgical services of his/her own patients or his group's patients at an ambulatory surgical center; a health care provider for clinical laboratory services related to renal dialysis; or a urologist for lithotripsy services.

Since Florida's Patient Self-Referral Act was passed, there has been some question as to whether providers outside a group practice could refer patients to the group practice without violating the group practice exception. The group practice exception states that orders, recommendations, or plans of care "by a health care provider who is the sole provider or member of a group practice for designated health services or other health care items or services that are prescribed or provided solely for such referring health care provider's or group practice's own patients, and that are provided or performed by or under the direct supervision of such referring health care provider or group practice" does not constitute a referral by a health care provider (s. 455.654(3)(k)3.f., F.S.).

The 1st DCA Wingo Decision

In June 1997, the First District Court of Appeal (DCA) narrowly construed the group practice exception in an opinion titled Agency for Health Care Administration v. Wingo, 697 So.2d 1231 (Fla. 1st DCA 1997). In Wingo, the DCA held that a group practice that allows any outside referrals to the group's equipment or facilities loses its privilege to the group practice exception under the Patient Self-Referral Act.

In reaching its decision, the DCA reviewed a declaratory statement made by the Florida Board of Medicine regarding a group practice that had purchased a magnetic resonance imaging system (MRI) to be used by the patients of the practice. The practice expected some patient referrals for MRIs from physicians outside of the group practice who had no investment interest in the clinic. The board ruled that the group practice could accept MRI referrals from non-group physicians to supplement utilization and still maintain the group practice exception to the Self-Referral Act for its own referrals. In forming its decision, the board agreed with the assertion of the group practice that it should be treated differently under the statute because it was *accepting* patients rather than *referring* them.

The Agency for Health Care Administration (AHCA) appealed to the First District Court of Appeal, contending that the practice forfeited its group practice exception by providing MRI services to patients referred from outside physicians. In its analysis of the group practice exception, the court

focused on language which states that group practice referred services must be "provided solely for such referring health care provider's or group practice's own patients..." (s. 455.654(3)(k)3.f., F.S.).

In overruling the board, the DCA held that the group practice may not allow providers outside of the group to refer patients to the practice for MRI services, and any outside referrals would prohibit the group from referring its own patients to the practice for MRI services and destroy the group practice exception entirely. The court concluded that a group practice could lawfully provide MRI services to its own patients only if it prohibited referrals from physicians outside the group practice.

Prior to the Wingo decision, a health care provider who did not have the equipment to perform certain designated health services could send his patient to an outside group practice that performed those designated health services for the sole purpose of those services. The patient remained under the care of the health care provider and did not become a patient of the group practice performing the designated health services.

As a result of the Wingo decision, a group practice is prohibited from performing designated health care services for an outside health care provider's patients. If a group practice does provide such services for other health care providers' patients, the group will no longer be able to perform those designated health services on its own patients. The Patient Self-Referral Act defines "designated health services" to mean "clinical laboratory services, physical therapy services, comprehensive rehabilitative services, diagnostic-imaging services, and radiation therapy services" (s. 455.654(3)(c), F.S.).

The referral process from primary care and family practice physicians for more disease-specific diagnostic evaluation is inherent in the practice of medicine. According to the Wingo decision, if a patient is not an established patient of a group practice but is referred to the group practice from an outside physician who has no investment in that practice for the purposes of diagnostic-imaging, the group practice becomes a diagnostic imaging center. As a diagnostic-imaging center, the group practice could no longer perform diagnostic-imaging on its own patients because it would be considered a self-referral.

The intent behind the Patient Self-Referral Act was "to provide guidance to health care providers regarding prohibited patient referrals between health care providers and entities providing health care services and to protect the people of Florida from unnecessary and costly health care expenditures" (s. 455.654(2), F.S.). The DCA's interpretation of the statute may put restrictions on a group that might not have been intended to be restricted by the act: group practices that receive referrals from health care providers who have no financial investment in the practice and who will not gain financially in the referral process.

Patient Brokering

Chapter 817, F.S., relates to fraudulent practices. Part I of this chapter, consisting of ss. 817.02-817.567, F.S., is specific to false pretenses and frauds, generally. Section 817.505, F.S., specifically prohibits patient brokering, and provides penalties related to such action. The definition provided for "health care provider or health care facility" under this section reads:

> [A]ny person or entity licensed, certified, or registered with the Agency for Health Care Administration; any person or entity that has contracted with the Agency for Health Care Administration to provide goods or services to Medicaid recipients as provided under s. 409.907; a county health department established under part I of chapter 154; any community service provider contracting with the Department of Health and Rehabilitative Services to furnish alcohol, drug abuse, or mental health services under part IV of chapter 394; any substance abuse service provider licensed under chapter 397; or any federally supported primary care program such as a migrant or community health center authorized under ss. 329 and 330 of the United States Public Health Services Act.

This provision of statute has not been updated to reflect the transfer of Medical Quality Assurance functions from AHCA to the Department of Health. This section also does not reflect the redesignation of the Department of Health and Rehabilitative Services as the Department of Children and Family Services.

B. EFFECT OF PROPOSED CHANGES:

HB 2231 will:

- Amend the “Patient Self-Referral Act of 1992" to add definitions for specific terms.
- Authorize referrals to sole providers and group practices for diagnostic imaging services, under certain circumstances. Provide separate processes depending on a sole provider’s or group practice’s history of referrals for such services, with a “grandfathering” of certain providers and the establishment of an allowable threshold for other providers.
- Amend the Patient Brokering Act to update the definition of “health care provider or health care facility.”
- Direct AHCA to study and report back to the Governor and the Legislature by January 15, 2000, regarding the need to establish quality of care standards relating to group practices that provide designated health care services.
- Direct AHCA to conduct a study of outpatient designated health care services, and referral patterns for such services, with a report back to the Governor and the Legislature by December 15, 2000.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

The bill directs the Agency for Health Care Administration to conduct two studies.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

The bill does not eliminate or reduce an agency or a program.

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. _____

   a. Does the bill increase anyone's taxes?

   b. Does the bill require or authorize an increase in any fees?

   c. Does the bill reduce total taxes, both rates and revenues?

   d. Does the bill reduce total fees, both rates and revenues?

   e. Does the bill authorize any fee or tax increase by any local government?

3. Personal Responsibility:

   Does the bill reduce or eliminate an entitlement to government services or subsidy?

   N/A

   Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

4. Individual Freedom:

   Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

   health care services the physicians can make for their patients under certain circumstances.

   b.
   activity?

   The bill directs physicians to make known to the Agency for Health Care Administration the

   and authorizes referrals up to certain specified limits under certain circumstances.

5. _____

   a. If the bill purports to provide services to families or children:

      (1) Who evaluates the family's needs?

Who makes the decisions?

N/A

Are private alternatives permitted?

N/A

Are families required to participate in a program?

N/A

Are families penalized for not participating in a program?

N/A

Does the bill directly affect the legal rights and obligations between family members?

N/A

If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or

The bill does not create or change a program providing services to families or children.

(1)

N/A

(2)

N/A

(3)

N/A

D.

Sections 455.654, F.S., (1998 Supp.); 455.6545, F.S.; 408.704(5)(b), F.S., (1998 Supp.); 641.316(2)(b), F.S., (1998 Supp.); and 817.505(2)(a), F.S., (1998 Supp.).

SECTION-BY-SECTION ANALYSIS:

Section 1.
the following terms: “diagnostic imaging services,” “direct supervision,” “outside referral for diagnostic imaging services,” “patient of a group practice,” and “sole provider.”

Creates s. 455.6545, F.S., to authorize referrals to sole providers and group practices for

- Authorizes sole providers and group practices that relied on declaratory statements issued by the

that have accepted outside referrals for diagnostic imaging services to continue to do so, provided the sole providers and group practices submit to AHCA:

A report detailing the number of outside referrals for diagnostic imaging services accepted, and the total number of patients accepted who received diagnostic imaging services, for the

(2) Documentation of reliance upon the declaratory statements issued by the Board of Medicine,

Based on the information submitted, an acceptable level of outside referrals for diagnostic imaging services will be determined by AHCA for each sole provider or group practice. Upon written notification from AHCA, sole providers and group practices may accept outside referrals for diagnostic imaging services so long as the annual percentage does not exceed the maximum established by AHCA.

- All other group practices or sole providers not approved under the above process may accept referrals for diagnostic imaging services no more than 15 percent of the total number of patients who receive diagnostic imaging services from the sole provider or group practice, provided applicable requirements are met. This provision shall stand repealed effective July 1, 2001, unless earlier amended by the Legislature.

- Establishes criteria which all sole providers and group practices accepting outside referrals for diagnostic imaging services must meet, and imposes penalties for submitting false information or violation of these provisions.

Section 3. Amends s. 408.704(5)(b), F.S., (1998 Supp.), relating to AHCA functions with regard to community health purchasing alliances, to incorporate a conforming cross-reference revision.

Section 4. Amends s. 641.316(2)(b), F.S., (1998 Supp.), relating to managed care fiscal intermediary services, to incorporate a conforming cross-reference revision.

Section 5. Amends s. 817.505(2)(a), F.S., (1998 Supp.), the so-called “Patient Brokering Act,” to update the definition of “health care provider or health care facility” to include reference to licensure by the Department of Health, and to reference the Department of Children and Family Services rather than the Department of Health and Rehabilitative Services.

Section 6. Directs ACHA to study and report back to the Governor and the Legislature by January 15, 2000, regarding the need to establish quality of care standards relating to group practices that provide designated health care services. Specifies study topics, and authorizes AHCA to convene a technical assistance panel for this purpose. Requires a report back to the Governor and the Legislature by January 15, 2000.

Section 7. Directs AHCA to conduct a study of outpatient designated health care services, and referral patterns for such services. Specifies study topics, including a requirement that group practices register with the agency, and a determination as to whether there are items of outpatient service that should be exempted from the Patient Self-Referral Act of 1992. Requires a report back to the Governor and the Legislature by December 15, 2000.

Section 8. Provides for a July 1, 1999, effective date.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

The Agency for Health Care Administration will incur costs associated with the two studies the agency is required to conduct, one of which is a one-year study and the other of which is to be completed by December 15, 2000. The costs of these studies are unknown.

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

   See above note.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

   N/A

2. Recurring Effects:

   N/A

3. Long Run Effects Other Than Normal Growth:

   N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

   Unknown.

2. Direct Private Sector Benefits:

   Unknown.

3. Effects on Competition, Private Enterprise and Employment Markets:

   Unknown.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that counties or municipalities have to raise revenue in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 21, 1999, the Committee on Governmental Operations adopted a strike-everything amendment with three amendments which have been incorporated into the strike-everything amendment. The strike-everything amendment as amended made the following changes to the bill:

- Deletes a reference to s. 455.6545 in the application of the definitions because the bill no longer creates such a section;
- Adds EEG, EKG, nerve conduction studies and evoked potentials to the list of terms in the definition of "diagnostic imaging services";
- Adds sole provider to the meaning of "outside referral for diagnostic imaging services" and defines the term "sole provider";
- Adds to the definition of "referral" to provide that certain licensed physicians may refer patients for diagnostic imaging services to sole providers or group practices if the referring physician has no financial interest in the practice, and limits such practices to accepting no more than 35% of their patients through such referrals;
- Adds a definition of "present in the office suite";
- Relocates portions of Section 2 of the bill into subparagraph (4) of section 455.654, F.S., regarding requirements for providers for accepting outside referrals for diagnostic imaging services. The amendment adds a provision that the agency can seek federal waivers; corrects a cross-reference to the percentage of outside referrals a provider can accept; deletes reference to a manner by which certain physicians who relied on declaratory statements issued by the Board of Medicine may continue to accept referrals; deletes a reference to the employment status of physicians who can perform diagnostic imaging services; provides for annual reporting by such providers to ACHA; deletes a reference to physicians who provide false information to the agency; and deletes a provision that such services are subject to the assessment imposed by s. 395.7015, F.S.;
- Amends the scope of a study ACHA is directed to perform;
- Deletes a provision that ACHA perform a second study;
- Revises the provision that ACHA require registration of certain providers; and
- Restores Section 4 of the original bill regarding ch. 98-192, except that the act shall not apply to s. 395.7015, F.S.

VII. SIGNATURES:

COMMITTEE ON HEALTH CARE SERVICES:

Prepared by: Staff Director:

Phil E. Williams — Phil E. Williams

AS REVISED BY THE COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by: Staff Director:

Douglas Pile — Jimmy O. Helms