

Amendment No. 1 (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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ORIGINAL STAMP BELOW

11 Representative(s) Farkas offered the following:

13 **Amendment (with title amendment)**

14 On page 43 from line 14 through page 46, line 2,
15 remove: all of said lines

17 and insert:

18 Section 14. Section 456.053, Florida Statutes, is
19 amended to read:

20 456.053 Financial arrangements between referring
21 health care providers and providers of health care services.--

22 (1) SHORT TITLE.--This section may be cited as the
23 "Patient Self-Referral Act of 1992."

24 (2) LEGISLATIVE INTENT.--It is recognized by the
25 Legislature that the referral of a patient by a health care
26 provider to a provider of health care services in which the
27 referring health care provider has an investment interest
28 represents a potential conflict of interest. The Legislature
29 finds these referral practices may limit or eliminate
30 competitive alternatives in the health care services market,
31 may result in overutilization of health care services, may

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1 increase costs to the health care system, and may adversely
2 affect the quality of health care. The Legislature also
3 recognizes, however, that it may be appropriate for providers
4 to own entities providing health care services, and to refer
5 patients to such entities, as long as certain safeguards are
6 present in the arrangement. In respect to the kidney dialysis
7 industry, the Florida Legislature recognizes that publicly
8 held corporations, as defined in this section, provide the
9 majority of dialysis and clinical laboratory services to
10 dialysis patients and that all provisions within subsection
11 (6) of this act shall be applicable to all physicians
12 providing dialysis services with an investment interest or is
13 an investor. It is the intent of the Legislature to provide
14 guidance to health care providers regarding prohibited patient
15 referrals between health care providers and entities providing
16 health care services and to protect the people of Florida from
17 unnecessary and costly health care expenditures. Furthermore,
18 it is the intent of the Legislature to prohibit physicians
19 from making a referral for designated health services to an
20 entity with which the physician or a member of the physician's
21 immediate family has an investment interest or is an investor.

22 (3) DEFINITIONS.--For the purpose of this section, the
23 word, phrase, or term:

24 (a) "Board" means any of the following boards relating
25 to the respective professions: the Board of Medicine as
26 created in s. 458.307; the Board of Osteopathic Medicine as
27 created in s. 459.004; the Board of Chiropractic Medicine as
28 created in s. 460.404; the Board of Podiatric Medicine as
29 created in s. 461.004; the Board of Optometry as created in s.
30 463.003; the Board of Pharmacy as created in s. 465.004; and
31 the Board of Dentistry as created in s. 466.004.

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1 (b) "Comprehensive rehabilitation services" means
2 services that are provided by health care professionals
3 licensed under part I or part III of chapter 468 or chapter
4 486 to provide speech, occupational, or physical therapy
5 services on an outpatient or ambulatory basis.

6 (c) "Designated health services" means, for purposes
7 of this section, clinical laboratory services, physical
8 therapy services, comprehensive rehabilitative services,
9 diagnostic-imaging services, and radiation therapy services.

10 (d) "Diagnostic imaging services" means magnetic
11 resonance imaging, nuclear medicine, angiography,
12 arteriography, computed tomography, positron emission
13 tomography, digital vascular imaging, bronchography,
14 lymphangiography, splenography, ultrasound, EEG, EKG, nerve
15 conduction studies, and evoked potentials.

16 (e) "Direct supervision" means supervision by a
17 physician who is present in the office suite and immediately
18 available to provide assistance and direction throughout the
19 time services are being performed.

20 (f) "Entity" means any individual, partnership, firm,
21 corporation, or other business entity.

22 (g) "Fair market value" means value in arms length
23 transactions, consistent with the general market value, and,
24 with respect to rentals or leases, the value of rental
25 property for general commercial purposes, not taking into
26 account its intended use, and, in the case of a lease of
27 space, not adjusted to reflect the additional value the
28 prospective lessee or lessor would attribute to the proximity
29 or convenience to the lessor where the lessor is a potential
30 source of patient referrals to the lessee.

31 (h) "Group practice" means a group of two or more

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1 health care providers legally organized as a partnership,
2 professional corporation, or similar association:

3 1. In which each health care provider who is a member
4 of the group provides substantially the full range of services
5 which the health care provider routinely provides, including
6 medical care, consultation, diagnosis, or treatment, through
7 the joint use of shared office space, facilities, equipment,
8 and personnel;

9 2. For which substantially all of the services of the
10 health care providers who are members of the group are
11 provided through the group and are billed in the name of the
12 group and amounts so received are treated as receipts of the
13 group; and

14 3. In which the overhead expenses of and the income
15 from the practice are distributed in accordance with methods
16 previously determined by members of the group.

17 (i) "Health care provider" means any physician
18 licensed under chapter 458, chapter 459, chapter 460, or
19 chapter 461, or any health care provider licensed under
20 chapter 463 or chapter 466.

21 (j) "Immediate family member" means a health care
22 provider's spouse, child, child's spouse, grandchild,
23 grandchild's spouse, parent, parent-in-law, or sibling.

24 (k) "Investment interest" means an equity or debt
25 security issued by an entity, including, without limitation,
26 shares of stock in a corporation, units or other interests in
27 a partnership, bonds, debentures, notes, or other equity
28 interests or debt instruments. The following investment
29 interests shall be excepted from this definition:

30 1. An investment interest in an entity that is the
31 sole provider of designated health services in a rural area;

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1 2. An investment interest in notes, bonds, debentures,
2 or other debt instruments issued by an entity which provides
3 designated health services, as an integral part of a plan by
4 such entity to acquire such investor's equity investment
5 interest in the entity, provided that the interest rate is
6 consistent with fair market value, and that the maturity date
7 of the notes, bonds, debentures, or other debt instruments
8 issued by the entity to the investor is not later than October
9 1, 1996.

10 3. An investment interest in real property resulting
11 in a landlord-tenant relationship between the health care
12 provider and the entity in which the equity interest is held,
13 unless the rent is determined, in whole or in part, by the
14 business volume or profitability of the tenant or exceeds fair
15 market value; or

16 4. An investment interest in an entity which owns or
17 leases and operates a hospital licensed under chapter 395 or a
18 nursing home facility licensed under chapter 400.

19 (1) "Investor" means a person or entity owning a legal
20 or beneficial ownership or investment interest, directly or
21 indirectly, including, without limitation, through an
22 immediate family member, trust, or another entity related to
23 the investor within the meaning of 42 C.F.R. s. 413.17, in an
24 entity.

25 (m) "Outside referral for diagnostic imaging services"
26 means a referral of a patient to a group practice or sole
27 provider for diagnostic imaging services by a physician who is
28 not a member of the group practice or of the sole provider's
29 practice and who does not have an investment interest in the
30 group practice or sole provider's practice, for which the
31 group practice or sole provider billed for both the technical

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1 and the professional fee for the patient, and the patient did
2 not become a patient of the group practice or sole provider's
3 practice.

4 (n) "Patient of a group practice" or "patient of a
5 sole provider" means a patient who receives a physical
6 examination, evaluation, diagnosis, and development of a
7 treatment plan if medically necessary by a physician who is a
8 member of the group practice or the sole provider's practice.

9 (o) "Referral" means any referral of a patient by a
10 health care provider for health care services, including,
11 without limitation:

12 1. The forwarding of a patient by a health care
13 provider to another health care provider or to an entity which
14 provides or supplies designated health services or any other
15 health care item or service; or

16 2. The request or establishment of a plan of care by a
17 health care provider, which includes the provision of
18 designated health services or other health care item or
19 service.

20 3. The following orders, recommendations, or plans of
21 care shall not constitute a referral by a health care
22 provider:

23 a. By a radiologist for diagnostic-imaging services.

24 b. By a physician specializing in the provision of
25 radiation therapy services for such services.

26 c. By a medical oncologist for drugs and solutions to
27 be prepared and administered intravenously to such
28 oncologist's patient, as well as for the supplies and
29 equipment used in connection therewith to treat such patient
30 for cancer and the complications thereof.

31 d. By a cardiologist for cardiac catheterization

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1 services.

2 e. By a pathologist for diagnostic clinical laboratory
3 tests and pathological examination services, if furnished by
4 or under the supervision of such pathologist pursuant to a
5 consultation requested by another physician.

6 f. By a health care provider who is the sole provider
7 or member of a group practice for designated health services
8 or other health care items or services that are prescribed or
9 provided solely for such referring health care provider's or
10 group practice's own patients, and that are provided or
11 performed by or under the direct supervision of such referring
12 health care provider or group practice; provided, however,
13 that effective July 1, 1999, a physician licensed pursuant to
14 chapter 458, chapter 459, chapter 460, or chapter 461 may
15 refer a patient to a sole provider or group practice for
16 diagnostic imaging services, excluding radiation therapy
17 services, for which the sole provider or group practice billed
18 both the technical and the professional fee for or on behalf
19 of the patient, if the referring physician has no investment
20 interest in the practice. The diagnostic imaging service
21 referred to a group practice or sole provider must be a
22 diagnostic imaging service normally provided within the scope
23 of practice to the patients of the group practice or sole
24 provider. The group practice or sole provider may accept no
25 more than 15 percent of their patients receiving diagnostic
26 imaging services from outside referrals, excluding radiation
27 therapy services.

28 g. By a health care provider for services provided by
29 an ambulatory surgical center licensed under chapter 395.

30 ~~h. By a health care provider for diagnostic clinical~~
31 ~~laboratory services where such services are directly related~~

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1 ~~to renal dialysis.~~

2 ~~h.i.~~ By a urologist for lithotripsy services.

3 ~~i.j.~~ By a dentist for dental services performed by an
4 employee of or health care provider who is an independent
5 contractor with the dentist or group practice of which the
6 dentist is a member.

7 ~~j.k.~~ By a physician for infusion therapy services to a
8 patient of that physician or a member of that physician's
9 group practice.

10 ~~kl.~~ By a nephrologist for renal dialysis services and
11 supplies, except clinical laboratory services.

12 l. By a home care physician whose principal medical
13 practice consists of treating patients in the patient's
14 private homes. The "present in the office suite" requirements
15 of this section are met if the referring physician or
16 qualified person, technician, or nurse provides the prescribed
17 designated health service to the patient in the patient's
18 private home. For purposes of this section, a private home
19 does not include a nursing, long-term care, or other facility
20 or institution.

21 (p) "Present in the office suite" means that the
22 physician is actually physically present; provided, however,
23 that the health care provider is considered physically present
24 during brief unexpected absences as well as during routine
25 absences of a short duration if the absences occur during time
26 periods in which the health care provider is otherwise
27 scheduled and ordinarily expected to be present and the
28 absences do not conflict with any other requirement in the
29 Medicare program for a particular level of health care
30 provider supervision.

31 (q) "Rural area" means a county with a population

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1 density of no greater than 100 persons per square mile, as
2 defined by the United States Census.

3 (r) "Sole provider" means one health care provider
4 licensed under chapter 458, chapter 459, chapter 460, or
5 chapter 461, who maintains a separate medical office and a
6 medical practice separate from any other health care provider
7 and who bills for his or her services separately from the
8 services provided by any other health care provider. A sole
9 provider shall not share overhead expenses or professional
10 income with any other person or group practice.

11 (4) REQUIREMENTS FOR SELF-REFERRALS AS DEFINED IN
12 FEDERAL LAW.--Notwithstanding the provisions of this act, the
13 prohibitions for self-referrals shall only be governed
14 consistent with the provisions pursuant to 42 U.S.C., ss.
15 1395nn, "The Stark Law", and accompanying federal regulations,
16 as interpreted and applied, at 42 C.F.F. ss. 411.1, et seq.,
17 for all licensed providers as set forth in this section.

18 (5)(4) REQUIREMENTS FOR ACCEPTING OUTSIDE REFERRALS
19 FOR DIAGNOSTIC IMAGING.--

20 (a) A group practice or sole provider accepting
21 outside referrals for diagnostic imaging services is required
22 to comply with the following conditions:

23 1. Diagnostic imaging services must be provided
24 exclusively by a group practice physician or by a full-time or
25 part-time employee of the group practice or of the sole
26 provider's practice.

27 2. All equity in the group practice or sole provider's
28 practice accepting outside referrals for diagnostic imaging
29 must be held by the physicians comprising the group practice
30 or the sole provider's practice, each of whom must provide at
31 least 75 percent of his or her professional services to the

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1 group. Alternatively, the group must be incorporated under
2 chapter 617 and must be exempt under the provisions of s.
3 501(c)(3) of the Internal Revenue Code and be part of a
4 foundation in existence prior to January 1, 1999, that is
5 created for the purpose of patient care, medical education,
6 and research.

7 3. A group practice or sole provider may not enter
8 into, extend or renew any contract with a practice management
9 company that provides any financial incentives, directly or
10 indirectly, based on an increase in outside referrals for
11 diagnostic imaging services from any group or sole provider
12 managed by the same practice management company.

13 4. The group practice or sole provider accepting
14 outside referrals for diagnostic imaging services must bill
15 for both the professional and technical component of the
16 service on behalf of the patient, and no portion of the
17 payment, or any type of consideration, either directly or
18 indirectly, may be shared with the referring physician.

19 5. Group practices or sole providers that have a
20 Medicaid provider agreement with the Agency for Health Care
21 Administration must furnish diagnostic imaging services to
22 their Medicaid patients and may not refer a Medicaid recipient
23 to a hospital for outpatient diagnostic imaging services
24 unless the physician furnishes the hospital with documentation
25 demonstrating the medical necessity for such a referral. If
26 necessary, the Agency for Health Care Administration may apply
27 for a federal waiver to implement this subparagraph.

28 6. All group practices and sole providers accepting
29 outside referrals for diagnostic imaging shall report annually
30 to the Agency for Health Care Administration providing the
31 number of outside referrals accepted for diagnostic imaging

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1 services and the total number of all patients receiving
2 diagnostic imaging services.

3 (b) If a group practice or sole provider accepts an
4 outside referral for diagnostic imaging services in violation
5 of this subsection or if a group practice or sole provider
6 accepts outside referrals for diagnostic imaging services in
7 excess of the percentage limitation established in
8 subparagraph (a)2., the group practice or the sole provider
9 shall be subject to the penalties in subsection (6)~~(5)~~.

10 (c) Each managing physician member of a group practice
11 and each sole provider who accepts outside referrals for
12 diagnostic imaging services shall submit an annual attestation
13 signed under oath to the Agency for Health Care Administration
14 which shall include the annual report required under
15 subparagraph (a)6. and which shall further confirm that each
16 group practice or sole provider is in compliance with the
17 percentage limitations for accepting outside referrals and the
18 requirements for accepting outside referrals listed in
19 paragraph (a). The agency may verify the report submitted by
20 group practices and sole providers.

21 (6)~~(5)~~ PROHIBITED REFERRALS AND CLAIMS FOR
22 PAYMENT.--Except as provided in this section:

23 (a) A health care provider may not refer a patient for
24 the provision of designated health services to an entity in
25 which the health care provider is an investor or has an
26 investment interest.

27 (b) A health care provider may not refer a patient for
28 the provision of any other health care item or service to an
29 entity in which the health care provider is an investor
30 unless:

31 1. The provider's investment interest is in registered

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1 securities purchased on a national exchange or
2 over-the-counter market and issued by a publicly held
3 corporation:
4 a. Whose shares are traded on a national exchange or
5 on the over-the-counter market; and
6 b. Whose total assets at the end of the corporation's
7 most recent fiscal quarter exceeded \$50 million; or
8 2. With respect to an entity other than a publicly
9 held corporation described in subparagraph 1., and a referring
10 provider's investment interest in such entity, each of the
11 following requirements are met:
12 a. No more than 50 percent of the value of the
13 investment interests are held by investors who are in a
14 position to make referrals to the entity.
15 b. The terms under which an investment interest is
16 offered to an investor who is in a position to make referrals
17 to the entity are no different from the terms offered to
18 investors who are not in a position to make such referrals.
19 c. The terms under which an investment interest is
20 offered to an investor who is in a position to make referrals
21 to the entity are not related to the previous or expected
22 volume of referrals from that investor to the entity.
23 d. There is no requirement that an investor make
24 referrals or be in a position to make referrals to the entity
25 as a condition for becoming or remaining an investor.
26 3. With respect to either such entity or publicly held
27 corporation:
28 a. The entity or corporation does not loan funds to or
29 guarantee a loan for an investor who is in a position to make
30 referrals to the entity or corporation if the investor uses
31 any part of such loan to obtain the investment interest.

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1 b. The amount distributed to an investor representing
2 a return on the investment interest is directly proportional
3 to the amount of the capital investment, including the fair
4 market value of any preoperational services rendered, invested
5 in the entity or corporation by that investor.

6 4. Each board and, in the case of hospitals, the
7 Agency for Health Care Administration, shall encourage the use
8 by licensees of the declaratory statement procedure to
9 determine the applicability of this section or any rule
10 adopted pursuant to this section as it applies solely to the
11 licensee. Boards shall submit to the Agency for Health Care
12 Administration the name of any entity in which a provider
13 investment interest has been approved pursuant to this
14 section, and the Agency for Health Care Administration shall
15 adopt rules providing for periodic quality assurance and
16 utilization review of such entities.

17 (c) No claim for payment may be presented by an entity
18 to any individual, third-party payor, or other entity for a
19 service furnished pursuant to a referral prohibited under this
20 section.

21 (d) If an entity collects any amount that was billed
22 in violation of this section, the entity shall refund such
23 amount on a timely basis to the payor or individual, whichever
24 is applicable.

25 (e) Any person that presents or causes to be presented
26 a bill or a claim for service that such person knows or should
27 know is for a service for which payment may not be made under
28 paragraph (c), or for which a refund has not been made under
29 paragraph (d), shall be subject to a civil penalty of not more
30 than \$15,000 for each such service to be imposed and collected
31 by the appropriate board.

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1 (f) Any health care provider or other entity that
2 enters into an arrangement or scheme, such as a cross-referral
3 arrangement, which the physician or entity knows or should
4 know has a principal purpose of assuring referrals by the
5 physician to a particular entity which, if the physician
6 directly made referrals to such entity, would be in violation
7 of this section, shall be subject to a civil penalty of not
8 more than \$100,000 for each such circumvention arrangement or
9 scheme to be imposed and collected by the appropriate board.

10 (g) A violation of this section by a health care
11 provider shall constitute grounds for disciplinary action to
12 be taken by the applicable board pursuant to s. 458.331(2), s.
13 459.015(2), s. 460.413(2), s. 461.013(2), s. 463.016(2), or s.
14 466.028(2). Any hospital licensed under chapter 395 found in
15 violation of this section shall be subject to the rules
16 adopted by the Agency for Health Care Administration pursuant
17 to s. 395.0185(2).

18 (h) Any hospital licensed under chapter 395 that
19 discriminates against or otherwise penalizes a health care
20 provider for compliance with this act.

21 (i) The provision of paragraph (a) shall not apply to
22 referrals to the offices of radiation therapy centers managed
23 by an entity or subsidiary or general partner thereof, which
24 performed radiation therapy services at those same offices
25 prior to April 1, 1991, and shall not apply also to referrals
26 for radiation therapy to be performed at no more than one
27 additional office of any entity qualifying for the foregoing
28 exception which, prior to February 1, 1992, had a binding
29 purchase contract on and a nonrefundable deposit paid for a
30 linear accelerator to be used at the additional office. The
31 physical site of the radiation treatment centers affected by

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1 this provision may be relocated as a result of the following
2 factors: acts of God; fire; strike; accident; war; eminent
3 domain actions by any governmental body; or refusal by the
4 lessor to renew a lease. A relocation for the foregoing
5 reasons is limited to relocation of an existing facility to a
6 replacement location within the county of the existing
7 facility upon written notification to the Office of Licensure
8 and Certification.

9 (j) A health care provider who meets the requirements
10 of paragraphs (b) and (i) must disclose his or her investment
11 interest to his or her patients as provided in s. 456.052.

12
13

14 ===== T I T L E A M E N D M E N T =====

15 And the title is amended as follows:

16 On page 5, line 8, after the semicolon,

17

18 insert:

19 providing legislative intent; providing the
20 applicability of the Federal "Stark Law" for
21 licensed health providers in Florida;

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