

By Senator Clemens

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1 A bill to be entitled
2 An act relating to marketing practices for substance
3 abuse services; amending s. 16.56, F.S.; authorizing
4 the Office of Statewide Prosecution in the Department
5 of Legal Affairs to investigate and prosecute patient
6 brokering offenses; amending s. 397.407, F.S.;
7 revising the requirements for the referral of patients
8 to, and the acceptance of referrals from, a recovery
9 residence; specifying that certain referrals are not
10 prohibited; providing applicability; clarifying that
11 such referrals are not required; amending s. 397.501,
12 F.S.; providing that an application for the disclosure
13 of an individual's records may be filed as part of an
14 active criminal investigation; authorizing a court to
15 approve an application for the disclosure of an
16 individual's substance abuse treatment records without
17 providing express notice of the application to the
18 individual or identified parties with an interest in
19 the records if the application is filed as part of an
20 active criminal investigation; providing that upon
21 implementation of the order granting such application,
22 the individual and identified parties with an interest
23 in the records must be afforded an opportunity to seek
24 revocation or amendment of that order; creating s.
25 397.55, F.S.; providing legislative findings;
26 prohibiting service providers, operators of recovery
27 residences, and certain third parties from engaging in
28 specified marketing practices; requiring a person or
29 entity to obtain a license from the Department of
30 Business and Professional Regulation before attempting
31 to generate referrals or leads for the placement of
32 patients with a service provider or in a recovery

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33 residence; requiring such person or entity to maintain
34 an office in the state as a condition of the license;
35 providing penalties; creating s. 817.0345, F.S.;
36 prohibiting a person from knowingly and willfully
37 making specified false or misleading statements or
38 providing specified false or misleading information
39 under certain circumstances; providing penalties;
40 amending s. 817.505, F.S.; providing that it is
41 unlawful for a person to offer or pay, or solicit or
42 receive, benefits under certain circumstances;
43 providing fines and penalties; amending s. 895.02,
44 F.S.; revising the definition of the term
45 "racketeering activity"; providing an effective date.
46

47 Be It Enacted by the Legislature of the State of Florida:
48

49 Section 1. Paragraph (a) of subsection (1) of section
50 16.56, Florida Statutes, is amended to read:

51 16.56 Office of Statewide Prosecution.—

52 (1) There is created in the Department of Legal Affairs an
53 Office of Statewide Prosecution. The office shall be a separate
54 "budget entity" as that term is defined in chapter 216. The
55 office may:

56 (a) Investigate and prosecute the offenses of:

- 57 1. Bribery, burglary, criminal usury, extortion, gambling,
58 kidnapping, larceny, murder, prostitution, perjury, robbery,
59 carjacking, ~~and~~ home-invasion robbery, and patient brokering;
60 2. Any crime involving narcotic or other dangerous drugs;
61 3. Any violation of the Florida RICO (Racketeer Influenced

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62 and Corrupt Organization) Act, including any offense listed in
63 the definition of racketeering activity in s. 895.02(8)(a),
64 providing such listed offense is investigated in connection with
65 a violation of s. 895.03 and is charged in a separate count of
66 an information or indictment containing a count charging a
67 violation of s. 895.03, the prosecution of which listed offense
68 may continue independently if the prosecution of the violation
69 of s. 895.03 is terminated for any reason;

70 4. Any violation of the Florida Anti-Fencing Act;

71 5. Any violation of the Florida Antitrust Act of 1980, as
72 amended;

73 6. Any crime involving, or resulting in, fraud or deceit
74 upon any person;

75 7. Any violation of s. 847.0135, relating to computer
76 pornography and child exploitation prevention, or any offense
77 related to a violation of s. 847.0135 or any violation of
78 chapter 827 where the crime is facilitated by or connected to
79 the use of the Internet or any device capable of electronic data
80 storage or transmission;

81 8. Any violation of chapter 815;

82 9. Any criminal violation of part I of chapter 499;

83 10. Any violation of the Florida Motor Fuel Tax Relief Act
84 of 2004;

85 11. Any criminal violation of s. 409.920 or s. 409.9201;

86 12. Any crime involving voter registration, voting, or
87 candidate or issue petition activities;

88 13. Any criminal violation of the Florida Money Laundering
89 Act;

90 14. Any criminal violation of the Florida Securities and

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91 Investor Protection Act; or

92 15. Any violation of chapter 787, as well as any and all
93 offenses related to a violation of chapter 787;

94

95 or any attempt, solicitation, or conspiracy to commit any of the
96 crimes specifically enumerated above. The office shall have such
97 power only when any such offense is occurring, or has occurred,
98 in two or more judicial circuits as part of a related

99 transaction, or when any such offense is connected with an

100 organized criminal conspiracy affecting two or more judicial

101 circuits. Informations or indictments charging such offenses

102 shall contain general allegations stating the judicial circuits

103 and counties in which crimes are alleged to have occurred or the

104 judicial circuits and counties in which crimes affecting such

105 circuits or counties are alleged to have been connected with an

106 organized criminal conspiracy.

107 Section 2. Subsection (11) of section 397.407, Florida
108 Statutes, is amended to read:

109 397.407 Licensure process; fees.—

110 (11) Effective July 1, 2017 ~~2016~~, a service provider
111 licensed under this part may not refer a prospective, current,
112 or discharged patient to, or accept a referral from, a recovery
113 residence unless the recovery residence holds a valid
114 certificate of compliance as provided in s. 397.487 and is
115 actively managed by a certified recovery residence administrator
116 as provided in s. 397.4871 ~~or the recovery residence is owned~~
117 ~~and operated by a licensed service provider or a licensed~~
118 ~~service provider's wholly owned subsidiary~~. For purposes of this
119 subsection, the term "refer" means to inform a patient by any

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120 means about the name, address, or other details of the recovery
121 residence. However, this subsection does not require a licensed
122 service provider to refer any patient to a recovery residence,
123 or the licensed service provider, as applicable. This subsection
124 does not prohibit a referral by a recovery residence to a
125 licensed service provider when the recovery residence, including
126 its owners, operators, and employees, do not benefit, directly
127 or indirectly, from the referral, and does not apply to a
128 licensed service provider under contract with a managing entity
129 as defined in s. 394.9082.

130 Section 3. Paragraphs (g) and (h) of subsection (7) of
131 section 397.501, Florida Statutes, are amended to read:

132 397.501 Rights of individuals.—Individuals receiving
133 substance abuse services from any service provider are
134 guaranteed protection of the rights specified in this section,
135 unless otherwise expressly provided, and service providers must
136 ensure the protection of such rights.

137 (7) RIGHT TO CONFIDENTIALITY OF INDIVIDUAL RECORDS.—

138 (g) An order authorizing the disclosure of an individual's
139 records may be applied for by any person having a legally
140 recognized interest in the disclosure which is sought. The
141 application may be filed alone ~~separately~~ or as part of a
142 pending civil action or an active criminal investigation in
143 which it appears that the individual's records are needed to
144 provide evidence. An application must use a fictitious name,
145 such as John Doe or Jane Doe, to refer to any individual and may
146 not contain or otherwise disclose any identifying information
147 unless the individual is the applicant or has given a written
148 consent to disclosure or the court has ordered the record of the

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149 proceeding sealed from public scrutiny.

150 (h)1. For applications filed alone or as part of a pending
151 civil action, the individual and the person holding the records
152 from whom disclosure is sought must be given adequate notice in
153 a manner which will not disclose identifying information to
154 other persons, and an opportunity to file a written response to
155 the application, or to appear in person, for the limited purpose
156 of providing evidence on the statutory and regulatory criteria
157 for the issuance of the court order.

158 2. Applications filed as part of an active criminal
159 investigation may, in the discretion of the court, be granted
160 without notice. Although no express notice is required to the
161 agents, owners, and employees of the treatment provider or to
162 any patient whose records are to be disclosed, upon
163 implementation of an order so granted, any of these persons must
164 be afforded an opportunity to seek revocation or amendment of
165 the order, limited to the presentation of evidence on the
166 statutory and regulatory criteria for the issuance of the order.

167 Section 4. Section 397.55, Florida Statutes, is created to
168 read:

169 397.55 Prohibition of deceptive marketing practices.-

170 (1) The Legislature recognizes that consumers of substance
171 abuse treatment have disabling conditions and that such
172 consumers and their families are vulnerable and at risk of being
173 easily victimized by fraudulent marketing practices that
174 adversely impact the delivery of health care. To protect the
175 health, safety, and welfare of this vulnerable population, a
176 service provider, an operator of a recovery residence, or a
177 third party who provides any form of advertising or marketing

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178 services to a service provider or an operator of a recovery
179 residence may not engage in any of the following marketing
180 practices:

181 (a) Making a false or misleading statement or providing
182 false or misleading information about the provider's or
183 operator's or third party's products, goods, services, or
184 geographical locations in its marketing, advertising materials,
185 or media or on its website.

186 (b) Including on its website false information or
187 electronic links, coding or activation that provides false
188 information or that surreptitiously directs the reader to
189 another website.

190 (c) Soliciting, receiving, or making an attempt to solicit
191 or receive a commission, benefit, bonus, rebate, kickback, or
192 bribe, directly or indirectly, in cash or in kind, or engaging
193 or making an attempt to engage in a split-fee arrangement in
194 return for a referral or an acceptance or acknowledgment of
195 treatment from a service provider or recovery residence.

196 (d) Entering into a contract with a marketing provider who
197 agrees to generate referrals or leads for the placement of
198 patients with a service provider or in a recovery residence
199 through a call center or a web-based presence, unless the
200 service provider or the operator of the recovery residence
201 discloses the following to the prospective patient so that the
202 patient can make an informed health care decision:

203 1. Clear and concise language and instructions that allow
204 the prospective patient to easily determine whether the
205 marketing provider represents specific licensed service
206 providers or recovery residences that pay a fee to the marketing

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207 provider, and the identity of such service providers or recovery
208 residences; and

209 2. Clear and concise instructions that allow the
210 prospective patient to easily access lists of licensed service
211 providers and recovery residences on the department website.

212 (2) A person or entity must obtain a license from the
213 Department of Business and Professional Regulation before
214 attempting, by any method or design, including, but not limited
215 to, a call center or a web-based presence, to generate a
216 referral or lead for the placement of a patient with a service
217 provider or in a recovery residence. As a condition of the
218 license, such a person or entity must maintain an office in the
219 state for the purpose of service of process.

220 (3) In addition to any other punishment authorized by law,
221 a person or entity that knowingly and willfully violates
222 paragraph (1)(a), paragraph (1)(b), or paragraph (1)(d) commits
223 a misdemeanor of the first degree, punishable as provided in s.
224 775.083 or s. 775.089. A violation of paragraph (1)(c) is a
225 violation of the prohibition on patient brokering and may
226 subject the party committing the violation to criminal penalties
227 under s. 817.505.

228 Section 5. Section 817.0345, Florida Statutes, is created
229 to read:

230 817.0345 Prohibition of fraudulent marketing practices.—It
231 is unlawful for any person to knowingly and willfully make a
232 materially false or misleading statement or provide false or
233 misleading information about the identity, products, goods,
234 services, or geographical location of a licensed service
235 provider, as defined in chapter 397, in marketing, advertising

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236 materials, or other media or on a website with the intent to
237 induce another person to seek treatment with that service
238 provider. A person who violates this section commits a felony of
239 the third degree, punishable as provided in s. 775.082, s.
240 775.083, or s. 775.084.

241 Section 6. Subsections (1) and (4) of section 817.505,
242 Florida Statutes, are amended to read:

243 817.505 Patient brokering prohibited; exceptions;
244 penalties.—

245 (1) It is unlawful for any person, including any health
246 care provider or health care facility, to:

247 (a) Offer or pay a ~~any~~ commission, benefit, bonus, rebate,
248 kickback, or bribe, directly or indirectly, in cash or in kind,
249 or engage in any split-fee arrangement, in any form whatsoever,
250 to induce the referral of a patient ~~patients~~ or patronage to or
251 from a health care provider or health care facility;

252 (b) Solicit or receive a ~~any~~ commission, benefit, bonus,
253 rebate, kickback, or bribe, directly or indirectly, in cash or
254 in kind, or engage in any split-fee arrangement, in any form
255 whatsoever, in return for referring a patient ~~patients~~ or
256 patronage to or from a health care provider or health care
257 facility;

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

264 (d) Aid, abet, advise, or otherwise participate in the

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265 conduct prohibited under paragraph (a), paragraph (b), or
266 paragraph (c).

267 (4) (a) Any person, including an officer, partner, agent,
268 attorney, or other representative of a firm, joint venture,
269 partnership, business trust, syndicate, corporation, or other
270 business entity, who violates any provision of this section
271 commits a felony of the third degree, punishable as provided in
272 s. 775.082, s. 775.083, or s. 775.084, and shall be ordered to
273 pay a fine of \$50,000.

274 (b) Any person, including an officer, partner, agent,
275 attorney, or other representative of a firm, joint venture,
276 partnership, business trust, syndicate, corporation, or other
277 business entity, who violates any provision of this section,
278 where the prohibited conduct involves 10 or more patients but
279 fewer than 20 patients, commits a felony of the second degree,
280 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,
281 and shall be ordered to pay a fine of \$100,000.

282 (c) Any person, including an officer, partner, agent,
283 attorney, or other representative of a firm, joint venture,
284 partnership, business trust, syndicate, corporation, or other
285 business entity, who violates any provision of this section,
286 where the prohibited conduct involves 20 or more patients,
287 commits a felony of the first degree, punishable as provided in
288 s. 775.082, s. 775.083, or s. 775.084, and shall be ordered to
289 pay a fine of \$500,000.

290 Section 7. Paragraph (a) of subsection (8) of section
291 895.02, Florida Statutes, is amended to read:

292 895.02 Definitions.—As used in ss. 895.01-895.08, the term:

293 (8) "Racketeering activity" means to commit, to attempt to

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294 commit, to conspire to commit, or to solicit, coerce, or
295 intimidate another person to commit:

296 (a) Any crime that is chargeable by petition, indictment,
297 or information under the following provisions of the Florida
298 Statutes:

299 1. Section 210.18, relating to evasion of payment of
300 cigarette taxes.

301 2. Section 316.1935, relating to fleeing or attempting to
302 elude a law enforcement officer and aggravated fleeing or
303 eluding.

304 3. Section 403.727(3)(b), relating to environmental
305 control.

306 4. Section 409.920 or s. 409.9201, relating to Medicaid
307 fraud.

308 5. Section 414.39, relating to public assistance fraud.

309 6. Section 440.105 or s. 440.106, relating to workers'
310 compensation.

311 7. Section 443.071(4), relating to creation of a fictitious
312 employer scheme to commit reemployment assistance fraud.

313 8. Section 465.0161, relating to distribution of medicinal
314 drugs without a permit as an Internet pharmacy.

315 9. Section 499.0051, relating to crimes involving
316 contraband, adulterated, or misbranded drugs.

317 10. Part IV of chapter 501, relating to telemarketing.

318 11. Chapter 517, relating to sale of securities and
319 investor protection.

320 12. Section 550.235 or s. 550.3551, relating to dogracing
321 and horseracing.

322 13. Chapter 550, relating to jai alai frontons.

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- 323 14. Section 551.109, relating to slot machine gaming.
- 324 15. Chapter 552, relating to the manufacture, distribution,
325 and use of explosives.
- 326 16. Chapter 560, relating to money transmitters, if the
327 violation is punishable as a felony.
- 328 17. Chapter 562, relating to beverage law enforcement.
- 329 18. Section 624.401, relating to transacting insurance
330 without a certificate of authority, s. 624.437(4)(c)1., relating
331 to operating an unauthorized multiple-employer welfare
332 arrangement, or s. 626.902(1)(b), relating to representing or
333 aiding an unauthorized insurer.
- 334 19. Section 655.50, relating to reports of currency
335 transactions, when such violation is punishable as a felony.
- 336 20. Chapter 687, relating to interest and usurious
337 practices.
- 338 21. Section 721.08, s. 721.09, or s. 721.13, relating to
339 real estate timeshare plans.
- 340 22. Section 775.13(5)(b), relating to registration of
341 persons found to have committed any offense for the purpose of
342 benefiting, promoting, or furthering the interests of a criminal
343 gang.
- 344 23. Section 777.03, relating to commission of crimes by
345 accessories after the fact.
- 346 24. Chapter 782, relating to homicide.
- 347 25. Chapter 784, relating to assault and battery.
- 348 26. Chapter 787, relating to kidnapping or human
349 trafficking.
- 350 27. Chapter 790, relating to weapons and firearms.
- 351 28. Chapter 794, relating to sexual battery, but only if

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352 such crime was committed with the intent to benefit, promote, or
353 further the interests of a criminal gang, or for the purpose of
354 increasing a criminal gang member's own standing or position
355 within a criminal gang.

356 29. Former s. 796.03, former s. 796.035, s. 796.04, s.
357 796.05, or s. 796.07, relating to prostitution.

358 30. Chapter 806, relating to arson and criminal mischief.

359 31. Chapter 810, relating to burglary and trespass.

360 32. Chapter 812, relating to theft, robbery, and related
361 crimes.

362 33. Chapter 815, relating to computer-related crimes.

363 34. Chapter 817, relating to fraudulent practices, false
364 pretenses, fraud generally, ~~and~~ credit card crimes, and patient
365 brokering.

366 35. Chapter 825, relating to abuse, neglect, or
367 exploitation of an elderly person or disabled adult.

368 36. Section 827.071, relating to commercial sexual
369 exploitation of children.

370 37. Section 828.122, relating to fighting or baiting
371 animals.

372 38. Chapter 831, relating to forgery and counterfeiting.

373 39. Chapter 832, relating to issuance of worthless checks
374 and drafts.

375 40. Section 836.05, relating to extortion.

376 41. Chapter 837, relating to perjury.

377 42. Chapter 838, relating to bribery and misuse of public
378 office.

379 43. Chapter 843, relating to obstruction of justice.

380 44. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or

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381 s. 847.07, relating to obscene literature and profanity.
382 45. Chapter 849, relating to gambling, lottery, gambling or
383 gaming devices, slot machines, or any of the provisions within
384 that chapter.
385 46. Chapter 874, relating to criminal gangs.
386 47. Chapter 893, relating to drug abuse prevention and
387 control.
388 48. Chapter 896, relating to offenses related to financial
389 transactions.
390 49. Sections 914.22 and 914.23, relating to tampering with
391 or harassing a witness, victim, or informant, and retaliation
392 against a witness, victim, or informant.
393 50. Sections 918.12 and 918.13, relating to tampering with
394 jurors and evidence.
395 Section 8. This act shall take effect July 1, 2017.