

1 A bill to be entitled
 2 An act relating to physician referrals; amending s.
 3 456.053, F.S.; revising the definition of the term
 4 "investment interest" to delete a provision exempting
 5 investment interests in an equity that owns or leases
 6 and operates licensed hospitals; authorizing a health
 7 care provider to refer a patient to a licensed
 8 hospital owned or leased and operated by an entity in
 9 which the provider has an investment interest;
 10 amending s. 456.0575, F.S.; requiring a health care
 11 practitioner to provide a notice to patients upon
 12 referring the patient to certain providers; providing
 13 requirements for such notice; providing an effective
 14 date.

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 16 Be It Enacted by the Legislature of the State of Florida:

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 18 Section 1. Paragraph (k) of subsection (3) and paragraph
 19 (b) of subsection (5) of section 456.053, Florida Statutes, are
 20 amended to read:

21 456.053 Financial arrangements between referring health
 22 care providers and providers of health care services.—

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

25 (k) "Investment interest" means an equity or debt security

26 | issued by an entity, including, without limitation, shares of
27 | stock in a corporation, units or other interests in a
28 | partnership, bonds, debentures, notes, or other equity interests
29 | or debt instruments. The following investment interests shall be
30 | excepted from this definition:

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

33 | 2. An investment interest in notes, bonds, debentures, or
34 | other debt instruments issued by an entity which provides
35 | designated health services, as an integral part of a plan by
36 | such entity to acquire such investor's equity investment
37 | interest in the entity, provided that the interest rate is
38 | consistent with fair market value, and that the maturity date of
39 | the notes, bonds, debentures, or other debt instruments issued
40 | by the entity to the investor is not later than October 1, 1996.

41 | 3. An investment interest in real property resulting in a
42 | landlord-tenant relationship between the health care provider
43 | and the entity in which the equity interest is held, unless the
44 | rent is determined, in whole or in part, by the business volume
45 | or profitability of the tenant or exceeds fair market value; or

46 | 4. An investment interest in an entity which owns or
47 | leases and operates ~~a hospital licensed under chapter 395~~ or a
48 | nursing home facility licensed under chapter 400.

49 | (5) PROHIBITED REFERRALS AND CLAIMS FOR PAYMENT.—Except as
50 | provided in this section:

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

54 1. The provider's investment interest is in registered
55 securities purchased on a national exchange or over-the-counter
56 market and issued by a publicly held corporation:

57 a. Whose shares are traded on a national exchange or on
58 the over-the-counter market; and

59 b. Whose total assets at the end of the corporation's most
60 recent fiscal quarter exceeded \$50 million; or

61 2. With respect to an entity other than a publicly held
62 corporation described in subparagraph 1., and a referring
63 provider's investment interest in such entity, each of the
64 following requirements are met:

65 a. No more than 50 percent of the value of the investment
66 interests are held by investors who are in a position to make
67 referrals to the entity.

68 b. The terms under which an investment interest is offered
69 to an investor who is in a position to make referrals to the
70 entity are no different from the terms offered to investors who
71 are not in a position to make such referrals.

72 c. The terms under which an investment interest is offered
73 to an investor who is in a position to make referrals to the
74 entity are not related to the previous or expected volume of
75 referrals from that investor to the entity.

76 d. There is no requirement that an investor make referrals
 77 or be in a position to make referrals to the entity as a
 78 condition for becoming or remaining an investor.

79 3. With respect to either such entity or publicly held
 80 corporation:

81 a. The entity or corporation does not loan funds to or
 82 guarantee a loan for an investor who is in a position to make
 83 referrals to the entity or corporation if the investor uses any
 84 part of such loan to obtain the investment interest.

85 b. The amount distributed to an investor representing a
 86 return on the investment interest is directly proportional to
 87 the amount of the capital investment, including the fair market
 88 value of any preoperational services rendered, invested in the
 89 entity or corporation by that investor.

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 91 This paragraph does not apply to a referral in which the health
 92 care provider has an investment interest in an entity that owns
 93 or leases and operates a hospital licensed under chapter 395.

94 Additionally, ~~4.~~ each board and, in the case of hospitals, the
 95 Agency for Health Care Administration, shall encourage the use
 96 by licensees of the declaratory statement procedure to determine
 97 the applicability of this section or any rule adopted pursuant
 98 to this section as it applies solely to the licensee. Boards
 99 shall submit to the Agency for Health Care Administration the
 100 name of any entity in which a provider investment interest has

101 | been approved pursuant to this section.

102 | Section 2. Subsection (2) of section 456.0575, Florida
 103 | Statutes, is renumbered as subsection (3), and a new subsection
 104 | (2) is added to that section to read:

105 | 456.0575 Duty to notify patients.—

106 | (2) A health care practitioner shall notify a patient, in
 107 | writing, upon referring the patient to a nonparticipating
 108 | provider for nonemergency services, as those terms are defined
 109 | in s. 627.64194, or to a provider, as defined in s. 641.47, not
 110 | under contract with the patient's health maintenance
 111 | organization. Such notice must state that the services will be
 112 | provided on an out-of-network basis, which may result in
 113 | additional cost-sharing responsibilities for the patient, and
 114 | such notice must be documented in the patient's medical record.
 115 | Failure to comply with this subsection, without good cause,
 116 | shall result in disciplinary action against the health care
 117 | practitioner.

118 | Section 3. This act shall take effect July 1, 2019.