

The 2016 Florida Statute

Title XLVI
CRIMES

Chapter 817
FRAUDULENT PRACTICES

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817.505 Patient brokering prohibited; exceptions; penalties.—

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

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

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

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

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

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

(a) “Health care provider or health care facility” means any person or entity licensed, certified, or registered; required to be licensed, certified, or registered; or lawfully exempt from being required to be licensed, certified, or registered with the Agency for Health Care Administration or the Department of Health; 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 Children and Families 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.

(b) “Health care provider network entity” means a corporation, partnership, or limited liability company owned or operated by two or more health care providers and organized for the purpose of entering into agreements with health insurers, health care purchasing groups, or the Medicare or Medicaid program.

(c) "Health insurer" means any insurance company authorized to transact health insurance in the state, any insurance company authorized to transact health insurance or casualty insurance in the state that is offering a minimum premium plan or stop-loss coverage for any person or entity providing health care benefits, any self-insurance plan as defined in s. 624.031, any health maintenance organization authorized to transact business in the state pursuant to part I of chapter 641, any prepaid health clinic authorized to transact business in the state pursuant to part II of chapter 641, any prepaid limited health service organization authorized to transact business in this state pursuant to chapter 636, any multiple-employer welfare arrangement authorized to transact business in the state pursuant to ss. 624.436-624.45, or any fraternal benefit society providing health benefits to its members as authorized pursuant to chapter 632.

(3) This section shall not apply to:

(a) Any discount, payment, waiver of payment, or payment practice not prohibited by 42 U.S.C. s. 1320a-7b(b) or regulations promulgated thereunder.

(b) Any payment, compensation, or financial arrangement within a group practice as defined in s. 456.053, provided such payment, compensation, or arrangement is not to or from persons who are not members of the group practice.

(c) Payments to a health care provider or health care facility for professional consultation services.

(d) Commissions, fees, or other remuneration lawfully paid to insurance agents as provided under the insurance code.

(e) Payments by a health insurer who reimburses, provides, offers to provide, or administers health, mental health, or substance abuse goods or services under a health benefit plan.

(f) Payments to or by a health care provider or health care facility, or a health care provider network entity, that has contracted with a health insurer, a health care purchasing group, or the Medicare or Medicaid program to provide health, mental health, or substance abuse goods or services under a health benefit plan when such payments are for goods or services under the plan. However, nothing in this section affects whether a health care provider network entity is an insurer required to be licensed under the Florida Insurance Code.

(g) Insurance advertising gifts lawfully permitted under s. 626.9541(1)(m).

(h) Commissions or fees paid to a nurse registry licensed under s. 400.506 for referring persons providing health care services to clients of the nurse registry.

(i) Payments by a health care provider or health care facility to a health, mental health, or substance abuse information service that provides information upon request and without charge to consumers about providers of health care goods or services to enable consumers to select appropriate providers or facilities, provided that such information service:

1. Does not attempt through its standard questions for solicitation of consumer criteria or through any other means to steer or lead a consumer to select or consider selection of a particular health care provider or health care facility;

2. Does not provide or represent itself as providing diagnostic or counseling services or assessments of illness or injury and does not make any promises of cure or guarantees of treatment;

3. Does not provide or arrange for transportation of a consumer to or from the location of a health care provider or health care facility; and

4. Charges and collects fees from a health care provider or health care facility participating in its services that are set in advance, are consistent with the fair market value for those information services, and are not based on the potential value of a patient or patients to a health care provider or health care facility or of the goods or services provided by the health care provider or health care facility.

(j) Any activity permitted under s. 429.195(2).

(4) Any person, including an officer, partner, agent, attorney, or other representative of a firm, joint venture, partnership, business trust, syndicate, corporation, or other business entity, who violates any provision of this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) Notwithstanding the existence or pursuit of any other remedy, the Attorney General or the state attorney of the judicial circuit in which any part of the offense occurred may maintain an action for injunctive or other process to enforce the provisions of this section.

(6) The party bringing an action under this section may recover reasonable expenses in obtaining injunctive relief, including, but not limited to, investigative costs, court costs, reasonable attorney's fees, witness costs, and deposition expenses.

(7) The provisions of this section are in addition to any other civil, administrative, or criminal actions provided by law and may be imposed against both corporate and individual defendants.

History.—s. 1, ch. 96-152; s. 226, ch. 97-101; s. 168, ch. 98-166; s. 297, ch. 99-8; s. 7, ch. 99-204; s. 228, ch. 2000-160; s. 19, ch. 2006-305; s. 37, ch. 2012-160; s. 302, ch. 2014-19; s. 4, ch. 2015-66.

