

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 notify a patient in writing upon
 12 referring the patient to certain providers; providing
 13 requirements for such notice; providing an effective
 14 date.

15
 16 Be It Enacted by the Legislature of the State of Florida:
 17

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,
 41 | 1996;;

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

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

50 | (5) PROHIBITED REFERRALS AND CLAIMS FOR PAYMENT.—Except as

51 provided in this section:

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

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

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

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

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

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

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

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

76 | referrals from that investor to the entity.

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

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

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

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

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

95 | Additionally, ~~4.~~ each board and, in the case of hospitals, the
96 | Agency for Health Care Administration~~7~~ shall encourage the use
97 | by licensees of the declaratory statement procedure to determine
98 | the applicability of this section or any rule adopted pursuant
99 | to this section as it applies solely to the licensee. Boards
100 | shall submit to the Agency for Health Care Administration the

101 name of any entity in which a provider investment interest has
102 been approved pursuant to this section.

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

106 456.0575 Duty to notify patients.—

107 (2) A health care practitioner shall notify a patient in
108 writing upon referring the patient to a nonparticipating
109 provider for nonemergency services, as those terms are defined
110 in s. 627.64194(1), or to a provider, as defined in s. 641.47,
111 that is not under contract with the patient's health maintenance
112 organization. Such notice must state that the services will be
113 provided on an out-of-network basis, which may result in
114 additional cost-sharing responsibilities for the patient, and
115 such notice must be documented in the patient's medical record.
116 Failure to comply with this subsection, without good cause,
117 shall result in disciplinary action against the health care
118 practitioner.

119 Section 3. This act shall take effect January 1, 2021.