



Go to ▾

References to 279 S... 1 of 2 ▾



Search Document 🔍

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Current through Chapter 2020-177.

[LexisNexis® Florida Annotated Statutes](#) [Title XLVI. Crimes. \(Chs. 775 – 896\)](#) [Chapter 817. Fraudulent Practices. \(Pts. I – IV\)](#) [Part I. False Pretenses and Frauds, Generally. \(§§ 817.011 – 817.569\)](#)

§ 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 a commission, benefit, 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 a patient or patronage to or from a health care provider or health care facility;

(b) Solicit or receive a commission, benefit, 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 a patient or patronage to or from a health care provider or health care facility;

(c) Solicit or receive a commission, benefit, 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.





Go to ▾

References to 279 S... 1 of 2 ▾



Search Document 🔍

[Shepard's® report](#) >

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 the following payment practices:

- (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





Go to

References to 279 S... 1 of 2



Search Document

[Shepard's® report](#)

(a) 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](#) or [s. 775.084](#), and shall be ordered to pay a fine of \$50,000.

(b) 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, where the prohibited conduct involves 10 or more patients but fewer than 20 patients, commits a felony of the second degree, punishable as provided in [s. 775.082](#) or [s. 775.084](#), and shall be ordered to pay a fine of \$100,000.

(c) 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, where the prohibited conduct involves 20 or more patients, commits a felony of the first degree, punishable as provided in [s. 775.082](#) or [s. 775.084](#), and shall be ordered to pay a fine of \$500,000.

(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](#), eff. July 1, 2006; s. 37, [ch. 2012-160](#), eff. July 1, 2012; s. 302, [ch. 2014-19](#), eff. July 1, 2014; s. 4, [ch. 2015-66](#), eff. July 1, 2015; s. 24, [ch. 2017-173](#), eff. July 1, 2017; s. 11, [ch. 2019-159](#), eff. July 1, 2019; s. 6, [ch. 2020-38](#), eff. July 1, 2020.



Annotations



Go to

References to 279 S... 1 of 2



Search Document

[Shepard's® report](#)

section, are codified as [42 U.S.C.S. §§ 254b](#) and [254c](#), respectively.

Amendments.

The 2006 amendment by s. 19, ch. 2006-305, effective July 1, 2006, in (1)(a), substituted "to or from" for "from"; in (1)(b), substituted "to or from" for "to"; added (1)(c) and redesignated former (1)(c) as present (1)(d); in (1)(d), added "or paragraph (c)" and made a related change; and in (2)(a), inserted "required to be licensed, certified, or registered; or lawfully exempt from being required to be licensed, certified, or registered" and "or the Department of Health."

The 2012 amendment added (3)(j).

The 2014 amendment substituted "Department of Children and Families" for "Department of Children and Family Services" in (2)(a).

The 2015 amendment reenacted (3)(h) for the purpose of incorporating the amendment made by that Act to Fla. Stat. § 400.506, in a reference thereto.

The 2017 amendment by s. 24, ch. 2017-173 substituted "a commission, benefit, bonus" for "any commission, bonus" in (1)(a) through (1)(c); substituted "a patient" for "patients" in (1)(a) and (1)(b); added the (4)(a) designation; substituted "s. 775.082 or s. 775.084, and shall be ordered to pay a fine of \$50,000" for "s. 775.082, s. 775.083, or s. 775.084" at the end of (4)(a); and added (4)(b) and (4)(c).

The 2019 amendment by s. 11 ch. 2019-159 added "the following payment practices" in the introductory language of (3); and substituted "expressly authorized by 42 U.S.C. s. 1320a-7b(b)(3) or regulations adopted thereunder" for "not prohibited by 42 U.S.C. s. 1320a-7b(b) or regulations promulgated thereunder" in (3)(a).

The 2020 amendment by s. 6, ch. 2020-38, rewrote (3)(a), which formerly read: "Any discount, payment, waiver of payment, or payment practice expressly authorized by 42 U.S.C. s. 1320a-7b(b)(3) or regulations adopted thereunder."

Case Notes

[Constitutional Law: The Judiciary: Case or Controversy:](#)

[Constitutionality of Legislation: General Overview](#)

[Criminal Law & Procedure: Criminal Offenses: Fraud: General Overview](#)

[Criminal Law & Procedure: Criminal Offenses: Racketeering: Racketeer Influenced & Corrupt Organizations: Elements](#)

[Criminal Law & Procedure: Pretrial Motions & Procedures: Motions in Limine](#)





Go to ▾

References to 279 S... 1 of 2 ▾



Search Document 🔍

[Shepard's® report](#) >**Payments & Reimbursements: Abuse & Fraud****📌 Constitutional Law: The Judiciary: Case or Controversy: Constitutionality of Legislation: General Overview**

[Fla. Stat. § 817.505](#), which prohibits “patient brokering,” is constitutional. [State v. Rubio, 967 So. 2d 768, 2007 Fla. LEXIS 1248 \(Fla. 2007\)](#).

📌 Criminal Law & Procedure: Criminal Offenses: Fraud: General Overview

As fraud is not one of the elements of patient brokering pursuant to [Fla. Stat. § 817.505](#), that crime is not an appropriate predicate for a white collar crime charge under [Fla. Stat. § 775.0844](#). [State v. Rubio, 967 So. 2d 768, 2007 Fla. LEXIS 1248 \(Fla. 2007\)](#).

📌 Criminal Law & Procedure: Criminal Offenses: Racketeering: Racketeer Influenced & Corrupt Organizations: Elements

As fraud is not one of the elements of patient brokering pursuant to [Fla. Stat. § 817.505](#), that crime is not an appropriate predicate for a racketeering charge under [Fla. Stat. § 895.03\(3\)](#). [State v. Rubio, 967 So. 2d 768, 2007 Fla. LEXIS 1248 \(Fla. 2007\)](#).

📌 Criminal Law & Procedure: Pretrial Motions & Procedures: Motions in Limine

Circuit court erred by denying the State’s motion in limine because “advice of counsel” was not a defense to the general intent crime of patient brokering. Because the statute did not require a heightened or particularized intent beyond the mere intent to commit the act itself, the statute’s prohibition on patient brokering was a general intent crime, not a specific intent crime. [State v. Kigar, 279 So. 3d 217, 2019 Fla. App. LEXIS 12219 \(Fla. 4th DCA 2019\)](#).

📌 Criminal Law & Procedure: Double Jeopardy: Double Jeopardy Protection: Multiple Punishments

Because [Fla. Stat. § 817.505](#) does not simply prohibit split-fee arrangements but prohibits “engaging” in those arrangements, the State is not limited to prosecuting only the arrangement to refer patients; each instance of fee-splitting may be charged as a separate and distinct crime. [State v. Rubio, 967 So. 2d 768, 2007 Fla. LEXIS 1248 \(Fla. 2007\)](#).

📌 Criminal Law & Procedure: Scierter: Specific Intent

Circuit court erred by denying the State’s motion in limine because “advice of counsel” was not a defense to the general intent crime of patient brokering. Because the statute did not require a heightened or particularized intent beyond the mere intent to commit the act itself, the statute’s prohibition on patient brokering was a general intent crime,





Go to ▾

References to 279 S... 1 of 2 ▾



Search Document 🔍

[Shepard's® report](#) >

an independent contractor, and still expect payment from an insurer for the same; thus, an insurer was not entitled to summary judgment on the issue, and the appeals court rejected the insurer's argument that the provider's billing practice resulted in an illegal fee split or brokering agreement in violation of [Fla. Stat. § 456.054](#) and [Fla. Stat. § 817.505\(1\)](#). [Reg'l MRI of Orlando, Inc. v. Nationwide Mut. Fire Ins. Co., 884 So. 2d 1102, 2004 Fla. App. LEXIS 15574 \(Fla. 5th DCA 2004\)](#).

Healthcare Law: Insurance: Reimbursement: General Overview

MRI service provider was able to render a medical service under [Fla. Stat. § 627.736\(5\)\(a\)](#), when the medical service was provided through the use of a radiologist, an independent contractor, and still expect payment from an insurer for the same; thus, an insurer was not entitled to summary judgment on the issue, and the appeals court rejected the insurer's argument that the provider's billing practice resulted in an illegal fee split or brokering agreement in violation of [Fla. Stat. § 456.054](#) and [Fla. Stat. § 817.505\(1\)](#). [Reg'l MRI of Orlando, Inc. v. Nationwide Mut. Fire Ins. Co., 884 So. 2d 1102, 2004 Fla. App. LEXIS 15574 \(Fla. 5th DCA 2004\)](#).

Public Health & Welfare Law: Social Security: Medicaid: Providers: Payments & Reimbursements: Abuse & Fraud

Because a healthcare provider contracted magnetic resonance image services out to another entity pursuant to a "lease" arrangement, and did not perform the professional or the technical components of the MRI, their arrangement violated the prohibition against fee splitting and patient brokering. [Prosper Diagnostic Ctrs. v. Allstate Ins. Co., 964 So. 2d 763, 2007 Fla. App. LEXIS 13401 \(Fla. 4th DCA 2007\)](#).

Research References & Practice Aids

RESEARCH REFERENCES & PRACTICE AIDS

Florida Statutes references.

Chapter 322. Drivers' Licenses, [F.S. § 322.21](#). License fees; procedure for handling and collecting fees.

Chapter 322. Drivers' Licenses, [F.S. § 322.26](#). Mandatory revocation of license by department.

Chapter 429. Assisted Care Communities, [F.S. § 429.195](#). Rebates prohibited; penalties.


Chapter 456. Health Professions and Occupations: General Provisions, [F.S. § 456.054](#). Kickbacks prohibited.



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for Suspension or Withdrawal of Designation of Receiving Facilities.

Law Reviews & Journals

General Issue: Bio-Ethics And Physician Liability: The Liability Effects of Developing Pain Management Standards, [Steven E. Stark](#) , J.D., Spring 2002, [14 St. Thomas L. Rev. 601](#).

Treatises

[Florida Torts, V. Actions Involving Specific Parties, Chapter 101 Motor Vehicles, Part I. Legal Background, D. Florida Motor Vehicle No-Fault Law, § 101.64 Civil Action for Insurance Fraud.](#)

Practice Guides

[Southeast Transaction Guide, Unit V. Personal Transactions, Division 1. Personal Affairs, § 323.02 State Statutes.](#)

FLORIDA BAR PUBLICATIONS

Consolidation of Physicians and Other Noninstitutional Providers, by Stephen H. Siegel, April, 1998, [72 Fla. Bar J. 18](#).

Fee Splitting and the Management of Medical Practices: A History of Board of Medicine Declaratory Statements, by Allen R. Grossman and R. Andrew Rock, April, 1998, [72 Fla. Bar J. 48](#).

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