

# CHAPTER 2023-251

## Senate Bill No. 768

An act relating to referral of patients by health care providers; amending s. 456.053, F.S.; deleting the definitions of the terms “direct supervision” and “present in the office suite”; revising the definition of the term “referral” to remove reference to direct physician supervision and to require compliance with certain Medicare payment and coverage rules; amending s. 641.316, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Paragraphs (e) and (o) and present paragraph (p) of subsection (3) of section 456.053, Florida Statutes, are amended to read:

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

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

~~(e) “Direct supervision” means supervision by a physician who is present in the office suite and immediately available to provide assistance and direction throughout the time services are being performed.~~

~~(o) “Present in the office suite” means that the physician is actually physically present; provided, however, that the health care provider is considered physically present during brief unexpected absences as well as during routine absences of a short duration if the absences occur during time periods in which the health care provider is otherwise scheduled and ordinarily expected to be present and the absences do not conflict with any other requirement in the Medicare program for a particular level of health care provider supervision.~~

~~(n)(p)~~ “Referral” means any referral of a patient by a health care provider for health care services, including, without limitation:

1. The forwarding of a patient by a health care provider to another health care provider or to an entity which provides or supplies designated health services or any other health care item or service; or

2. The request or establishment of a plan of care by a health care provider, which includes the provision of designated health services or other health care item or service.

3. The following orders, recommendations, or plans of care shall not constitute a referral by a health care provider:

a. By a radiologist for diagnostic-imaging services.

b. By a physician specializing in the provision of radiation therapy services for such services.

c. By a medical oncologist for drugs and solutions to be prepared and administered intravenously to such oncologist's patient, as well as for the supplies and equipment used in connection therewith to treat such patient for cancer and the complications thereof.

d. By a cardiologist for cardiac catheterization services.

e. By a pathologist for diagnostic clinical laboratory tests and pathological examination services, if furnished by or under the supervision of such pathologist pursuant to a consultation requested by another physician.

f. By a health care provider who is the sole provider or member of a group practice for designated health services or other health care items or services that are prescribed or provided solely for such referring health care provider's or group practice's own patients, and that are provided or performed by or under the direct supervision of such referring health care provider or group practice if such supervision complies with all applicable Medicare payment and coverage rules for services; provided, however, a physician licensed pursuant to chapter 458, chapter 459, chapter 460, or chapter 461 or an advanced practice registered nurse registered under s. 464.0123 may refer a patient to a sole provider or group practice for diagnostic imaging services, excluding radiation therapy services, for which the sole provider or group practice billed both the technical and the professional fee for or on behalf of the patient, if the referring physician or advanced practice registered nurse registered under s. 464.0123 has no investment interest in the practice. The diagnostic imaging service referred to a group practice or sole provider must be a diagnostic imaging service normally provided within the scope of practice to the patients of the group practice or sole provider. The group practice or sole provider may accept no more than 15 percent of their patients receiving diagnostic imaging services from outside referrals, excluding radiation therapy services. However, the 15 percent limitation of this sub-subparagraph and the requirements of subparagraph (4)(a)2. do not apply to a group practice entity that owns an accountable care organization or an entity operating under an advanced alternative payment model according to federal regulations if such entity provides diagnostic imaging services and has more than 30,000 patients enrolled per year.

g. By a health care provider for services provided by an ambulatory surgical center licensed under chapter 395.

h. By a urologist for lithotripsy services.

i. By a dentist for dental services performed by an employee of or health care provider who is an independent contractor with the dentist or group practice of which the dentist is a member.

j. By a physician for infusion therapy services to a patient of that physician or a member of that physician's group practice.

k. By a nephrologist for renal dialysis services and supplies, except laboratory services.

l. By a health care provider whose principal professional practice consists of treating patients in their private residences for services to be rendered in such private residences, except for services rendered by a home health agency licensed under chapter 400. For purposes of this sub-subparagraph, the term "private residences" includes patients' private homes, independent living centers, and assisted living facilities, but does not include skilled nursing facilities.

m. By a health care provider for sleep-related testing.

Section 2. Paragraph (b) of subsection (2) and subsection (6) of section 641.316, Florida Statutes, are amended to read:

641.316 Fiscal intermediary services.—

(2)

(b) The term "fiscal intermediary services organization" means a person or entity that performs fiduciary or fiscal intermediary services to health care professionals who contract with health maintenance organizations other than a hospital licensed under chapter 395, an insurer licensed under chapter 624, a third-party administrator licensed under chapter 626, a prepaid limited health service organization licensed under chapter 636, a health maintenance organization licensed under this chapter, or a physician group practice as defined in s. 456.053(3) ~~s. 456.053(3)(h)~~ which provides services under the scope of licenses of the members of the group practice.

(6) Any fiscal intermediary services organization, other than a hospital licensed under chapter 395, an insurer licensed under chapter 624, a third-party administrator licensed under chapter 626, a prepaid limited health service organization licensed under chapter 636, a health maintenance organization licensed under this chapter, a not-for-profit corporation that provides health care services directly to patients through employed, salaried physicians and that is affiliated with an accredited hospital licensed in this state, or a physician group practice as defined in s. 456.053(3) ~~s. 456.053(3)(h)~~ which provides services under the scope of licenses of the members of the group practice, must register with the office and meet the requirements of this section. In order to register as a fiscal intermediary services organization, the organization must comply with ss. 641.21(1)(c), (d), and (j), 641.22(6), and 641.27. The fiscal intermediary services organization must also comply with the provisions of ss. 641.3155, 641.3156, and 641.51(4). Should the office determine that the fiscal intermediary services organization does not meet the requirements of this section, the registration shall be denied. If the registrant fails to maintain

compliance with this section, the office may revoke or suspend the registration. In lieu of revocation or suspension of the registration, the office may levy an administrative penalty in accordance with s. 641.25.

Section 3. This act shall take effect July 1, 2023.

Approved by the Governor June 16, 2023.

Filed in Office Secretary of State June 16, 2023.