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New Changes to the Florida Patient Brokering Act Provide Clarity

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Senate Bill 1120 ("SB 1120"), which in part clarifies a confusing change made to the Florida Patient Brokering Act ("FPBA") last July, was passed by the Florida Legislature prior to the March 13, 2020 adjournment of the regular session, but has not yet been presented to Governor DeSantis. Prior to the 2019 change, the FPBA had exempted any arrangement "*not prohibited by*" the federal Anti-Kickback Statute (AKS). The 2019 change amended the FPBA to instead only protect arrangements "*expressly authorized by*" the AKS. While the 2019 change was apparently intended to clarify application of the FPBA, it had the opposite effect of creating further uncertainty as the AKS does not "*expressly authorize*" any arrangements, but instead speaks in terms of prohibiting certain arrangements.

Following the urging of Florida health care law attorneys, many of whom routinely provide legal opinions on the FPBA, and through the support of Representative Caruso and Senator Harrell, SB 1120 makes new changes to subsection 3(a) which, in part, revert the "*expressly authorized by*" language back to "*not prohibited by*." The full text of SB 1120 is available at <https://www.flsenate.gov/Session/Bill/2020/1120/BillText/er/PDF>. While there has been some delay in presenting new legislation to Governor DeSantis due to the COVID-19 pandemic, the bill, if signed, will go into effect on July 1, 2020. If no action is taken by Governor DeSantis, it will automatically become law on July 1, 2020.



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