

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1152 Session of
1993

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APRIL 19, 1993

AS REPORTED FROM COMMITTEE ON INSURANCE, HOUSE OF
REPRESENTATIVES, AS AMENDED, JUNE 16, 1993

AN ACT

1 ~~Relating to medical practice; prohibiting certain financial~~ <—
2 ~~arrangements between referring health care providers and~~
3 ~~those who provide health care; prohibiting certain kickbacks;~~
4 ~~prohibiting markups on charges for services rendered by~~
5 ~~another entity; providing for disclosure of financial~~
6 ~~interests; requiring periodic analysis of financial data and~~
7 ~~determination of compliance; establishing a fee schedule for~~
8 ~~data collection and analysis; providing powers; prescribing~~
9 ~~crimes, offenses and penalties; providing for applicability;~~
10 ~~and making a repeal.~~

11 REGULATING SELF-REFERRALS BY HEALTH CARE PRACTITIONERS; <—
12 REQUIRING DISCLOSURE OF FINANCIAL OR OWNERSHIP INTERESTS OF
13 HEALTH CARE PROVIDERS IN HEALTH CARE FACILITIES; IMPOSING
14 CIVIL PENALTIES; CONFERRING POWERS AND DUTIES ON THE
15 DEPARTMENT OF HEALTH, THE STATE HEALTH FACILITY HEARING
16 BOARD, VARIOUS STATE LICENSING BOARDS AND THE DEPARTMENT OF
17 STATE; AND MAKING A REPEAL.

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17 The General Assembly of the Commonwealth of Pennsylvania
18 hereby enacts as follows:

19 ~~Section 1. Short title.~~

<—

20 ~~This act shall be known and may be cited as the Patient Self-~~
21 ~~Referral Act.~~

22 ~~Section 2. Legislative intent.~~

23 ~~The General Assembly declares the following to be the~~
24 ~~purposes of this act:~~

25 ~~(1) To address the potential conflict of interests that~~
26 ~~arises when a health care provider refers a patient to an~~
27 ~~entity providing health care goods or services with whom the~~
28 ~~health care provider has a financial relationship.~~

29 ~~(2) To eliminate referral practices that may restrict~~
30 ~~health care access, limit or eliminate competitive health~~

~~care goods or services alternatives, increase health care costs and affect the quality of health care.~~

~~(3) To provide health care provider guidelines as to prohibited types of joint ventures.~~

~~(4) To protect the citizens of this Commonwealth from unnecessary and costly health care expenditures.~~

~~Section 3. Definitions.~~

~~The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:~~

~~"Board." Any one of the following boards: the State Board of Chiropractic, the State Board of Dentistry, the State Board of Medicine, the State Board of Occupational Therapy Education and Licensure, the State Board of Optometry, the State Board of Osteopathic Medicine, the State Board of Pharmacy, the State Board of Physical Therapy, the State Board of Podiatry or the State Board of Psychology.~~

~~"Council." The Health Care Cost Containment Council.~~

~~"Department." The Department of Health of the Commonwealth.~~

~~"Designated health services." The term includes clinical laboratory services, physical therapy services, comprehensive rehabilitative services, diagnostic imaging services and radiation therapy services.~~

~~"Entity." Any individual, partnership, firm, corporation or other business entity.~~

~~"Fair market value." Value in arm's length transactions, consistent with the general market value, and, with respect to rentals or leases, the value of rental property for general commercial purposes, not taking into account its intended use, and, in the case of a lease of space, not adjusted to reflect~~

~~the additional value the prospective lessee or lessor would attribute to the proximity or convenience to the lessor where the lessor is a potential source of patient referrals to the lessee.~~

~~"Group practice." A group of two or more health care providers legally organized as a partnership, professional corporation or similar association:~~

~~(1) in which each health care provider who is a member of the group provides substantially the full range of services which the health care provider routinely provides, including medical care, consultation, diagnosis or treatment, through the joint use of shared office space, facilities, equipment and personnel;~~

~~(2) for which substantially all of the services of the health care providers who are members of the group are provided through the group and are billed in the name of the group and amounts so received are treated as receipts of the group; and~~

~~(3) in which the overhead expenses of and the income from the practice are distributed in accordance with methods previously determined by members of the group.~~

~~"Health care provider." A licensed individual who, in the course of practicing his profession, may provide diagnoses, prescriptions and referrals for treatment.~~

~~"Immediate family member." A health care provider's spouse, child, child's spouse, stepchild, stepchild's spouse, grandchild, grandchild's spouse, sibling, sibling's spouse, parent, parent in law, aunt, uncle, cousin or cousin's spouse.~~

~~"Investment interest." An equity or debt security issued by an entity, including, but not limited to, shares of stock in a~~

~~corporation, units or other interests in a partnership, bonds, debentures, notes or other equity interests or debt instruments. This shall not include an investment interest in real property resulting in a landlord tenant relationship between the health care provider and the entity in which the equity interest is held, unless the rent is determined, in whole or in part, by the business volume or profitability of the tenant or exceeds fair market value.~~

~~"Investor." A person or entity owning a legal or beneficial ownership or investment interest, directly or indirectly, including, without limitation, through an immediate family member, trust or another entity related to the investor within the meaning of 42 CFR 413.17 (relating to cost to related organizations), in an entity.~~

~~"Kickback." A remuneration or payback, pursuant to an investment interest, compensation arrangement or otherwise by a provider of health care services or items, of a portion of the charges for services rendered to a referring health care provider as an incentive or inducement to refer patients for future services or items, when the payment is not tax deductible as an ordinary and necessary expense.~~

~~"Referral."~~

~~(1) Any referral of a patient by a health care provider for health care services, including, without limitation:~~

~~(i) 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~~

~~(ii) 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.~~

~~(2) The following orders, recommendations or plans of
care shall not constitute a referral by a health care
provider for:~~

~~(i) Diagnostic imaging services by a radiologist.~~

~~(ii) Radiation therapy services by a physician
specializing in radiation therapy.~~

~~(iii) Drugs and solutions to be prepared and
administered intravenously to an oncology patient for the
supplies and equipment used in connection therewith to
treat the patient for cancer and the complications
thereof by a medical oncologist.~~

~~(iv) Cardiac catheterization services by a
cardiologist.~~

~~(v) By a pathologist for diagnostic clinical
laboratory tests and pathological examination services if
furnished by or under the supervision of the pathologist
pursuant to a consultation requested by another
physician.~~

~~(vi) Designated health services or other health care
items or services that are prescribed or provided solely
for the referring health care provider's or group
practice's own patients and that are provided or
performed by or under the direct supervision of the
referring health care provider or group practice.~~

~~(vii) Services provided by a licensed ambulatory
surgical center.~~

~~(viii) Diagnostic clinical laboratory services where
the services are directly related to renal dialysis.~~

1 ~~(ix) Lithotripsy services by a urologist.~~

2 ~~(x) By a dentist for dental services performed by an~~
3 ~~employee of or health care provider who is an independent~~
4 ~~contractor with the dentist or group practice of which~~
5 ~~the dentist is a member.~~

6 ~~(xi) Infusion therapy services to a patient of that~~
7 ~~physician or a member of that physician's group practice.~~

8 ~~(xii) Renal dialysis services and supplies by a~~
9 ~~nephrologist.~~

10 ~~(xiii) An emergency situation where normal~~
11 ~~compliance with this act would lead to serious health~~
12 ~~risks including loss of life.~~

13 ~~"Rural area." A county with at least 80% of its population~~
14 ~~living in an area defined by the United States Census Bureau as~~
15 ~~rural.~~

16 ~~"Self-referral." Selection by a patient of an entity to~~
17 ~~provide additional health care services or items under the~~
18 ~~referral practices established by this act.~~

19 ~~Section 4. Prohibited referrals and claims for payment.~~

20 ~~(a) General rule. A health care provider may not refer a~~
21 ~~patient for the provision of designated health services to an~~
22 ~~entity in which the health care provider or a member of the~~
23 ~~health care provider's immediate family is an investor or has an~~
24 ~~investment interest.~~

25 ~~(b) When self-referral permitted. A health care provider~~
26 ~~may not refer a patient, for any health care item or service, to~~
27 ~~an entity in which the health care provider or a member of the~~
28 ~~health care provider's immediate family is an investor unless~~
29 ~~the conditions of paragraph (1), (2) or (3) are satisfied:~~

30 ~~(1) The provider's investment interest is in registered~~

~~securities purchased on a national exchange or over the
counter market and issued by a publicly held corporation:~~

~~(i) whose shares are traded on a national exchange
or on the over the counter market; and~~

~~(ii) whose total assets at the end of the
corporation's most recent fiscal quarter exceeded
\$50,000,000.~~

~~(2) With respect to an entity other than a publicly held
corporation described in paragraph (1) and with respect to a
referring provider's investment interest in the entity, each
of the following requirements are met:~~

~~(i) No more than 50% of the value of the investment
interests are held by investors who are in a position to
make referrals to the entity.~~

~~(ii) The terms under which an investment interest is
offered to an investor who is in a position to make a
referral to the entity are no different from the terms
offered to investors who are not in a position to make
such referrals.~~

~~(iii) The terms under which an investment interest
is offered to an investor who is in a position to make
referrals to the entity are not related to the previous
or expected volume of referrals from that investor to the
entity.~~

~~(iv) There is no requirement that an investor make
referrals or be in a position to make referrals to the
entity as a condition for becoming or remaining an
investor.~~

~~(3) With respect to either such entity or publicly held
corporation:~~

1 ~~(i) The entity or corporation does not loan funds to~~
2 ~~or guarantee a loan for an investor who is in a position~~
3 ~~to make referrals to the entity or corporation if the~~
4 ~~investor uses any part of the loan to obtain the~~
5 ~~investment interest.~~

6 ~~(ii) The amount distributed to an investor~~
7 ~~representing a return on the investment interest is~~
8 ~~directly proportional to the amount of the capital~~
9 ~~investment, including the fair market value of a~~
10 ~~preoperations service rendered, invested in the entity or~~
11 ~~corporation by that investor.~~

12 ~~(c) Enforcement. Each board and department, where~~
13 ~~applicable, in the course of licensing or recertification, shall~~
14 ~~determine the applicability of this section or any rule adopted~~
15 ~~under this section as it applies solely to the licensee. Boards~~
16 ~~shall submit to the department the name of any entity in which a~~
17 ~~provider investment interest has been approved under this~~
18 ~~section.~~

19 ~~(d) Relief. No claim for payment may be presented by an~~
20 ~~entity to any individual, third party payor or other entity for~~
21 ~~a service furnished pursuant to a referral prohibited under this~~
22 ~~act.~~

23 ~~(e) Refunds. If an entity collects any amount that was~~
24 ~~billed in violation of this section, the entity shall refund the~~
25 ~~amount on a timely basis to the payor or individual, whichever~~
26 ~~is applicable.~~

27 ~~(f) Penalties.—~~

28 ~~(1) Any person that presents or causes to be presented a~~
29 ~~bill or a claim for service that the person knows or should~~
30 ~~know is for a service for which payment may not be made under~~

1 ~~subsection (d), or for which a refund has not been made under~~
2 ~~subsection (e), shall be subject to a civil penalty of not~~
3 ~~more than \$15,000 for each service, to be imposed and~~
4 ~~collected by the appropriate board.~~

5 ~~(2) Any health care provider or other entity that enters~~
6 ~~into an arrangement or scheme, such as a cross referral~~
7 ~~arrangement, which the physician or entity knows or should~~
8 ~~know has a principal purpose of assuring referrals by the~~
9 ~~physician to a particular entity which, if the physician~~
10 ~~directly made referrals to the entity, would be in violation~~
11 ~~of this section, shall be subject to a civil penalty of not~~
12 ~~more than \$100,000 for each circumvention arrangement or~~
13 ~~scheme, to be imposed and collected by the appropriate board.~~

14 ~~(g) Disciplinary actions. A violation of this act by a~~
15 ~~health care provider shall constitute grounds for disciplinary~~
16 ~~action to be taken by the applicable board. A hospital or health~~
17 ~~care facility licensed by the Commonwealth found in violation of~~
18 ~~this act shall be subject to disciplinary action to be taken by~~
19 ~~the department.~~

20 ~~(h) Discrimination for compliance prohibited. Any hospital~~
21 ~~or health care facility licensed by the Commonwealth is~~
22 ~~prohibited from discriminating against or otherwise penalizing a~~
23 ~~health care provider for compliance with this act.~~

24 ~~(i) Exception for radiation therapy services. The~~
25 ~~provisions of subsection (a) shall not apply to referrals to the~~
26 ~~offices of radiation therapy centers managed by an entity or~~
27 ~~subsidiary or general partner thereof, which performed radiation~~
28 ~~therapy services at those same offices prior to April 1, 1991,~~
29 ~~and shall not apply also to referrals for radiation therapy to~~
30 ~~be performed at no more than one additional office of any entity~~

~~qualifying for the foregoing exception which, prior to February 1, 1992, had a binding purchase contract on and a nonrefundable deposit paid for a linear accelerator to be used at the additional office. The physical site of the radiation treatment centers affected by this provision may be relocated as a result of the following factors: acts of God, fire, strike, accident, war, eminent domain actions by any governmental body or refusal by the lessor to renew a lease. A relocation for the foregoing reasons is limited to relocation of an existing facility to a replacement location within the county of the existing facility upon written notification to the department.~~

~~(j) Disclosure to patients.— A health care provider who meets the requirements of subsections (b) and (i) must disclose his investment interest to his patients as provided in section 7(c).~~

~~(k) Exemption for rural area.— The department may, in cases where the department determines that the provision of adequate health care services in a rural area necessitates, waive the requirement contained in section 4(b)(2)(i), provided that the reason for said waiver is described on the disclosure forms prepared for the patient under section 7.~~

~~Section 5.— Kickbacks prohibited.~~

~~It is unlawful for any health care provider or any provider of health care services to offer, pay, solicit or receive a kickback, directly or indirectly, overtly or covertly, in cash or in kind, for referring or soliciting patients.~~

~~Section 6.— Markup on charges prohibited.~~

~~A health care provider may not charge an additional amount for services rendered by an entity outside of that provider's practice.~~

~~Section 7. Financial disclosure and data collection.~~

~~(a) Requirement to provide financial information. An entity providing designated health services or any other health care item or service licensed by the Commonwealth must submit the financial information necessary for the determination of compliance with this act on an annual basis.~~

~~(1) The council shall prescribe and collect the ownership disclosure provisions required under this section in accordance with the act of July 8, 1986 (P.L.408, No.89), known as the Health Care Cost Containment Act.~~

~~(2) The council shall submit to the appropriate board all information collected by the council under this act.~~

~~(3) The council shall provide, for a fee designed to cover the costs of duplication, all information collected by the council under this act, on request, to any insurer licensed to provide health insurance in this Commonwealth.~~

~~(b) Disclosure to licensing board. A health care provider shall disclose to his licensing board all investment interests in entities providing designated health services or any other health care item or service. The Department of State shall develop and provide to all health care providers covered by this act a standardized form and procedures for the reporting of investment interests covered under this section.~~

~~(c) Written disclosure. A health care provider shall not refer a patient to an entity in which the provider is an investor unless, prior to referral, the provider furnishes the patient with a written disclosure form, informing the patient of:~~

~~(1) The existence of the investment interest.~~

~~(2) The name and address of each applicable entity in~~

1 ~~which the referring health care provider is an investor.~~

2 ~~(3) The patient's right to obtain the items or services~~
3 ~~for which the patient has been referred at the location or~~
4 ~~from the provider or supplier of the patient's choice,~~
5 ~~including the entity in which the referring provider is an~~
6 ~~investor.~~

7 ~~(4) The names, addresses and telephone numbers of at~~
8 ~~least two alternative sources available to the patient within~~
9 ~~reasonable travel distances.~~

10 ~~(5) A toll free telephone number established by the~~
11 ~~department for the reporting of any suspected violations of~~
12 ~~this act.~~

13 ~~(d) Acknowledgment. An entity may not provide items or~~
14 ~~services to a patient unless, before providing the item or~~
15 ~~service, the entity obtains the signature of the patient on a~~
16 ~~written disclosure form informing the patient of the following:~~

17 ~~(1) The existence or nonexistence of any financial~~
18 ~~relationship with the health care provider who referred the~~
19 ~~patient.~~

20 ~~(2) A schedule of typical fees for items or services~~
21 ~~usually provided by the entity or, if impracticable because~~
22 ~~of the nature of the treatment, a written estimate specific~~
23 ~~to the patient.~~

24 ~~(3) The patient's right to obtain the items or services~~
25 ~~for which the patient has been referred at a location or from~~
26 ~~a supplier of the patient's choice, including an entity with~~
27 ~~which the referring health care provider may have a financial~~
28 ~~relationship.~~

29 ~~(4) The names, addresses and telephone numbers of at~~
30 ~~least two reasonable alternative sources of such items or~~

~~services available to the patient.~~

~~(5) A toll free telephone number established by the department for the reporting of any suspected violations of this act.~~

~~(c) Duty to post disclosure statements. The health care provider and the entity providing health care items or services shall post a copy of their respective disclosure forms in conspicuous public places in the offices.~~

~~Section 8. Data analysis and compliance.~~

~~(a) Determinations of compliance. Licensing boards shall determine compliance under this act through the use of data collected under this act and all other sources allowed under law.~~

~~(b) Reviews. Reviews shall occur periodically and in no case shall reviews occur less frequently than once every two years.~~

~~Section 9. Fee schedules for data collection and analysis.~~

~~(a) Establishment of fees. Licensing boards, the Department of Health and the Department of State are hereby authorized to develop fee schedules to be paid by the appropriate health care provider and entity providing health care items or services which are designed to cover and limited to the costs of data collection and analysis provided for under this act.~~

~~(b) Duty to pay fees. All health care providers and entities providing health care items or services shall pay the fees for data collection and analysis as provided for in subsection (a).~~

~~Section 10. Powers and duties.~~

~~The Department of Health, Department of State and the licensing boards shall promulgate regulations necessary to~~

1 ~~implement the provisions and intent of this act.~~

2 ~~Section 11. Crimes, offenses and penalties.~~

3 ~~(a) Additional penalties. In addition to the penalties~~
4 ~~provided for in section 4, each violation of this act shall~~
5 ~~constitute a misdemeanor of the first degree punishable by a~~
6 ~~fine of not more than \$10,000 or imprisonment for up to five~~
7 ~~years, or both.~~

8 ~~(b) Suspension. Health care providers found in violation of~~
9 ~~this act shall be subject to disciplinary action by the~~
10 ~~licensing boards, including, but not limited to, a suspension of~~
11 ~~professional licensure for a period not to exceed five years.~~

12 ~~Section 12. Applicability.~~

13 ~~This act shall apply to referrals made on or after the~~
14 ~~effective date of this act, provided that, with respect to an~~
15 ~~investment interest acquired before December 31, 1992, section~~
16 ~~4(a) shall not apply to referrals for designated health services~~
17 ~~occurring before October 1, 1995.~~

18 ~~Section 13. Repeal.~~

19 ~~The act of May 26, 1988 (P.L.403, No.66), entitled "An act~~
20 ~~providing for certain disclosures by practitioners of the~~
21 ~~healing arts when making patient referrals; providing penalties;~~
22 ~~and conferring powers and duties on the several licensing boards~~
23 ~~in the Bureau of Professional and Occupational Affairs," is~~
24 ~~repealed.~~

25 ~~Section 14. Effective date.~~

26 ~~This act shall take effect in 60 days.~~

27 CHAPTER 1

28 PRELIMINARY PROVISIONS

29 SECTION 101. SHORT TITLE.

30 THIS ACT SHALL BE KNOWN AND MAY BE CITED AS THE HEALTH CARE

1 PRACTITIONER SELF-REFERRAL ACT.

2 SECTION 102. DECLARATION OF POLICY.

3 THE GENERAL ASSEMBLY FINDS AND DECLARES AS FOLLOWS:

4 (1) THE PURPOSE OF THIS ACT IS TO REDUCE OR ELIMINATE
5 SELF-REFERRAL.

6 (2) SELF-REFERRAL PRACTICES OFTEN LIMIT OR ELIMINATE
7 COMPETITIVE ALTERNATIVES IN THE HEALTH CARE SERVICES MARKET;
8 RESULT IN OVERUTILIZATION OF CERTAIN HEALTH CARE SERVICES;
9 INCREASE COSTS GENERALLY IN THE HEALTH CARE SYSTEM; AND MAY,
10 IN SOME INSTANCES, ADVERSELY AFFECT THE QUALITY OF HEALTH
11 CARE.

12 (3) WHILE SELF-REFERRALS MAY BE APPROPRIATE IN CERTAIN
13 INSTANCES, HEALTH CARE PRACTITIONERS SHOULD BE REQUIRED TO
14 FULLY DISCLOSE THEIR FINANCIAL ARRANGEMENTS WHEN MAKING SELF-
15 REFERRALS.

16 (4) A SELF-REFERRAL ARRANGEMENT SHOULD BE ALLOWED ONLY
17 WHERE THE DEPARTMENT OF HEALTH DETERMINES THERE IS A
18 COMPELLING NEED OR THAT THE REFERRAL RELATIONSHIP WILL NOT
19 IMPEDE THE PROFESSIONAL JUDGMENT OF THE REFERRING HEALTH CARE
20 PRACTITIONER.

21 SECTION 103. DEFINITIONS.

22 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS ACT SHALL
23 HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
24 CONTEXT CLEARLY INDICATES OTHERWISE:

25 "BOARD." THE STATE HEALTH FACILITY HEARING BOARD.

26 "DEPARTMENT." THE DEPARTMENT OF HEALTH OF THE COMMONWEALTH.

27 "FACILITY" OR "ENTITY." A HEALTH CARE PRACTITIONER,
28 PARTNERSHIP, ASSOCIATION, GROUP PRACTICE, BUSINESS CORPORATION
29 OR PROFESSIONAL CORPORATION WHICH IS NOT LOCATED ON THE PREMISES
30 OF ANOTHER HEALTH CARE PRACTITIONER.

1 "FAIR MARKET VALUE." THE VALUE IN ARMS-LENGTH TRANSACTIONS,
2 CONSISTENT WITH THE GENERAL MARKET VALUE. WITH RESPECT TO
3 RENTALS OR LEASES, FAIR MARKET VALUE MEANS THE VALUE OF RENTAL
4 PROPERTY FOR GENERAL COMMERCIAL PURPOSES, NOT TAKING INTO
5 ACCOUNT ITS INTENDED USE AND, IN THE CASE OF LEASE OF SPACE, NOT
6 ADJUSTED TO REFLECT THE ADDITIONAL VALUE THAT A PROSPECTIVE
7 LESSEE OR LESSOR WOULD ATTRIBUTE TO THE PROXIMITY OR CONVENIENCE
8 TO THE LESSOR WHERE THE LESSOR IS A POTENTIAL SOURCE OF PATIENT
9 REFERRALS TO THE LESSEE.

10 "FINANCIAL OR OWNERSHIP INTEREST." A FINANCIAL OR OWNERSHIP
11 INTEREST TO ANY EXTENT OR DEGREE THROUGH EQUITY, DEBT OR OTHER
12 MEANS, HELD BY THE HEALTH CARE PRACTITIONER OR AN IMMEDIATE
13 FAMILY MEMBER OF THE PRACTITIONER.

14 "GROUP PRACTICE." A GROUP OF TWO OR MORE HEALTH CARE
15 PRACTITIONERS LEGALLY ORGANIZED AS A PARTNERSHIP, PROFESSIONAL
16 CORPORATION, HEALTH MAINTENANCE ORGANIZATION, MANAGED CARE
17 NETWORK, HEALTH ALLIANCE OR SIMILAR ASSOCIATION WHICH MEETS ALL
18 OF THE FOLLOWING:

19 (1) EACH HEALTH CARE PRACTITIONER WHO IS A MEMBER OF THE
20 GROUP PROVIDES SUBSTANTIALLY THE FULL RANGE OF SERVICES WHICH
21 THE HEALTH CARE PRACTITIONER ROUTINELY PROVIDES, INCLUDING
22 MEDICAL CARE, CONSULTATION, DIAGNOSIS OR TREATMENT, THROUGH
23 THE JOINT USE OF SHARED OFFICE SPACE, FACILITIES, EQUIPMENT
24 AND PERSONNEL.

25 (2) SUBSTANTIALLY ALL OF THE SERVICES OF THE HEALTH CARE
26 PRACTITIONERS WHO ARE MEMBERS OF THE GROUP ARE PROVIDED
27 THROUGH THE GROUP AND ARE BILLED IN THE NAME OF THE GROUP.

28 (3) AMOUNTS RECEIVED UNDER PARAGRAPH (2) ARE TREATED AS
29 RECEIPTS OF THE GROUP.

30 (4) THE OVERHEAD EXPENSES OF AND THE INCOME FROM THE

PRACTICE ARE DISTRIBUTED IN ACCORDANCE WITH METHODS
PREVIOUSLY DETERMINED BY MEMBERS OF THE GROUP.

"HEALTH CARE PRACTITIONER." AN INDIVIDUAL WHO IS AUTHORIZED
TO PRACTICE THE HEALING ARTS OR SOME COMPONENT THEREOF BY A
LICENSE, PERMIT, CERTIFICATE OR REGISTRATION ISSUED BY A
COMMONWEALTH AGENCY OR LICENSING BOARD.

"IMMEDIATE FAMILY MEMBER." A PARENT, SPOUSE, CHILD, SIBLING
OR SIBLING'S SPOUSE.

"PRACTICE-RELATED SERVICES."

(1) HEALTH CARE SERVICES THAT ARE FURNISHED PERSONALLY
BY THE REFERRING HEALTH CARE PRACTITIONER, PERSONALLY BY A
HEALTH CARE PRACTITIONER OR PERSONALLY BY INDIVIDUALS WHO ARE
EMPLOYED BY OR UNDER THE SUPERVISION OF THE HEALTH CARE
PRACTITIONER OR ANOTHER HEALTH CARE PRACTITIONER IN THE GROUP
PRACTICE TO WHICH THE HEALTH CARE PRACTITIONER BELONGS.
PRACTICE-RELATED SERVICES MAY BE PROVIDED IN A BUILDING IN
WHICH THE REFERRING HEALTH CARE PRACTITIONER, OR ANOTHER
HEALTH CARE PRACTITIONER WHO IS A MEMBER OF THE SAME GROUP
PRACTICE, FURNISHES HEALTH CARE PRACTITIONERS' SERVICES
UNRELATED TO THE FURNISHING OF THE ITEMS OR SERVICES FOR
WHICH A REFERRAL WAS MADE OR, IN THE CASE OF A REFERRING
HEALTH CARE PRACTITIONER WHO IS A MEMBER OF A GROUP PRACTICE,
MAY BE PROVIDED IN ANOTHER BUILDING WHICH IS USED BY THE
GROUP PRACTICE FOR THE CENTRALIZED PROVISION OF SUCH ITEMS OR
SERVICES OF THE GROUP.

(2) HEALTH CARE SERVICES THAT ARE BILLED BY THE HEALTH
CARE PRACTITIONER PERFORMING OR SUPERVISING THE SERVICES OR
BY A GROUP PRACTICE OF WHICH THE HEALTH CARE PRACTITIONER IS
A MEMBER.

"SELF-REFERRAL." REFERRAL BY A HEALTH CARE PRACTITIONER OF A

1 PATIENT FOR HEALTH CARE SERVICES TO A FACILITY OR ENTITY IN
2 WHICH THE HEALTH CARE PRACTITIONER HAS A FINANCIAL OR OWNERSHIP
3 INTEREST. THE TERM DOES NOT INCLUDE IN-OFFICE ANCILLARY HEALTH
4 CARE SERVICES PROVIDED BY A SOLE HEALTH CARE PRACTITIONER OR A
5 MEMBER OF THE PRACTITIONER'S GROUP PRACTICE.

6 CHAPTER 3

7 PROHIBITION ON HEALTH CARE

8 PRACTITIONER SELF-REFERRALS

9 SECTION 301. GENERAL BAN ON SELF-REFERRALS.

10 (A) GENERAL RULE.--

11 (1) IT IS UNLAWFUL FOR A HEALTH CARE PRACTITIONER TO
12 MAKE A SELF-REFERRAL.

13 (2) IT IS UNLAWFUL FOR A FACILITY, ENTITY OR HEALTH CARE
14 PRACTITIONER TO ACCEPT A REFERRAL FROM A HEALTH CARE
15 PRACTITIONER WHO THE FACILITY, ENTITY OR HEALTH CARE
16 PRACTITIONER KNOWS OR HAS REASON TO KNOW HAS A FINANCIAL
17 INTEREST IN SUCH FACILITY, ENTITY OR HEALTH CARE
18 PRACTITIONER.

19 (B) BILLING.--NO INVOICE OR CLAIM FOR PAYMENT MAY BE
20 PRESENTED BY ANY ENTITY OR HEALTH CARE PRACTITIONER TO ANY
21 INDIVIDUAL, THIRD-PARTY PAYER OR OTHER ENTITY FOR HEALTH CARE
22 SERVICES FURNISHED PURSUANT TO A REFERRAL PROHIBITED UNDER THIS
23 ACT.

24 (C) AGREEMENTS.--ANY HEALTH CARE PRACTITIONER, FACILITY OR
25 ENTITY THAT ENTERS INTO AN ARRANGEMENT OR A SCHEME, SUCH AS A
26 CROSS-REFERRAL ARRANGEMENT, THAT THE HEALTH CARE PRACTITIONER,
27 FACILITY OR ENTITY KNOWS OR SHOULD KNOW IS INTENDED TO INDUCE
28 REFERRALS OF PATIENTS FOR DESIGNATED HEALTH CARE SERVICES TO A
29 PARTICULAR ENTITY AND THAT, IF THE HEALTH CARE PRACTITIONER
30 DIRECTLY MADE REFERRALS TO SUCH ENTITY, WOULD CONSTITUTE A

PROHIBITED REFERRAL UNDER THIS SECTION, IS IN VIOLATION OF THIS
ACT.

SECTION 302. EXCEPTIONS TO BAN ON SELF-REFERRALS.

THE PROHIBITIONS ON SELF-REFERRALS UNDER SECTION 301 SHALL
NOT APPLY TO ANY OF THE FOLLOWING SITUATIONS:

(1) EMERGENCY REFERRALS OR ADMISSIONS IN SITUATIONS
WHERE TO DELAY OR FOREGO THE REQUIRED HEALTH CARE SERVICE
WOULD POSE A HEALTH RISK TO THE PATIENT.

(2) OWNERSHIP OF PUBLICLY TRADED COMPANIES IF THE
FINANCIAL OR OWNERSHIP INTERESTS OF THE HEALTH CARE
PRACTITIONER AMOUNTS TO NO MORE THAN 5% OF THE INVESTMENT
SECURITIES, INCLUDING SHARES OR BONDS, DEBENTURES, NOTES OR
OTHER DEBT INSTRUMENTS, OF A CORPORATION WHICH WERE PURCHASED
ON TERMS GENERALLY AVAILABLE TO THE PUBLIC AND WHICH ARE IN A
CORPORATION THAT:

(I) IS LISTED FOR TRADING ON THE NEW YORK STOCK
EXCHANGE OR ON THE AMERICAN STOCK EXCHANGE, OR IS A
NATIONAL MARKET SYSTEM SECURITY TRADED UNDER AN AUTOMATED
INTERDEALER QUOTATION SYSTEM OPERATED BY THE NATIONAL
ASSOCIATION OF SECURITIES DEALERS; AND

(II) HAD, AT THE END OF THE CORPORATION'S MOST
RECENT FISCAL YEAR, TOTAL ASSETS EXCEEDING \$100,000,000.

(3) PRACTICE-RELATED SERVICES IF THE HEALTH CARE-RELATED
SERVICES ARE FURNISHED PERSONALLY BY THE REFERRING HEALTH
CARE PRACTITIONER, PERSONALLY BY A HEALTH CARE PRACTITIONER
WHO IS A MEMBER OF THE SAME GROUP PRACTICE AS THE REFERRING
HEALTH CARE PRACTITIONER, OR PERSONALLY BY INDIVIDUALS WHO
ARE EMPLOYED BY SUCH HEALTH CARE PRACTITIONER, GROUP PRACTICE
OR WHO ARE SUPERVISED BY THE HEALTH CARE PRACTITIONER OR BY
ANOTHER HEALTH CARE PRACTITIONER IN THE GROUP PRACTICE.

(4) LEASES AND RENTAL AGREEMENTS IF THE HEALTH CARE PRACTITIONER'S ONLY FINANCIAL OR OWNERSHIP INTEREST IN A REFERRING FACILITY OR ENTITY DERIVES FROM A LEASE OR RENTAL AGREEMENT OBTAINED AT A FAIR MARKET VALUE.

SECTION 303. PROHIBITION ON KICKBACKS.

A HEALTH CARE PRACTITIONER MAY NOT KNOWINGLY AND INTENTIONALLY SOLICIT, ACCEPT, ATTEMPT TO ACCEPT, OFFER TO PROVIDE, PROVIDE, OR ATTEMPT TO PROVIDE, DIRECTLY OR INDIRECTLY, ANY MONEY, FEE, COMMISSION, CREDIT, GIFT, GRATUITY, THING OF VALUE OR COMPENSATION OF ANY KIND IN CONNECTION WITH MAKING OR RECEIVING A REFERRAL.

SECTION 304. WAIVERS.

(A) GENERAL RULE.--NOTWITHSTANDING THE PROVISIONS OF SECTION 301, THE DEPARTMENT HAS THE AUTHORITY TO GRANT WAIVERS TO THE GENERAL PROHIBITION ON SELF-REFERRALS UPON APPLICATION BY A HEALTH CARE PRACTITIONER WITH A FINANCIAL OR OWNERSHIP INTEREST IN A FACILITY OR ENTITY. THE DEPARTMENT MAY GRANT A WAIVER IF IT DETERMINES ANY OF THE FOLLOWING:

(1) THERE IS A DEMONSTRATED HEALTH CARE NEED IN THE COMMUNITY WHERE THE ENTITY OR FACILITY IS LOCATED OR HAS BEEN PROPOSED AND ALTERNATIVE FINANCING IS NOT AVAILABLE ON REASONABLE TERMS FROM SOURCES OTHER THAN THE HEALTH CARE PRACTITIONER TO DEVELOP SUCH AN ENTITY OR FACILITY.

(2) THE SELF-REFERRAL ARRANGEMENT WILL NOT RESULT IN UNNECESSARY OR EXCESSIVE UTILIZATION OF THE ENTITY OR FACILITY.

(3) ANY OTHER CONDITIONS WHICH SHALL BE ESTABLISHED IN REGULATIONS PROMULGATED BY THE SECRETARY.

(B) BURDEN OF PROOF.--IN APPLYING FOR A WAIVER, THE BURDEN OF PROOF IS ON THE HEALTH CARE PRACTITIONER TO DEMONSTRATE THAT

1 IT MEETS THE CRITERIA ESTABLISHED IN SUBSECTION (A).

2 (C) PROCEDURES.--

3 (1) THE DEPARTMENT SHALL PROMULGATE REGULATIONS
4 GOVERNING THE FORM AND CONTENT OF APPLICATIONS FOR A WAIVER
5 UNDER SUBSECTION (A). ANY DETERMINATION MADE BY THE
6 DEPARTMENT UNDER THIS SECTION SHALL BE APPLICABLE FOR A
7 PERIOD OF FIVE YEARS FROM THE DATE OF ISSUANCE OR UNTIL THE
8 DEPARTMENT CAN DEMONSTRATE THAT THE CIRCUMSTANCES WHICH
9 NECESSITATED THE GRANTING OF A WAIVER HAVE CHANGED
10 SIGNIFICANTLY.

11 (2) IN ALL CASES IN WHICH A HEALTH CARE PRACTITIONER
12 RECEIVES A WAIVER FROM THE DEPARTMENT, THE HEALTH CARE
13 PRACTITIONER SHALL DISCLOSE FINANCIAL OR OWNERSHIP INTEREST
14 IN THE FACILITY OR ENTITY TO THE PATIENT IN WRITING. PATIENTS
15 SHALL BE GIVEN A LIST OF ALTERNATIVE FACILITIES AND INFORMED
16 IN WRITING THAT THEY HAVE THE OPTION TO USE ONE OF THE
17 ALTERNATIVE FACILITIES AND ASSURED THAT THEY WILL NOT BE
18 TREATED DIFFERENTLY BY THE HEALTH CARE PRACTITIONER IF THEY
19 DO NOT CHOOSE THE FACILITY OR ENTITY IN WHICH THE HEALTH CARE
20 PRACTITIONER HAS A FINANCIAL OR OWNERSHIP INTEREST.

21 SECTION 305. DISCLOSURE.

22 (A) GENERAL RULE.--ALL HEALTH CARE PRACTITIONERS SHALL
23 REGISTER WITH, AND FULLY DISCLOSE TO, THE DEPARTMENT ANY
24 FINANCIAL OR OWNERSHIP INTEREST HELD IN A HEALTH CARE FACILITY
25 OR ENTITY.

26 (B) LICENSURE.--THE DISCLOSURE REQUIRED UNDER SUBSECTION (A)
27 IS A CONDITION OF LICENSURE OR RENEWAL OF A LICENSE FOR HEALTH
28 CARE PRACTITIONERS IN THIS COMMONWEALTH.

29 (C) INFORMATION.--THE DEPARTMENT AND THE DEPARTMENT OF STATE
30 HAVE AUTHORITY TO PROMULGATE REGULATIONS REGARDING THE

1 COLLECTION, PROCESSING AND RETENTION OF THE HEALTH CARE
2 PRACTITIONER DISCLOSURE INFORMATION. THIS AUTHORITY SHALL
3 INCLUDE THE ABILITY TO ASSESS FEES FOR THE COLLECTION AND
4 ANALYSIS OF OWNERSHIP INTERESTS.

5 CHAPTER 5

6 ADMINISTRATION

7 SECTION 501. CIVIL PENALTIES.

8 THE DEPARTMENT HAS THE AUTHORITY TO ASSESS THE FOLLOWING
9 CIVIL PENALTIES AND TO CARRY OUT THE ENFORCEMENT PROVISIONS OF
10 THIS ACT:

11 (1) ANY HEALTH CARE PRACTITIONER THAT ENTERS INTO A
12 KICKBACK ARRANGEMENT OR SCHEME OR A CROSS-REFERRAL
13 ARRANGEMENT IN VIOLATION OF SECTION 303 SHALL BE SUBJECT TO A
14 CIVIL PENALTY OF NOT MORE THAN \$100,000 FOR EACH
15 CIRCUMVENTION ARRANGEMENT OR SCHEME.

16 (2) ANY HEALTH CARE PRACTITIONER THAT PRESENTS OR CAUSES
17 TO BE PRESENTED A BILL OR A CLAIM FOR A HEALTH CARE SERVICE
18 IN VIOLATION OF SECTION 301 SHALL BE SUBJECT TO A CIVIL
19 PENALTY OF NOT MORE THAN \$15,000 FOR EACH BILL OR CLAIM.

20 (3) ANY HEALTH CARE PRACTITIONER THAT MAKES A REFERRAL
21 IN VIOLATION OF SECTION 301(A)(1) SHALL BE SUBJECT TO A
22 PENALTY OF \$15,000 FOR EACH REFERRAL.

23 (4) ANY HEALTH CARE PRACTITIONER THAT FAILS TO DISCLOSE
24 A FINANCIAL OR OWNERSHIP INTEREST UNDER SECTION 305 SHALL BE
25 SUBJECT TO A CIVIL PENALTY OF NOT MORE THAN \$15,000 FOR EACH
26 INSTANCE IN WHICH THE FINANCIAL OR OWNERSHIP INTEREST HAS NOT
27 BEEN DISCLOSED.

28 (5) A HEALTH CARE PRACTITIONER FOUND TO BE IN VIOLATION
29 OF THIS ACT ON MORE THAN ONE OCCASION WITHIN A TWO-YEAR
30 PERIOD SHALL BE SUBJECT TO DISCIPLINARY ACTION BY THE

DEPARTMENT AND THE DEPARTMENT OF STATE, INCLUDING, BUT NOT
LIMITED TO, A SUSPENSION OF PROFESSIONAL LICENSURE FOR A
PERIOD NOT TO EXCEED TWO YEARS.

SECTION 502. DEPARTMENT.

THE DEPARTMENT HAS THE AUTHORITY TO PROMULGATE REGULATIONS TO
ADMINISTER THE REVIEW OF WAIVER APPLICATIONS. THIS AUTHORITY
SHALL INCLUDE THE ABILITY TO IMPOSE FEES.

SECTION 503. BOARD.

(A) AUTHORITY.--ALL DECISIONS OF THE DEPARTMENT WITH RESPECT
TO CIVIL PENALTIES UNDER SECTION 501 OR THE QUALIFICATION OF
HEALTH CARE PRACTITIONERS FOR A WAIVER SHALL BE DEEMED FINAL AND
APPEALABLE TO THE BOARD. THE BOARD HAS THE AUTHORITY AND DUTY TO
HEAR APPEALS BY APPLICANTS OR INTERESTED PERSONS UNDER THIS ACT.

(B) REGULATIONS.--THE BOARD SHALL PROMULGATE REGULATIONS
ESTABLISHING THE PROCEDURES FOR APPEALS FROM DEPARTMENT ACTIONS
AND DECISIONS ON CIVIL PENALTIES AND WAIVERS.

CHAPTER 21

MISCELLANEOUS

SECTION 2101. REPEAL.

ACT OF MAY 26, 1988 (P.L.403, NO.66), ENTITLED "AN ACT
PROVIDING FOR CERTAIN DISCLOSURES BY PRACTITIONERS OF THE
HEALING ARTS WHEN MAKING PATIENT REFERRALS; PROVIDING PENALTIES;
AND CONFERRING POWERS AND DUTIES ON THE SEVERAL LICENSING BOARDS
IN THE BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS," IS
REPEALED.

SECTION 2102. APPLICABILITY.

(A) GENERAL RULE.--EXCEPT AS PROVIDED IN SUBSECTION (B),
THIS ACT SHALL APPLY TO REFERRALS FOR HEALTH CARE SERVICES MADE
ON OR AFTER THE EFFECTIVE DATE OF THIS ACT.

(B) EXCEPTION.--WITH RESPECT TO A FINANCIAL OR OWNERSHIP

1 INTEREST OBTAINED BY A HEALTH CARE PRACTITIONER PRIOR TO THE
2 EFFECTIVE DATE OF THIS ACT, THE BAN ON SELF-REFERRALS DESCRIBED
3 IN SECTION 301 SHALL NOT APPLY UNTIL TWO YEARS AFTER THE
4 EFFECTIVE DATE OF THIS ACT.

5 SECTION 2103. EFFECTIVE DATE.

6 THIS ACT SHALL TAKE EFFECT IN 60 DAYS.