
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1405 Session of
2009

INTRODUCED BY DeLUCA, BOYD, BRENNAN, BROWN, CALTAGIRONE,
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MAY 4, 2009

REFERRED TO COMMITTEE ON HEALTH AND HUMAN SERVICES, MAY 4, 2009

AN ACT

1 Prohibiting certain referrals of patients by health care
2 providers for health care services; providing for powers and
3 duties of the Department of Health; and imposing penalties.

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11 diagnostic imaging.

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14 Section 1101. Effective date.

15 The General Assembly of the Commonwealth of Pennsylvania
16 hereby enacts as follows:

17 CHAPTER 1

PRELIMINARY PROVISIONS

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Section 101. Short title.

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

Section 102. Declaration of policy.

The General Assembly finds and declares as follows:

(1) The referral of a patient by a health care provider to a provider of health care services in which the referring health care provider has an investment interest represents a potential conflict of interest.

(2) These referral practices may limit or eliminate competitive alternatives in the health care services market, may result in overutilization of health care services, may increase costs to the health care system and may adversely affect the quality of health care.

(3) This act is intended to prohibit patient referrals between health care providers and entities providing health care services in which health care providers have a financial interest and to protect the residents of this Commonwealth from unnecessary and costly health care expenditures.

Section 103. 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 of the following boards relating to the respective professions:

- (1) The State Board of Medicine.
- (2) The State Board of Osteopathic Medicine.
- (3) The State Board of Dentistry.
- (4) The State Board of Podiatry.

1 (5) The State Board of Chiropractic.

2 (6) The State Board of Optometry.

3 (7) The State Board of Pharmacy.

4 "Comprehensive rehabilitation services." Services that are
5 provided by health care professionals licensed under the laws of
6 this Commonwealth to provide speech, occupational or physical
7 therapy services on an outpatient or ambulatory basis.

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

9 "Designated health services." Includes:

10 (1) Clinical laboratory services.

11 (2) Physical therapy services.

12 (3) Comprehensive rehabilitative services.

13 (4) Diagnostic imaging services.

14 (5) Radiation therapy services.

15 "Diagnostic imaging services." Includes:

16 (1) Magnetic resonance imaging.

17 (2) Nuclear medicine.

18 (3) Angiography.

19 (4) Arteriography.

20 (5) Computed tomography.

21 (6) Positron emission tomography.

22 (7) Digital vascular imaging.

23 (8) Bronchography.

24 (9) Lymphangiography.

25 (10) Splenography.

26 (11) Ultrasound.

27 (12) EEG.

28 (13) EKG.

29 (14) Nerve conduction studies.

30 (15) Evoked potentials.

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

3 "Fair market value." Value in arm's-length transactions,
4 consistent with the general market value and, with respect to
5 rentals or leases, the value of rental property for general
6 commercial purposes, not taking into account its intended use,
7 and, in the case of a lease of space, not adjusted to reflect
8 the additional value the prospective lessee or lessor would
9 attribute to the proximity or convenience to the lessor where
10 the lessor is a potential source of patient referrals to the
11 lessee.

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

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

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

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

29 "Health care provider." A licensee of any of the following:

30 (1) The State Board of Medicine.

1 (2) The State Board of Osteopathic Medicine.

2 (3) The State Board of Dentistry.

3 (4) The State Board of Podiatry.

4 (5) The State Board of Chiropractic.

5 (6) The State Board of Optometry.

6 (7) The State Board of Pharmacy.

7 "Immediate family member." A health care provider's spouse,
8 child, child's spouse, grandchild, grandchild's spouse, parent,
9 parent-in-law or sibling.

10 "Investment interest." An equity or debt security issued by
11 an entity, including, without limitation, shares of stock in a
12 corporation, units or other interests in a partnership, bonds,
13 debentures, notes or other equity interests or debt instruments.

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

20 "Licensed hospital." An institution licensed as a hospital
21 by the Department of Health pursuant to Chapter 8 of the act of
22 July 19, 1979 (P.L.130, No.48), known as the Health Care
23 Facilities Act.

24 "Outside referral for diagnostic imaging services." A
25 referral of a patient to a group practice or sole provider for
26 diagnostic imaging services by a physician who is not a member
27 of the group practice or of the sole provider's practice and who
28 does not have an investment interest in the group practice or
29 sole provider's practice for which the group practice or sole
30 provider billed for both the technical and the professional fee

1 for the patient and the patient did not become a patient of the
2 group practice or sole provider's practice.

3 "Patient of a group practice." A patient who receives a
4 physical examination, evaluation, diagnosis and development of a
5 treatment plan if medically necessary by a physician who is a
6 member of the group practice.

7 "Patient of a sole provider." A patient who receives a
8 physical examination, evaluation, diagnosis and development of a
9 treatment plan if medically necessary by a physician who is a
10 member of the sole provider's practice.

11 "Referral." Any referral of a patient by a health care
12 provider for health care services, including, without
13 limitation:

14 (1) The forwarding of a patient by a health care
15 provider to another health care provider or to an entity
16 which provides or supplies designated health services or any
17 other health care item or service.

18 (2) The request or establishment of a plan of care by a
19 health care provider, which includes the provision of
20 designated health services or other health care item or
21 service.

22 "Sole provider." One health care provider who maintains a
23 separate medical office and a medical practice separate from any
24 other health care provider and who bills for services separately
25 from the services provided by any other health care provider and
26 does not share overhead expenses or professional income with any
27 other person or group practice.

28 CHAPTER 3

29 REFERRAL RESTRICTIONS

30 Section 301. Requirements for accepting outside referrals for

1 diagnostic imaging.

2 (a) Conditions.--A group practice or sole provider accepting
3 outside referrals for diagnostic imaging services must comply
4 with the following conditions:

5 (1) Diagnostic imaging services must be provided
6 exclusively by a group practice physician or by a full-time
7 or part-time employee of the group practice or of the sole
8 provider's practice.

9 (2) All equity in the group practice or sole provider's
10 practice accepting outside referrals for diagnostic imaging
11 must be held by the physicians comprising the group practice
12 or the sole provider's practice, each of whom must provide at
13 least 75% of the physician's professional services to the
14 group.

15 (3) A group practice or sole provider may not enter
16 into, extend or renew any contract with a practice management
17 company that provides any financial incentives, directly or
18 indirectly, based on an increase in outside referrals for
19 diagnostic imaging services from any group or sole provider
20 managed by the same practice management company.

21 (4) The group practice or sole provider accepting
22 outside referrals for diagnostic imaging services must bill
23 for both the professional and technical components of the
24 service on behalf of the patient, and no portion of the
25 payment, or any type of consideration, either directly or
26 indirectly, may be shared with the referring physician.

27 (5) Group practices or sole providers that have a
28 Medicaid provider agreement with a State agency must furnish
29 diagnostic imaging services to their Medicaid patients and
30 may not refer a Medicaid recipient to a hospital for

1 outpatient diagnostic imaging services unless the physician
2 furnishes the hospital with documentation demonstrating the
3 medical necessity for the referral. If necessary, the
4 Commonwealth may apply for a Federal waiver to implement this
5 paragraph.

6 (6) All group practices and sole providers accepting
7 outside referrals for diagnostic imaging services shall
8 report annually to the department providing the number of
9 outside referrals accepted for diagnostic imaging services
10 and the total number of all patients receiving diagnostic
11 imaging services.

12 (b) Violation.--If a group practice or sole provider accepts
13 an outside referral for diagnostic imaging services in violation
14 of this section or if a group practice or sole provider accepts
15 outside referrals for diagnostic imaging services in excess of
16 the percentage limitation established in subsection (a)(2), the
17 group practice or the sole provider shall be subject to the
18 penalties in section 302.

19 (c) Annual attestation.--Each managing physician member of a
20 group practice and each sole provider who accepts outside
21 referrals for diagnostic imaging services shall submit an annual
22 attestation signed under oath to the department which shall
23 include the annual report required under subsection (a)(6), and
24 which shall further confirm that each group practice or sole
25 provider is in compliance with the percentage limitations for
26 accepting outside referrals and the requirements for accepting
27 outside referrals listed in subsection (a). The department may
28 verify the report submitted by group practices and sole
29 providers.

30 Section 302. Prohibited referrals and claims for payment.

1 (a) Designated health services.--A health care provider may
2 not refer a patient for the provision of designated health
3 services to an entity in which the health care provider is an
4 investor or has an investment interest.

5 (b) Other health care items or services.--A health care
6 provider may not refer a patient for the provision of any other
7 health care item or service to an entity in which the health
8 care provider is an investor unless any of the following
9 applies:

10 (1) The provider's investment interest is in registered
11 securities purchased on a national exchange or over-the-
12 counter market and issued by a publicly held corporation:

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

15 (ii) whose total assets at the end of the
16 corporation's most recent fiscal quarter exceeded
17 \$50,000,000.

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

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

25 (ii) The terms under which an investment interest is
26 offered to an investor who is in a position to make
27 referrals to the entity are no different from the terms
28 offered to investors who are not in a position to make
29 referrals.

30 (iii) The terms under which an investment interest

1 is offered to an investor who is in a position to make
2 referrals to the entity are not related to the previous
3 or expected volume of referrals from that investor to the
4 entity.

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

9 (3) With respect to either the entity or publicly held
10 corporation:

11 (i) The entity or corporation does not lend funds to
12 or guarantee a loan for an investor who is in a position
13 to make referrals to the entity or corporation if the
14 investor uses any part of the loan to obtain the
15 investment interest.

16 (ii) The amount distributed to an investor
17 representing a return on the investment interest is
18 directly proportional to the amount of the capital
19 investment, including the fair market value of any
20 preoperational services rendered, invested in the entity
21 or corporation by that investor.

22 (c) Claim for payment.--No claim for payment may be
23 presented by an entity to any individual, third-party payor or
24 other entity for a service furnished pursuant to a referral
25 prohibited under this section.

26 (d) Refund.--If an entity collects any amount that was
27 billed in violation of this section, the entity shall refund
28 that amount on a timely basis to the payor or individual,
29 whichever is applicable.

30 (e) Civil penalty.--Any person that presents or causes to be

1 presented a bill or a claim for service that the person knows or
2 should know is for a service for which payment may not be made
3 under subsection (c) or for which a refund has not been made
4 under subsection (d) shall be subject to a civil penalty of not
5 more than \$15,000 for each service to be imposed and collected
6 by the appropriate board.

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

17 (g) Violation.--A violation of this section by a health care
18 provider shall constitute grounds for disciplinary action to be
19 taken by the applicable board pursuant to the applicable
20 licensing statute. A violation of this section by a licensed
21 hospital shall be deemed a violation under the act of July 19,
22 1979 (P.L.130, No.48), known as the Health Care Facilities Act.

23 (h) Other violation.--It is a violation of this act for a
24 licensed hospital to discriminate against or otherwise penalize
25 a health care provider for compliance with this act.

26 CHAPTER 11

27 MISCELLANEOUS PROVISIONS

28 Section 1101. Effective date.

29 This act shall take effect in 60 days.