

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2867 Session of
1992

INTRODUCED BY DeLUCA, VEON, HARPER, MELIO, TIGUE, KRUSZEWSKI,
McNALLY, STEELMAN, KASUNIC AND TANGRETTI, JUNE 23, 1992

REFERRED TO COMMITTEE ON INSURANCE, JUNE 23, 1992

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

13 Section 1. Short title.

14 This act shall be known and may be cited as the Patient Self-
15 referral Act.

16 Section 2. Legislative intent.

17 The General Assembly declares the following to be the
18 purposes of this act:

19 (1) To address the potential conflict of interests that
20 arises when a health care provider refers a patient to an
21 entity providing health care goods or services with whom the

1 health care provider has a financial relationship.

2 (2) To eliminate referral practices that may restrict
3 health care access, limit or eliminate competitive health
4 care goods or services alternatives, increase health care
5 costs and affect the quality of health care.

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

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

10 Section 3. Definitions.

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

14 "Board." Any one of the following boards: the State Board of
15 Chiropractic, the State Board of Dentistry, the State Board of
16 Medicine, the State Board of Occupational Therapy Education and
17 Licensure, the State Board of Optometry, the State Board of
18 Osteopathic Medicine, the State Board of Pharmacy, the State
19 Board of Physical Therapy, the State Board of Podiatry or the
20 State Board of Psychology.

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

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

23 "Designated health services." The term includes clinical
24 laboratory services, physical therapy services, comprehensive
25 rehabilitative services, diagnostic imaging services and
26 radiation therapy services.

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

29 "Fair market value." Value in arm's length transactions,
30 consistent with the general market value, and, with respect to

1 rentals or leases, the value of rental property for general
2 commercial purposes, not taking into account its intended use,
3 and, in the case of a lease of space, not adjusted to reflect
4 the additional value the prospective lessee or lessor would
5 attribute to the proximity or convenience to the lessor where
6 the lessor is a potential source of patient referrals to the
7 lessee.

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

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

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

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

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

28 "Immediate family member." A health care provider's spouse,
29 child, child's spouse, stepchild, stepchild's spouse,
30 grandchild, grandchild's spouse, sibling, sibling's spouse,

1 parent, parent-in-law, aunt, uncle, cousin or cousin's spouse.

2 "Investment interest." An equity or debt security issued by
3 an entity, including, but not limited to, shares of stock in a
4 corporation, units or other interests in a partnership, bonds,
5 debentures, notes or other equity interests or debt instruments.
6 This shall not include an investment interest in real property
7 resulting in a landlord-tenant relationship between the health
8 care provider and the entity in which the equity interest is
9 held, unless the rent is determined, in whole or in part, by the
10 business volume or profitability of the tenant or exceeds fair
11 market value.

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

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

25 "Referral."

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

28 (i) the forwarding of a patient by a health care
29 provider to another health care provider or to an entity
30 which provides or supplies designated health services or

1 any other health care item or service; or

2 (ii) the request or establishment of a plan of care
3 by a health care provider, which includes the provision
4 of designated health services or other health care item
5 or service.

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

9 (i) Diagnostic imaging services by a radiologist.

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

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

17 (iv) Cardiac catheterization services by a
18 cardiologist.

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

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

30 (vii) Services provided by a licensed ambulatory

1 surgical center.

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

4 (ix) Lithotripsy services by a urologist.

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

9 (xi) Infusion therapy services to a patient of that
10 physician or a member of that physician's group practice.

11 (xii) Renal dialysis services and supplies by a
12 nephrologist.

13 "Rural area." A county with a population density of no more
14 than 100 persons per square mile.

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

18 Section 4. Prohibited referrals and claims for payment.

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

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

29 (1) The provider's investment interest is in registered
30 securities purchased on a national exchange or over-the-

1 counter market and issued by a publicly held corporation:

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

4 (ii) whose total assets at the end of the
5 corporation's most recent fiscal quarter exceeded
6 \$50,000,000.

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

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

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

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

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

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

30 (i) The entity or corporation does not loan funds to

1 or guarantee a loan for an investor who is in a position
2 to make referrals to the entity or corporation if the
3 investor uses any part of the loan to obtain the
4 investment interest.

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

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

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

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

26 (f) Penalties.--

27 (1) Any person that presents or causes to be presented a
28 bill or a claim for service that the person knows or should
29 know is for a service for which payment may not be made under
30 subsection (d), or for which a refund has not been made under

1 subsection (e), shall be subject to a civil penalty of not
2 more than \$15,000 for each service, to be imposed and
3 collected by the appropriate board.

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

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

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

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

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

11 (j) Disclosure to patients.--A health care provider who
12 meets the requirements of subsections (b) and (i) must disclose
13 his investment interest to his patients as provided in section
14 7(c).

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

21 Section 5. Kickbacks prohibited.

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

26 Section 6. Markup on charges prohibited.

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

30 Section 7. Financial disclosure and data collection.

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

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

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

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

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

24 (1) The existence of the investment interest.

25 (2) The name and address of each applicable entity in
26 which the referring health care provider is an investor.

27 (3) The patient's right to obtain the items or services
28 for which the patient has been referred at the location or
29 from the provider or supplier of the patient's choice,
30 including the entity in which the referring provider is an

1 investor.

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

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

8 (d) Acknowledgment.--An entity may not provide items or
9 services to a patient unless, before providing the item or
10 service, the entity obtains the signature of the patient on a
11 written disclosure form informing the patient of the following:

12 (1) The existence or nonexistence of any financial
13 relationship with the health care provider who referred the
14 patient.

15 (2) A schedule of typical fees for items or services
16 usually provided by the entity or, if impracticable because
17 of the nature of the treatment, a written estimate specific
18 to the patient.

19 (3) The patient's right to obtain the items or services
20 for which the patient has been referred at a location or from
21 a supplier of the patient's choice, including an entity with
22 which the referring health care provider may have a financial
23 relationship.

24 (4) The names, addresses and telephone numbers of at
25 least two reasonable alternative sources of such items or
26 services available to the patient.

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

30 (e) Duty to post disclosure statements.--The health care

1 provider and the entity providing health care items or services
2 shall post a copy of their respective disclosure forms in
3 conspicuous public places in the offices.

4 Section 8. Data analysis and compliance.

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

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

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

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

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

23 Section 10. Powers and duties.

24 The Department of Health, Department of State and the
25 licensing boards shall promulgate regulations necessary to
26 implement the provisions and intent of this act.

27 Section 11. Crimes, offenses and penalties.

28 (a) Additional penalties.--In addition to the penalties
29 provided for in section 4, each violation of this act shall
30 constitute a misdemeanor of the first degree punishable by a

1 fine of not more than \$10,000 or imprisonment for up to five
2 years, or both.

3 (b) Suspension.--Health care providers found in violation of
4 this act shall be subject to disciplinary action by the
5 licensing boards, including, but not limited to, a suspension of
6 professional licensure for a period not to exceed five years.

7 Section 12. Applicability.

8 This act shall apply to referrals made on or after the
9 effective date of this act, provided that, with respect to an
10 investment interest acquired before December 31, 1992, section
11 4(a) shall not apply to referrals for designated health services
12 occurring before October 1, 1995.

13 Section 13. Repeal.

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

20 Section 14. Effective date.

21 This act shall take effect in 60 days.