
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1152 Session of
1993

INTRODUCED BY DeLUCA, TRICH, COLAIZZO, MIHALICH, ROEBUCK,
KUKOVICH, TRELLO, SCRIMENTI, WOZNIAK, FEE, GEORGE, MARKOSEK,
STEELMAN, PISTELLA, YANDRISEVITS, JOSEPHS, MELIO, GERLACH,
TIGUE, KASUNIC, CLARK, BELARDI, PETRONE, LAUGHLIN, CORNELL,
GIGLIOTTI, McNALLY, LINTON, STETLER, McCALL, ROBINSON,
OLIVER, ACOSTA, RIEGER, STEIGHNER, DALEY, STISH, CIVERA,
CESSAR, PESCI, SAURMAN, VEON, VAN HORNE, STABACK, TOMLINSON,
DRUCE, MICHLOVIC, ITKIN, MURPHY, HANNA AND FREEMAN,
APRIL 19, 1993

REFERRED TO COMMITTEE ON INSURANCE, APRIL 19, 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 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:

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

(2) To eliminate referral practices that may restrict 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

1 other business entity.

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

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

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

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

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

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

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

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

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

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

28 "Referral."

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

1 (i) the forwarding of a patient by a health care
2 provider to another health care provider or to an entity
3 which provides or supplies designated health services or
4 any other health care item or service; or

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

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

12 (i) Diagnostic imaging services by a radiologist.

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

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

20 (iv) Cardiac catheterization services by a
21 cardiologist.

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

27 (vi) Designated health services or other health care
28 items or services that are prescribed or provided solely
29 for the referring health care provider's or group
30 practice's own patients and that are provided or

1 performed by or under the direct supervision of the
2 referring health care provider or group practice.

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

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

7 (ix) Lithotripsy services by a urologist.

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

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

14 (xii) Renal dialysis services and supplies by a
15 nephrologist.

16 (xiii) An emergency situation where normal
17 compliance with this act would lead to serious health
18 risks including loss of life.

19 "Rural area." A county with at least 80% of its population
20 living in an area defined by the United States Census Bureau as
21 rural.

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

25 Section 4. Prohibited referrals and claims for payment.

26 (a) General rule.--A health care provider may not refer a
27 patient for the provision of designated health services to an
28 entity in which the health care provider or a member of the
29 health care provider's immediate family is an investor or has an
30 investment interest.

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

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

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

11 (ii) whose total assets at the end of the
12 corporation's most recent fiscal quarter exceeded
13 \$50,000,000.

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

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

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

26 (iii) The terms under which an investment interest
27 is offered to an investor who is in a position to make
28 referrals to the entity are not related to the previous
29 or expected volume of referrals from that investor to the
30 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:

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

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

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

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

(e) Refunds.--If an entity collects any amount that was billed in violation of this section, the entity shall refund the

1 amount on a timely basis to the payor or individual, whichever
2 is applicable.

3 (f) Penalties.--

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

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

20 (g) Disciplinary actions.--A violation of this act by a
21 health care provider shall constitute grounds for disciplinary
22 action to be taken by the applicable board. A hospital or health
23 care facility licensed by the Commonwealth found in violation of
24 this act shall be subject to disciplinary action to be taken by
25 the department.

26 (h) Discrimination for compliance prohibited.--Any hospital
27 or health care facility licensed by the Commonwealth is
28 prohibited from discriminating against or otherwise penalizing a
29 health care provider for compliance with this act.

30 (i) Exception for radiation therapy services.--The

1 provisions of subsection (a) shall not apply to referrals to the
2 offices of radiation therapy centers managed by an entity or
3 subsidiary or general partner thereof, which performed radiation
4 therapy services at those same offices prior to April 1, 1991,
5 and shall not apply also to referrals for radiation therapy to
6 be performed at no more than one additional office of any entity
7 qualifying for the foregoing exception which, prior to February
8 1, 1992, had a binding purchase contract on and a nonrefundable
9 deposit paid for a linear accelerator to be used at the
10 additional office. The physical site of the radiation treatment
11 centers affected by this provision may be relocated as a result
12 of the following factors: acts of God, fire, strike, accident,
13 war, eminent domain actions by any governmental body or refusal
14 by the lessor to renew a lease. A relocation for the foregoing
15 reasons is limited to relocation of an existing facility to a
16 replacement location within the county of the existing facility
17 upon written notification to the department.

18 (j) Disclosure to patients.--A health care provider who
19 meets the requirements of subsections (b) and (i) must disclose
20 his investment interest to his patients as provided in section
21 7(c).

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

28 Section 5. Kickbacks prohibited.

29 It is unlawful for any health care provider or any provider
30 of health care services to offer, pay, solicit or receive a

1 kickback, directly or indirectly, overtly or covertly, in case
2 or in kind, for referring or soliciting patients.

3 Section 6. Markup on charges prohibited.

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

7 Section 7. Financial disclosure and data collection.

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

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

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

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

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

30 (c) Written disclosure.--A health care provider shall not

1 refer a patient to an entity in which the provider is an
2 investor unless, prior to referral, the provider furnishes the
3 patient with a written disclosure form, informing the patient
4 of:

5 (1) The existence of the investment interest.

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

8 (3) The patient's right to obtain the items or services
9 for which the patient has been referred at the location or
10 from the provider or supplier of the patient's choice,
11 including the entity in which the referring provider is an
12 investor.

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

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

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

23 (1) The existence or nonexistence of any financial
24 relationship with the health care provider who referred the
25 patient.

26 (2) A schedule of typical fees for items or services
27 usually provided by the entity or, if impracticable because
28 of the nature of the treatment, a written estimate specific
29 to the patient.

30 (3) The patient's right to obtain the items or services

1 for which the patient has been referred at a location or from
2 a supplier of the patient's choice, including an entity with
3 which the referring health care provider may have a financial
4 relationship.

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

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

11 (e) Duty to postdisclosure statements.--The health care
12 provider and the entity providing health care items or services
13 shall post a copy of their respective disclosure forms in
14 conspicuous public places in the offices.

15 Section 8. Data analysis and compliance.

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

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

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

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

30 (b) Duty to pay fees.--All health care providers and

1 entities providing health care items or services shall pay the
2 fees for data collection and analysis as provided for in
3 subsection (a).

4 Section 10. Powers and duties.

5 The Department of Health, Department of State and the
6 licensing boards shall promulgate regulations necessary to
7 implement the provisions and intent of this act.

8 Section 11. Crimes, offenses and penalties.

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

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

18 Section 12. Applicability.

19 This act shall apply to referrals made on or after the
20 effective date of this act, provided that, with respect to an
21 investment interest acquired before December 31, 1992, section
22 4(a) shall not apply to referrals for designated health services
23 occurring before October 1, 1995.

24 Section 13. Repeal.

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

1 Section 14. Effective date.

2 This act shall take effect in 60 days.