

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 319 Session of 2011

INTRODUCED BY DeLUCA, D. COSTA, CALTAGIRONE, FABRIZIO, GEORGE, HARHART, HARKINS, JOSEPHS, KIRKLAND, KOTIK, WHITE AND YOUNGBLOOD, JANUARY 31, 2011

REFERRED TO COMMITTEE ON HEALTH, JANUARY 31, 2011

AN ACT

1 Providing for prohibition on health care provider self-referral.

2 The General Assembly of the Commonwealth of Pennsylvania

3 hereby enacts as follows:

4 Section 1. Short title.

5 This act shall be known and may be cited as the Prohibition
6 on Health Care Provider Self-referral Act.

7 Section 2. Definitions.

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

11 "Compensation arrangement." An arrangement involving
12 remuneration, direct or indirect, between a provider or a member
13 of a provider's immediate family, and a person or entity.

14 "Designated health service." The following goods or
15 services:

16 (1) clinical laboratory services;

17 (2) physical therapy, occupational therapy or speech

- 1 language pathology;
- 2 (3) chiropractic;
- 3 (4) radiation oncology;
- 4 (5) psychometric services;
- 5 (6) home health services; or
- 6 (7) diagnostic imaging.

7 "Financial interest." An ownership or investment interest or
8 a compensation arrangement.

9 "Health care provider." A person, corporation, facility or
10 institution licensed or otherwise authorized by the
11 Commonwealth to provide health care services, including, but not
12 limited to, a physician, coordinated care organization,
13 hospital, health care facility, dentist, nurse, optometrist,
14 podiatrist, physical therapist, psychologist, chiropractor or
15 pharmacist and an officer, employee or agent of the person
16 acting in the course and scope of employment or agency related
17 to health care services.

18 "Immediate family member." Husband or wife; birth or
19 adoptive parent, child or sibling; stepparent, stepchild,
20 stepbrother or stepsister; father-in-law, mother-in-law, son-in-
21 law, daughter-in-law, brother-in-law or sister-in-law;
22 grandparent or grandchild; and spouse of a grandparent or
23 grandchild.

24 "Ownership or investment interest." A direct or indirect
25 ownership or investment interest through equity, debt or other
26 means that includes an interest in an entity that holds an
27 ownership or investment interest in any entity that furnishes
28 designated health services. An ownership or investment interest
29 includes, but is not limited to, stock, stock options,
30 partnership shares, limited liability company memberships, as

1 well as loans, bonds or other financial instruments that are
2 secured with an entity's property or revenue or a portion of
3 that property or revenue.

4 "Referral."

5 (1) The term shall include:

6 (i) The request by a health care provider for, or
7 ordering of, or the certifying or recertifying of the
8 need for any designated health service, including a
9 request for a consultation with another health care
10 provider and any test or procedure ordered by or to be
11 performed by, or under the supervision of, that other
12 health care provider, but not including any designated
13 health service personally performed or provided by the
14 referring provider. A designated health service is not
15 personally performed or provided by the referring health
16 care provider if it is performed or provided by any other
17 person, including, but not limited to, the referring
18 health care provider's employees, independent contractors
19 or group practice members.

20 (ii) A request by a health care provider that
21 includes the provision of any designated health service,
22 the establishment of a plan of care by a health care
23 provider that includes the provision of such a designated
24 health service or the certifying or recertifying of the
25 need for such a designated health service, but not
26 including any designated health service personally
27 performed or provided by the referring health care
28 provider. A designated health service is not personally
29 performed or provided by the referring health care
30 provider if it is performed or provided by any other

1 person, including, but not limited to, the referring
2 health care provider's employees, independent contractors
3 or group practice members.

4 (2) The term shall not include a request by a
5 pathologist for clinical diagnostic laboratory tests and
6 pathological examination services by a radiologist for
7 diagnostic radiology services and by a radiation oncologist
8 for radiation therapy or ancillary services necessary for,
9 and integral to, the provision of radiation therapy, if:

10 (i) the request results from a consultation
11 initiated by another whether the request for a
12 consultation was made to a particular pathologist,
13 radiologist or radiation oncologist or to an entity with
14 which the pathologist, radiologist or radiation
15 oncologist is affiliated; and

16 (ii) the tests or services are furnished by or under
17 the supervision of the pathologist, radiologist or
18 radiation oncologist or under the supervision of a
19 pathologist, radiologist or radiation oncologist,
20 respectively, in the same group practice as the
21 pathologist, radiologist or radiation oncologist.

22 (3) A referral may be in any form, including, but not
23 limited to, written, oral or electronic.

24 "Secretary." The Secretary of Health of the Commonwealth.

25 Section 3. Unprofessional conduct.

26 (a) Referrals.--

27 (1) It is unlawful for a health care provider to refer a
28 person for a designated health service if the provider or an
29 immediate family member of the provider has a financial
30 interest with the person or entity that receives the

1 referral.

2 (2) It is unlawful for a health care provider to enter
3 into an arrangement or scheme, such as a cross-referral
4 arrangement, which the health care provider knows or should
5 know has a principal purpose of assuring referrals of
6 designated health services by a health care provider to a
7 particular entity which, if the provider directly made
8 referrals to such entity, would be in violation of this act.

9 (b) Limitation on billing.--No claim for payment may be
10 presented by an entity to any individual, third-party payer or
11 other entity for a designated health service furnished pursuant
12 to a referral prohibited under this section.

13 (c) Denial of payment.--

14 (1) Except as provided in paragraph (2), no payment may
15 be made by any payer for a designated health service that is
16 furnished pursuant to a prohibited referral.

17 (2) Payment may be made to an entity that submits a
18 claim for a designated health service if the entity did not
19 have actual knowledge of, and did not act in reckless
20 disregard or deliberate ignorance of, the identity of the
21 provider who made the referral of the designated health
22 service to the entity.

23 (d) Exceptions.--The provisions of subsections (a), (b) and
24 (c) do not apply to the following:

25 (1) Referrals permitted under all present and future
26 Safe Harbor regulations promulgated under the Medicare and
27 Medicaid Patient and Program Protection Act (section 1128B(b)
28 (1) and (2) of the Social Security Act (49 Stat. 620, 42
29 U.S.C. § 301 et seq.) currently published at 42 CFR 1001.952
30 (relating to exceptions)).

1 (2) Referrals permitted under all present and future
2 exceptions to the Stark amendments to the Medicare Act
3 (section 1877 of the Social Security Act) and all present and
4 future regulations promulgated thereunder, currently
5 published at 42 CFR Pt. 411 Subpt. J (relating to financial
6 relationships between physicians and entities furnishing
7 designated health services).

8 (3) Referrals permitted by the secretary through
9 regulations upon a determination that the referrals do not
10 pose a risk of program or patient abuse.

11 (e) Prohibition.--An individual, third-party payor or other
12 entity may not deny payment to a health care provider involved
13 in a transaction or referral described in subsection (d).

14 Section 4. Penalties.

15 (a) Requiring refunds for certain claims.--If a person
16 collects amounts billed in violation of section 3(a), he shall
17 be liable to the individual, payer or other entity for and shall
18 refund on a timely basis to the individual, payer or other
19 entity the collected amounts.

20 (b) Civil penalty for improper claims.--A person that
21 presents or causes to be presented a bill or a claim for a
22 service that he knows is for a service for which payment may not
23 be made under section 3(a) or for which a refund has not been
24 made under subsection (a) or otherwise violates this act shall
25 be subject to a civil penalty of not more than \$15,000 for each
26 service.

27 (c) Civil penalty for circumvention schemes.--A provider or
28 other entity that enters into an arrangement or scheme, such as
29 a cross-referral arrangement which the provider or entity knows
30 or should know has a principal purpose of assuring referrals by

1 the provider to a particular entity which, if the provider
2 directly made referrals to such entity, would be in violation of
3 this section, shall be subject to a civil penalty of not more
4 than \$100,000 for each arrangement or scheme.

5 Section 20. Effective date.

6 This act shall take effect in 60 days.