
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1750 Session of
2007

INTRODUCED BY DeLUCA, JOSEPHS, KORTZ, MUNDY, THOMAS, YOUNGBLOOD
AND WALKO, JULY 14, 2007

REFERRED TO COMMITTEE ON HEALTH AND HUMAN SERVICES,
JULY 14, 2007

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.

4 TABLE OF CONTENTS

5 Chapter 1. Preliminary Provisions

6 Section 101. Short title.

7 Section 102. Declaration of policy.

8 Section 103. Definitions.

9 Chapter 3. Referral Restrictions

10 Section 301. Requirements for accepting outside referrals for
11 diagnostic imaging.

12 Section 302. Prohibited referrals and claims for payment.

13 Chapter 11. Miscellaneous Provisions

14 Section 1101. Effective date.

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

17 CHAPTER 1

18 PRELIMINARY PROVISIONS

1 Section 101. Short title.

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

4 Section 102. Declaration of policy.

5 The General Assembly finds and declares as follows:

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

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

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

20 Section 103. Definitions.

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

24 "Board." Any of the following boards relating to the
25 respective professions:

26 (1) The State Board of Medicine.

27 (2) The State Board of Osteopathic Medicine.

28 (3) The State Board of Dentistry.

29 (4) The State Board of Podiatry.

30 (5) The State Board of Chiropractic.

1 (6) The State Board of Optometry.

2 (7) The State Board of Pharmacy.

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

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

8 "Designated health services." Includes:

9 (1) Clinical laboratory services.

10 (2) Physical therapy services.

11 (3) Comprehensive rehabilitative services.

12 (4) Diagnostic imaging services.

13 (5) Radiation therapy services.

14 "Diagnostic imaging services." Includes:

15 (1) Magnetic resonance imaging.

16 (2) Nuclear medicine.

17 (3) Angiography.

18 (4) Arteriography.

19 (5) Computed tomography.

20 (6) Positron emission tomography.

21 (7) Digital vascular imaging.

22 (8) Bronchography.

23 (9) Lymphangiography.

24 (10) Splenography.

25 (11) Ultrasound.

26 (12) EEG.

27 (13) EKG.

28 (14) Nerve conduction studies.

29 (15) Evoked potentials.

30 "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 licensee of any of the following:

29 (1) The State Board of Medicine.

30 (2) The State Board of Osteopathic Medicine.

1 (3) The State Board of Dentistry.

2 (4) The State Board of Podiatry.

3 (5) The State Board of Chiropractic.

4 (6) The State Board of Optometry.

5 (7) The State Board of Pharmacy.

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

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

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

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

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

1 group practice or sole provider's practice.

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

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

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

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

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

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

27 CHAPTER 3

28 REFERRAL RESTRICTIONS

29 Section 301. Requirements for accepting outside referrals for
30 diagnostic imaging.

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

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

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

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

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

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

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

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

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

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

29 Section 302. Prohibited referrals and claims for payment.

30 (a) Designated health services.--A health care provider may

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

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

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

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

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

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

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

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

29 (iii) The terms under which an investment interest
30 is offered to an investor who is in a position to make

1 referrals to the entity are not related to the previous
2 or expected volume of referrals from that investor to the
3 entity.

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

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

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

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

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

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

29 (e) Civil penalty.--Any person that presents or causes to be
30 presented a bill or a claim for service that the person knows or

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

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

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

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

25 CHAPTER 11

26 MISCELLANEOUS PROVISIONS

27 Section 1101. Effective date.

28 This act shall take effect in 60 days.