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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 347 Session of  
2017

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INTRODUCED BY DeLUCA, ROZZI, MURT, D. COSTA, CALTAGIRONE,  
McNEILL AND THOMAS, FEBRUARY 6, 2017

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REFERRED TO COMMITTEE ON HEALTH, FEBRUARY 6, 2017

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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 an 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 includes:

6 (i) The request by a health care provider for, or  
7 ordering of, or the certifying or recertifying of the  
8 need for a designated health service, including a request  
9 for a consultation with another health care provider and  
10 a test or procedure ordered by or to be performed by, or  
11 under the supervision of, that other health care  
12 provider, but not including a designated health service  
13 personally performed or provided by the referring  
14 provider. A designated health service is not personally  
15 performed or provided by the referring health care  
16 provider if it is performed or provided by another  
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 a designated health service,  
22 the establishment of a plan of care by a health care  
23 provider that includes the provision of the designated  
24 health service or the certifying or recertifying of the  
25 need for the designated health service, but not including  
26 a designated health service personally performed or  
27 provided by the referring health care provider. A  
28 designated health service is not personally performed or  
29 provided by the referring health care provider if it is  
30 performed or provided by another person, including, but

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

4 (2) The term does not include a request by a pathologist  
5 for clinical diagnostic laboratory tests and pathological  
6 examination services by a radiologist for diagnostic  
7 radiology services and by a radiation oncologist for  
8 radiation therapy or ancillary services necessary for, and  
9 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) A health care provider may not refer a person for a  
28 designated health service if the provider or an immediate  
29 family member of the provider has a financial interest with  
30 the person or entity that receives the referral.

1           (2) A health care provider may not enter into an  
2 arrangement or scheme, such as a cross-referral arrangement,  
3 which the health care provider knows or should know has a  
4 principal purpose of assuring referrals of designated health  
5 services by a health care provider to a particular entity  
6 which, if the provider directly made referrals to such  
7 entity, would be in violation of this act.

8           (b) Limitation on billing.--A claim for payment may not be  
9 presented by an entity to an individual, third-party payer or  
10 other entity for a designated health service furnished under a  
11 referral prohibited under this section.

12          (c) Denial of payment.--

13           (1) Except as provided in paragraph (2), a payment may  
14 not be made by a payer for a designated health service that  
15 is furnished under a prohibited referral.

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

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

24           (1) Referrals permitted under the Safe Harbor  
25 regulations promulgated under the Medicare and Medicaid  
26 Patient and Program Protection Act (section 1128B(b)(1) and  
27 (2) of the Social Security Act (49 Stat. 620, 42 U.S.C. §  
28 1320a-7b) currently published at 42 CFR 1001.952 (relating to  
29 exceptions)).

30           (2) Referrals permitted under the exceptions to the

1 Stark amendments to the Medicare Act (42 U.S.C. § 1395nn) of  
2 the Social Security Act and the regulations promulgated  
3 thereunder, currently published at 42 CFR Pt. 411 Subpt. J  
4 (relating to financial relationships between physicians and  
5 entities furnishing designated health services).

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

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

#### 12 Section 4. Penalties.

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

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

25 (c) Civil penalty for circumvention schemes.--A provider or  
26 other entity that enters into an arrangement or scheme, such as  
27 a cross-referral arrangement which the provider or entity knows  
28 or should know has a principal purpose of assuring referrals by  
29 the provider to a particular entity which, if the provider  
30 directly made referrals to such entity, would be in violation of

1 this section, shall be subject to a civil penalty of not more  
2 than \$100,000 for each arrangement or scheme.

3 Section 5. Effective date.

4 This act shall take effect in 60 days.