

# SENATE BILL 662

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By: **Senators Dyson, Greenip, Lenett, and Middleton**

Introduced and read first time: February 6, 2009

Assigned to: Education, Health, and Environmental Affairs

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## A BILL ENTITLED

1 AN ACT concerning

2 **Patient Referrals – Imaging and Radiation Therapy Services – Accreditation**

3 FOR the purpose of altering the definition of “in-office ancillary services” as it relates  
4 to certain referrals by certain health care practitioners so as to include magnetic  
5 resonance imaging services, computed tomography scan services, and radiation  
6 therapy services; altering certain exceptions to certain patient referral  
7 prohibitions; requiring health care entities that furnish magnetic resonance  
8 imaging services, radiation therapy services, and computed tomography scan  
9 services to receive accreditation from certain organizations by certain dates;  
10 authorizing the provisional accreditation of certain health care entities;  
11 requiring certain health care entities to maintain certain standards and make  
12 available evidence of accreditation; defining a certain term; and generally  
13 relating to the referral of patients for magnetic resonance imaging services,  
14 computed tomography scan services, and radiation therapy services.

15 BY repealing and reenacting, with amendments,  
16 Article – Health Occupations  
17 Section 1–301, 1–302, and 1–303  
18 Annotated Code of Maryland  
19 (2005 Replacement Volume and 2008 Supplement)

20 BY adding to  
21 Article – Health Occupations  
22 Section 1–601 to be under the new subtitle “Subtitle 6. Accreditation of  
23 Business Entities That Furnish Magnetic Resonance Imaging Services,  
24 Computed Tomography Scan Services, and Radiation Therapy Services”  
25 Annotated Code of Maryland  
26 (2005 Replacement Volume and 2008 Supplement)

27 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
28 MARYLAND, That the Laws of Maryland read as follows:

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



**Article – Health Occupations**

1–301.

(a) In this subtitle the following words have the meanings indicated.

(b) (1) “Beneficial interest” means ownership, through equity, debt, or other means, of any financial interest.

(2) “Beneficial interest” does not include ownership, through equity, debt, or other means, of securities, including shares or bonds, debentures, or other debt instruments:

(i) In a corporation that is traded on a national exchange or over the counter on the national market system;

(ii) That at the time of acquisition, were purchased at the same price and on the same terms generally available to the public;

(iii) That are available to individuals who are not in a position to refer patients to the health care entity on the same terms that are offered to health care practitioners who may refer patients to the health care entity;

(iv) That are unrelated to the past or expected volume of referrals from the health care practitioner to the health care entity; and

(v) That are not marketed differently to health care practitioners that may make referrals than they are marketed to other individuals.

(c) (1) “Compensation arrangement” means any agreement or system involving any remuneration between a health care practitioner or the immediate family member of the health care practitioner and a health care entity.

(2) “Compensation arrangement” does not include:

(i) Compensation or shares under a faculty practice plan or a professional corporation affiliated with a teaching hospital and comprised of health care practitioners who are members of the faculty of a university;

(ii) Amounts paid under a bona fide employment agreement between a health care entity and a health care practitioner or an immediate family member of the health care practitioner;

(iii) An arrangement between a health care entity and a health care practitioner or the immediate family member of a health care practitioner for the provision of any services, as an independent contractor, if:

- 1                   1.     The arrangement is for identifiable services;
- 2                   2.     The amount of the remuneration under the  
3 arrangement is consistent with the fair market value of the service and is not  
4 determined in a manner that takes into account, directly or indirectly, the volume or  
5 value of any referrals by the referring health care practitioner; and
- 6                   3.     The compensation is provided in accordance with an  
7 agreement that would be commercially reasonable even if no referrals were made to  
8 the health care provider;
- 9                   (iv)    Compensation for health care services pursuant to a referral  
10 from a health care practitioner and rendered by a health care entity, that employs or  
11 contracts with an immediate family member of the health care practitioner, in which  
12 the immediate family member's compensation is not based on the referral;
- 13                  (v)     An arrangement for compensation which is provided by a  
14 health care entity to a health care practitioner or the immediate family member of the  
15 health care practitioner to induce the health care practitioner or the immediate family  
16 member of the health care practitioner to relocate to the geographic area served by the  
17 health care entity in order to be a member of the medical staff of a hospital, if:
- 18                   1.     The health care practitioner or the immediate family  
19 member of the health care practitioner is not required to refer patients to the health  
20 care entity;
- 21                   2.     The amount of the compensation under the  
22 arrangement is not determined in a manner that takes into account, directly or  
23 indirectly, the volume or value of any referrals by the referring health care  
24 practitioner; and
- 25                   3.     The health care entity needs the services of the  
26 practitioner to meet community health care needs and has had difficulty in recruiting  
27 a practitioner;
- 28                   (vi)    Payments made for the rental or lease of office space if the  
29 payments are:
- 30                   1.     At fair market value; and
- 31                   2.     In accordance with an arm's length transaction;
- 32                   (vii)   Payments made for the rental or lease of equipment if the  
33 payments are:
- 34                   1.     At fair market value; and
- 35                   2.     In accordance with an arm's length transaction; or

(viii) Payments made for the sale of property or a health care practice if the payments are:

1. At fair market value;
2. In accordance with an arm's length transaction; and
3. The remuneration is provided in accordance with an agreement that would be commercially reasonable even if no referrals were made.

(d) "Direct supervision" means a health care practitioner is present on the premises where the health care services or tests are provided and is available for consultation within the treatment area.

(e) "Faculty practice plan" means a tax exempt organization established under Maryland law by or at the direction of a university to accommodate the professional practice of members of the faculty who are health care practitioners.

(f) "Group practice" means a group of two or more health care practitioners legally organized as a partnership, professional corporation, foundation, not-for-profit corporation, faculty practice plan, or similar association:

(1) In which each health care practitioner who is a member of the group provides substantially the full range of services which the practitioner routinely provides through the joint use of shared office space, facilities, equipment, and personnel;

(2) For which substantially all of the services of the health care practitioners who are members of the group are provided through the group and are billed in the name of the group and amounts so received are treated as receipts of the group; and

(3) In which the overhead expenses of and the income from the practice are distributed in accordance with methods previously determined on an annual basis by members of the group.

(g) "Health care entity" means a business entity that provides health care services for the:

(1) Testing, diagnosis, or treatment of human disease or dysfunction;  
or

(2) Dispensing of drugs, medical devices, medical appliances, or medical goods for the treatment of human disease or dysfunction.

(h) “Health care practitioner” means a person who is licensed, certified, or otherwise authorized under this article to provide health care services in the ordinary course of business or practice of a profession.

(i) “Health care service” means medical procedures, tests and services provided to a patient by or through a health care entity.

(j) “Immediate family member” means a health care practitioner’s:

(1) Spouse;

(2) Child;

(3) Child’s spouse;

(4) Parent;

(5) Spouse’s parent;

(6) Sibling; or

(7) Sibling’s spouse.

(k) (1) “In-office ancillary services” means those basic health care services and tests routinely performed in the office of one or more health care practitioners.

(2) [Except for a radiologist group practice or an office consisting solely of one or more radiologists, “in-office ancillary services” does not include:

(i) Magnetic] **“IN-OFFICE ANCILLARY SERVICES” INCLUDES MAGNETIC** resonance imaging services[;

(ii) Radiation], **RADIATION** therapy services[;], or

[(iii) Computer] **COMPUTED** tomography scan services, **IF:**

**(I) THE HEALTH CARE ENTITY FURNISHING THE SERVICES MEETS THE ACCREDITATION REQUIREMENTS SET FORTH IN SUBTITLE 6 OF THIS TITLE; AND**

**(II) 1. THE HEALTH CARE ENTITY FURNISHING THE SERVICES IS A RADIOLOGIST GROUP PRACTICE OR AN OFFICE CONSISTING SOLELY OF ONE OR MORE RADIOLOGISTS; OR**

**2. THE SERVICES ARE PROVIDED IN COMPLIANCE WITH § 1-302(D)(4)(I)1D AND (II)2 OF THIS SUBTITLE.**

1           **(L) “PERSONALLY SUPERVISE” MEANS THE EXERCISE OF ON-SITE**  
2 **SUPERVISION OR IMMEDIATELY AVAILABLE DIRECTION BY A HEALTH CARE**  
3 **PRACTITIONER FOR EMPLOYEES PERFORMING IN-OFFICE ANCILLARY SERVICES**  
4 **OR TESTS AS A RESULT OF A REFERRAL BY THE HEALTH CARE PRACTITIONER.**

5           **[(1)] (M)**       (1)     “Referral” means any referral of a patient for health care  
6 services.

7                       (2)     “Referral” includes:

8                               (i)     The forwarding of a patient by one health care practitioner  
9 to another health care practitioner or to a health care entity outside the health care  
10 practitioner’s office or group practice; or

11                           (ii)    The request or establishment by a health care practitioner of  
12 a plan of care for the provision of health care services outside the health care  
13 practitioner’s office or group practice.

14     1–302.

15           (a)     Except as provided in subsection (d) of this section, a health care  
16 practitioner may not refer a patient, or direct an employee of or person under contract  
17 with the health care practitioner to refer a patient to a health care entity:

18                       (1)     In which the health care practitioner or the practitioner in  
19 combination with the practitioner’s immediate family owns a beneficial interest;

20                       (2)     In which the practitioner’s immediate family owns a beneficial  
21 interest of 3 percent or greater; or

22                       (3)     With which the health care practitioner, the practitioner’s  
23 immediate family, or the practitioner in combination with the practitioner’s immediate  
24 family has a compensation arrangement.

25           (b)     A health care entity or a referring health care practitioner may not  
26 present or cause to be presented to any individual, third party payor, or other person a  
27 claim, bill, or other demand for payment for health care services provided as a result of  
28 a referral prohibited by this subtitle.

29           (c)     Subsection (a) of this section applies to any arrangement or scheme,  
30 including a cross-referral arrangement, which the health care practitioner knows or  
31 should know has a principal purpose of assuring indirect referrals that would be in  
32 violation of subsection (a) of this section if made directly.

33           (d)     The provisions of this section do not apply to:

1 (1) A health care practitioner when treating a member of a health  
2 maintenance organization as defined in § 19–701 of the Health – General Article if the  
3 health care practitioner does not have a beneficial interest in the health care entity;

4 (2) A health care practitioner who refers a patient to another health  
5 care practitioner in the same group practice as the referring health care practitioner;

6 (3) A health care practitioner with a beneficial interest in a health  
7 care entity who refers a patient to that health care entity for health care services or  
8 tests, if the services or tests are personally performed by or under the direct  
9 supervision of the referring health care practitioner;

10 (4) A health care practitioner who refers in–office ancillary services or  
11 tests that are:

12 (i) 1. Personally furnished by:

13 [1.] A. The referring health care practitioner;

14 [2.] B. A health care practitioner in the same group  
15 practice as the referring health care practitioner; [or]

16 [3.] C. An individual who is employed and personally  
17 supervised by the qualified referring health care practitioner or a health care  
18 practitioner in the same group practice as the referring health care practitioner; **OR**

19 **D. FOR MAGNETIC RESONANCE IMAGING SERVICES,**  
20 **COMPUTED TOMOGRAPHY SCAN SERVICES, AND RADIATION THERAPY SERVICES,**  
21 **AN INDIVIDUAL WHO IS EMPLOYED AND DIRECTLY SUPERVISED BY THE**  
22 **QUALIFIED REFERRING HEALTH CARE PRACTITIONER OR A HEALTH CARE**  
23 **PRACTITIONER IN THE SAME GROUP PRACTICE AS THE REFERRING HEALTH**  
24 **CARE PRACTITIONER;**

25 (ii) Provided [in]:

26 1. **IN** the same building where the referring health care  
27 practitioner or a health care practitioner in the same group practice as the referring  
28 health care practitioner furnishes services; [and] **OR**

29 2. **FOR MAGNETIC RESONANCE IMAGING SERVICES,**  
30 **COMPUTED TOMOGRAPHY SCAN SERVICES, AND RADIATION THERAPY SERVICES,**  
31 **IN THE SAME BUILDING WHERE THE REFERRING HEALTH CARE PRACTITIONER**  
32 **OR A HEALTH CARE PRACTITIONER IN THE SAME GROUP PRACTICE AS THE**  
33 **REFERRING HEALTH CARE PRACTITIONER FURNISHES SERVICES DURING THE**  
34 **REGULAR OFFICE HOURS MAINTAINED BY THE REFERRING HEALTH CARE**

**1 PRACTITIONER OR A HEALTH CARE PRACTITIONER IN THE SAME GROUP**  
**2 PRACTICE AS THE REFERRING HEALTH CARE PRACTITIONER; AND**

3 (iii) Billed by:

4 1. The health care practitioner performing or  
5 supervising the services; or

6 2. A group practice of which the health care practitioner  
7 performing or supervising the services is a member;

8 (5) A health care practitioner who has a beneficial interest in a health  
9 care entity if, in accordance with regulations adopted by the Secretary:

10 (i) The Secretary determines that the health care practitioner's  
11 beneficial interest is essential to finance and to provide the health care entity; and

12 (ii) The Secretary, in conjunction with the Maryland Health  
13 Care Commission, determines that the health care entity is needed to ensure  
14 appropriate access for the community to the services provided at the health care  
15 entity;

16 (6) A health care practitioner employed or affiliated with a hospital,  
17 who refers a patient to a health care entity that is owned or controlled by a hospital or  
18 under common ownership or control with a hospital if the health care practitioner does  
19 not have a direct beneficial interest in the health care entity;

20 (7) A health care practitioner or member of a single specialty group  
21 practice, including any person employed or affiliated with a hospital, who has a  
22 beneficial interest in a health care entity that is owned or controlled by a hospital or  
23 under common ownership or control with a hospital if:

24 (i) The health care practitioner or other member of that single  
25 specialty group practice provides the health care services to a patient pursuant to a  
26 referral or in accordance with a consultation requested by another health care  
27 practitioner who does not have a beneficial interest in the health care entity; or

28 (ii) The health care practitioner or other member of that single  
29 specialty group practice referring a patient to the facility, service, or entity personally  
30 performs or supervises the health care service or procedure;

31 (8) A health care practitioner with a beneficial interest in, or  
32 compensation arrangement with, a hospital or related institution as defined in §  
33 19-301 of the Health – General Article or a facility, service, or other entity that is  
34 owned or controlled by a hospital or related institution or under common ownership or  
35 control with a hospital or related institution if:

1 (i) The beneficial interest was held or the compensation  
2 arrangement was in existence on January 1, 1993; and

3 (ii) Thereafter the beneficial interest or compensation  
4 arrangement of the health care practitioner does not increase;

5 (9) A health care practitioner when treating an enrollee of a  
6 provider-sponsored organization as defined in § 19-7A-01 of the Health – General  
7 Article if the health care practitioner is referring enrollees to an affiliated health care  
8 provider of the provider-sponsored organization;

9 (10) A health care practitioner who refers a patient to a dialysis facility,  
10 if the patient has been diagnosed with end stage renal disease as defined in the  
11 Medicare regulations pursuant to the Social Security Act; or

12 (11) A health care practitioner who refers a patient to a hospital in  
13 which the health care practitioner has a beneficial interest if:

14 (i) The health care practitioner is authorized to perform  
15 services at the hospital; and

16 (ii) The ownership or investment interest is in the hospital itself  
17 and not solely in a subdivision of the hospital.

18 (e) A health care practitioner exempted from the provisions of this section in  
19 accordance with subsection (d) shall be subject to the disclosure provisions of § 1-303  
20 of this subtitle.

21 1-303.

22 (a) Except as provided in subsection (c) of this section and Title 12 of this  
23 article, a health care practitioner making a lawful referral shall disclose the existence  
24 of the beneficial interest in accordance with provisions of this section.

25 (b) Prior to referring a patient to a health care entity in which the  
26 practitioner, the practitioner's immediate family, or the practitioner in combination  
27 with the practitioner's immediate family owns a beneficial interest, the health care  
28 practitioner shall:

29 (1) Except if an oral referral is made by telephone, provide the patient  
30 with a written statement that:

31 (i) Discloses the existence of the ownership of the beneficial  
32 interest or compensation arrangement;

33 (ii) States that the patient may choose to obtain the health care  
34 service from another health care entity; and

(iii) Requires the patient to acknowledge in writing receipt of the statement;

(2) Except if an oral referral is made by telephone, insert in the medical record of the patient a copy of the written acknowledgement;

(3) Place on permanent display a written notice that is in a typeface that is large enough to be easily legible to the average person from a distance of 8 feet and that is in a location that is plainly visible to the patients of the health care practitioner disclosing all of the health care entities:

(i) In which the practitioner, the practitioner's immediate family, or the practitioner in combination with the practitioner's immediate family owns a beneficial interest; and

(ii) To which the practitioner refers patients; and

(4) Documents in the medical record of the patient that:

(i) A valid medical need exists for the referral; and

(ii) The practitioner has disclosed the existence of the beneficial interest to the patient.

(c) The provisions of this section do not apply to:

(1) A health care practitioner when treating a member of a health maintenance organization as defined in § 19-701 of the Health – General Article and the health care practitioner does not have a beneficial interest in the health care entity; or

(2) A health care practitioner who refers a patient:

(i) To another health care practitioner in the same group practice as the referring health care practitioner;

(ii) For in-office ancillary services, **EXCEPT IN-OFFICE ANCILLARY SERVICES AS DEFINED UNDER § 1-301(K)(2)**; or

(iii) For health care services provided through or by a health care entity owned or controlled by a hospital.

(d) A health care practitioner who fails to comply with any provision of this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$5,000.

**SUBTITLE 6. ACCREDITATION OF BUSINESS ENTITIES THAT FURNISH  
MAGNETIC RESONANCE IMAGING SERVICES, COMPUTED TOMOGRAPHY SCAN  
SERVICES, AND RADIATION THERAPY SERVICES.**

**1-601.**

(A) IN THIS SECTION, "HEALTH CARE ENTITY" HAS THE MEANING  
STATED IN § 1-301(G) OF THIS TITLE.

(B) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTIONS (C) AND (D) OF  
THIS SECTION, A HEALTH CARE ENTITY THAT FURNISHES MAGNETIC  
RESONANCE IMAGING SERVICES, COMPUTED TOMOGRAPHY SCAN SERVICES, OR  
RADIATION THERAPY SERVICES SHALL BE ACCREDITED TO PROVIDE THE  
SERVICES BY THE AMERICAN COLLEGE OF RADIOLOGY, THE AMERICAN  
COLLEGE OF RADIATION ONCOLOGY, THE INTERSOCIETAL ACCREDITATION  
COMMISSION, OR ANOTHER NATIONALLY RECOGNIZED ACCREDITATION  
ORGANIZATION, AS APPROPRIATE, WHOSE ACCREDITATION STANDARDS HAVE  
BEEN REVIEWED AND CONSIDERED ADEQUATE BY THE DEPARTMENT FOR  
MAGNETIC RESONANCE IMAGING, COMPUTED TOMOGRAPHY SCAN SERVICES, OR  
RADIATION THERAPY SERVICES.

(C) (1) ANY HEALTH CARE ENTITY THAT BEGINS FURNISHING  
MAGNETIC RESONANCE IMAGING SERVICES, COMPUTED TOMOGRAPHY SCAN  
SERVICES, OR RADIATION THERAPY SERVICES AFTER JULY 1, 2009, SHALL FILE  
AN APPLICATION FOR ACCREDITATION WITH ONE OF THE APPROPRIATE  
ACCREDITING ORGANIZATIONS SET FORTH IN SUBSECTION (B) OF THIS SECTION  
BY JANUARY 1, 2011, OR WITHIN 12 MONTHS OF THE DATE ON WHICH THE  
HEALTH CARE ENTITY BEGINS FURNISHING THE SERVICES, WHICHEVER PERIOD  
EXPIRES LATER.

(2) ANY HEALTH CARE ENTITY THAT FURNISHED MAGNETIC  
RESONANCE IMAGING SERVICES, COMPUTED TOMOGRAPHY SCAN SERVICES, OR  
RADIATION THERAPY SERVICES ON OR BEFORE JULY 1, 2009, THAT IS NOT  
ACCREDITED TO PROVIDE THE SERVICES BY ONE OF THE ACCREDITING  
ORGANIZATIONS SET FORTH IN SUBSECTION (B) OF THIS SECTION SHALL FILE  
AN APPLICATION FOR ACCREDITATION TO PROVIDE THE SERVICES BY JANUARY  
1, 2011.

(D) (1) NOTWITHSTANDING ANY PROVISION OF THIS SECTION, A  
HEALTH CARE ENTITY THAT FURNISHES MAGNETIC RESONANCE IMAGING  
SERVICES, COMPUTED TOMOGRAPHY SCAN SERVICES, OR RADIATION THERAPY  
SERVICES SHALL BE DEEMED PROVISIONALLY ACCREDITED UNDER THIS  
SECTION UNTIL JANUARY 1, 2011, OR FOR A PERIOD OF 12 MONTHS DATING

1 FROM THE DATE ON WHICH THE HEALTH CARE ENTITY BEGAN PROVIDING  
2 SERVICES, WHICHEVER PERIOD EXPIRES LATER.

3 (2) A HEALTH CARE ENTITY THAT HAS FILED AN APPLICATION  
4 FOR ACCREDITATION AS PROVIDED UNDER SUBSECTION (C) OF THIS SECTION  
5 AND HAS NOT BEEN REFUSED ACCREDITATION OR WITHDRAWN ITS  
6 APPLICATION SHALL BE DEEMED PROVISIONALLY ACCREDITED FOR AN  
7 ADDITIONAL 12-MONTH PERIOD BEGINNING ON THE DATE OF THE FILING OF  
8 THE APPLICATION.

9 (E) (1) AFTER A HEALTH CARE ENTITY BECOMES ACCREDITED AS  
10 PROVIDED UNDER SUBSECTION (B) OF THIS SECTION, THE ENTITY SHALL AT ALL  
11 TIMES MAINTAIN THE ACCREDITATION AND CONFORM THE MANNER IN WHICH  
12 IT FURNISHES THE SERVICES TO THE STANDARDS SET BY THE APPROPRIATE  
13 ACCREDITING BODY.

14 (2) EVIDENCE OF THE ACCREDITATION SHALL BE MAINTAINED AT  
15 EVERY LOCATION IN WHICH ANY MAGNETIC RESONANCE IMAGING SERVICES,  
16 COMPUTED TOMOGRAPHY SCAN SERVICES, AND RADIATION THERAPY SERVICES  
17 ARE FURNISHED AND SHALL BE MADE AVAILABLE FOR INSPECTION ON  
18 REQUEST OF THE DEPARTMENT.

19 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
20 July 1, 2009.