

Department of Legislative Services
 Maryland General Assembly
 2013 Session

FISCAL AND POLICY NOTE

Senate Bill 738 (Senator Dyson, *et al.*)
 Education, Health, and Environmental Affairs

Health Occupations - Magnetic Resonance Imaging Services - Study

This bill requires the Department of Health and Mental Hygiene (DHMH) to conduct a study of the ordering of magnetic resonance imaging (MRI) services by physicians in nonradiology group practices that previously owned or leased an MRI machine and referred patients for in-office MRI scans. DHMH must compare the number of MRI scans ordered by the physicians during two specified time periods and determine whether a change in patterns of ordering scans occurred. By April 1, 2014, DHMH must report the results of the study to specified committees of the General Assembly.

The bill takes effect July 1, 2013.

Fiscal Summary

State Effect: Special fund expenditures for the Maryland Health Care Commission (MHCC) increase by \$50,000 in FY 2014 only for contractual services to complete the study.

(in dollars)	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
Revenues	\$0	\$0	\$0	\$0	\$0
SF Expenditure	50,000	0	0	0	0
Net Effect	(\$50,000)	\$0	\$0	\$0	\$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: With certain exceptions, a health care practitioner may not refer a patient, or direct an employee of or person under contract with the health care practitioner to refer a patient, to a health care entity (1) in which the practitioner or the practitioner and his immediate family owns a beneficial interest; (2) in which the practitioner's immediate family owns a beneficial interest of 3% or greater; or (3) with which the practitioner, the practitioner's immediate family, or the practitioner and the practitioner's immediate family has a compensation arrangement. This is known as self-referral. A health care practitioner who fails to comply with these prohibitions is guilty of a misdemeanor and on conviction is subject to a fine of up to \$5,000.

Self-referral *is* allowed when a health care practitioner refers a patient to another practitioner in the same group practice as the referring practitioner. In addition, a health care practitioner may refer in-office ancillary services or tests that are (1) personally furnished by the referring health care practitioner, a practitioner in the same group practice as the referring practitioner, or an individual employed and personally supervised by the qualified referring practitioner or a practitioner in the same group practice as the referring practitioner; (2) provided in the same building where the referring practitioner or a practitioner in the same group practice as the referring practitioner furnishes services; and (3) billed by the practitioner performing or supervising the services or a group practice of which the practitioner performing or supervising the services is a member.

Regulations require any facility operating major medical equipment (including MRIs, radiation therapy equipment, and computed tomography (CT) scanners) in the State to be licensed by DHMH. Licensees are subject to random inspections and have to demonstrate that all operating personnel meet appropriate qualifications. Licensees must also meet specific safety standards and develop and implement a quality assurance program that ensures all personnel supervising or operating major medical equipment follow appropriate use guidelines.

Background: A January 4, 2006 letter of advice from the Attorney General's Office stated that the State's self-referral law would bar a patient referral for an MRI if the MRI machine is being leased by the group practice of which the referring practitioner is a member and the test is being performed by the group practice. State law would bar this referral even if the MRI is performed by or under the direct supervision of the referring practitioner. Further, the letter of advice stated that the statutory definition of a "health care service" includes MRIs, CT scans, and radiation therapy services and includes ordinary medical activities performed by a physician in the course of treatment. A February 23, 2006 opinion letter affirmed the analysis and conclusions in that letter of advice. The January 2006 letter of advice and February 2006 opinion letter were issued

after a ruling from the Circuit Court for Montgomery County in 2005 in which the court ruled that a referral by an orthopedic physician for a patient to have an MRI performed on a machine leased by the orthopedic physician's group practice met the statutory exception.

In December 2006, the State Board of Physicians (MBP) issued a Declaratory Ruling that a referral by an orthopedic physician for an MRI to be performed on or by an MRI machine owned or leased by the orthopedic practice is an illegal self-referral within the meaning of the Maryland Self-referral Law. In October 2007, the Circuit Court for Montgomery County upheld the board's decision and, in January 2011, the Maryland Court of Appeals upheld the lower court's decision. MBP now has one staff dedicated to investigating self-referral cases.

State Expenditures: Special fund expenditures increase for MHCC by \$50,000 in fiscal 2014 to conduct the study. According to MHCC, the all payer claims database does not contain the information required to conduct the study; therefore, MHCC would have to procure a contractor to perform the study.

Additional Comments: A related bill, SB 505 of 2012, would have modified the current exemption for a radiologist group practice or an office consisting solely of one or more radiologists from the prohibition on self-referrals for "in-house ancillary services" (*i.e.*, MRI, radiation therapy, or CT scan services). The bill also would have required a health care practitioner who makes a referral to disclose to the patient his or her beneficial interest in the entity to which the patient is being referred. SB 505 was heard by the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken.

Additional Information

Prior Introductions: None.

Cross File: HB 536 (Delegate Reznik, *et al.*) - Health and Government Operations.

Information Source(s): Department of Health and Mental Hygiene, Department of Legislative Services

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