

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE
First Reader

Senate Bill 1032 (Senator Conway)
Education, Health, and Environmental Affairs

Health Occupations - Prohibited Patient Referrals - Exceptions

This bill establishes that general prohibitions against self-referrals by health care practitioners do not apply to a health care practitioner who has a beneficial interest or compensation arrangement that meets specified requirements of federal law or that complies with a waiver issued by the U.S. Department of Health and Human Services (HHS). The bill also alters the definition of “referral” and limits specified exceptions to in-office ancillary services as defined under State law.

Fiscal Summary

State Effect: The bill does not directly affect State finances or operations.

Local Effect: The bill does not directly affect local government finances or operations.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary/Current Law:

Self-referral: A health care practitioner may not refer a patient, or direct an employee or a person under contract with the health care practitioner to refer a patient, to a health care entity (1) in which the health care practitioner or the practitioner in combination with the practitioner’s 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 health care practitioner, the practitioner’s immediate family, or the practitioner in combination with the practitioner’s immediate family has a compensation arrangement.

This prohibition does not apply to, among other specified situations, a health care practitioner who refers in-office ancillary services or tests that are (1) personally furnished by the referring health care practitioner, a health care practitioner in the same group practice as the referring health care practitioner, or an individual who is employed and personally supervised by the qualified referring health care practitioner or a health care practitioner in the same group practice as the referring health care practitioner; (2) provided in the same building where the referring health care practitioner or a health care practitioner in the same group practice as the referring health care practitioner furnishes services; and (3) billed by the health care practitioner performing or supervising the services or a group practice of which the health care practitioner performing or supervising the services is a member.

The bill specifies that the prohibition on self-referral does not apply to a health care practitioner who has a beneficial interest in or compensation arrangement with a health care entity if (1) the beneficial interest or compensation arrangement meets an exception specified under the federal Stark Law or (2) the beneficial interest or compensation agreement complies with specified waivers issued by HHS. The health care services that may be performed under the federal Stark Law exception for in-office ancillary services must be limited to “in-office ancillary services” as defined under State law.

“In-office ancillary services” are basic health care services and tests routinely performed in the office of one or more health care practitioners; except for a radiologist group practice or an office consisting solely of one or more radiologists, in-office ancillary services do not include magnetic resonance imaging services, radiation therapy services, or computer tomography scan services.

The bill also establishes that “referral” does not include a request for or the establishment of a plan of care for a health care service personally performed by the health care practitioner who makes the request or establishes the plan of care. Likewise, it does not include a request for, an order of, or the certification or recertification of the need for a health care service by a health care practitioner that is exempted from the definition of referral under specified federal law.

Definition of Compensation Arrangement: “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. “Compensation arrangement” does not include, among other specified agreements:

- an arrangement between a health care entity and a health care practitioner (or an immediate family member) for the provision of services, as an independent contractor, if (1) the arrangement is for identifiable services; (2) the amount of remuneration is consistent with the fair market value of the services and is not

determined based on the volume or value of any referrals; and (3) the compensation is provided in accordance with an agreement that would be commercially reasonable even if no referrals were made; and

- an arrangement for compensation provided by a health care entity to a health care practitioner (or an immediate family member) to induce the health care practitioner to relocate to a geographic area served by the health care entity in order to be a member of the medical staff of a hospital, if (1) the health care practitioner is not required to refer patients to the health care entity; (2) the amount of the compensation is not determined based on the volume or value of any referrals; and (3) the health care entity needs the services of the health care practitioner to meet community health care needs and has difficulty in recruiting a practitioner.

The bill adds to each of these exceptions that the special rules on compensation established under the federal Stark Law apply to the arrangement. The bill also adds an additional exception to the definition of compensation arrangement – an arrangement that is not a direct compensation arrangement or an indirect compensation arrangement as specified under the federal Stark Law.

Payment Excluded for Prohibited Referrals: Under the Insurance Article, each individual or group health insurance policy issued in the State must include a provision that excludes payment for health care services that the appropriate regulatory board determines were provided as a result of a prohibited referral. An entity may seek repayment from a health care practitioner for any money paid for a claim, bill, or other demand or request for payment for health care services that were provided as a result of a prohibited referral. Additionally, an entity may seek a refund of a payment made for a claim, bill, or other demand or request for payment that is subsequently determined to be for a health care service provided as a result of a prohibited referral.

Federal Stark Law: The federal physician referral law, 42 U.S.C. § 1395(nn), also referred to as the “Stark Law,” prohibits a physician from referring patients to an entity for a designated health service if the physician or a member of the physician’s immediate family has a financial relationship with the entity, unless an exception applies; exceptions are specified in federal regulations (42 C.F.R. Part 411, Subpart J).

Small Business Effect: Health care practitioners and health care entities may be affected by the bill’s alteration of State law prohibiting self-referrals by health care practitioners. The bill incorporates federal Stark Law exceptions and requirements for physician self-referrals into State law (which prohibits self-referrals for all health care practitioners, not just physicians). The insurance industry may also be affected, since the bill alters requirements for exemptions that would not be excluded under insurance policies.

Additional Information

Prior Introductions: None.

Cross File: HB 929 (Delegate Reznik, *et al.*) - Health and Government Operations.

Information Source(s): Office of the Attorney General, Department of Health and Mental Hygiene, Maryland Insurance Administration, Department of Legislative Services

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Analysis by: Sasika Subramaniam

Direct Inquiries to:
(410) 946-5510
(301) 970-5510