

SENATE BILL 762

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1999 Regular Session  
9r2594

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By: **Senator Hafer**

Introduced and read first time: March 2, 1999

Assigned to: Rules

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A BILL ENTITLED

1 AN ACT concerning

2 **Patient Referrals by Health Care Practitioners - Prohibition - Exemptions**

3 FOR the purpose of excluding certain payments made for the rental or lease of  
4 equipment, or for the sale of property or of a health care practice, from the  
5 definition of "compensation arrangement" for purposes of certain prohibitions  
6 and disclosure requirements relating to patient referrals; exempting from a  
7 certain prohibition against patient referrals a health care practitioner who  
8 refers a patient to a hospital in which the practitioner has a beneficial interest  
9 if the practitioner meets certain requirements; and generally relating to certain  
10 patient referrals by certain health care practitioners.

11 BY repealing and reenacting, with amendments,  
12 Article - Health Occupations  
13 Section 1-301(c) and 1-302  
14 Annotated Code of Maryland  
15 (1994 Replacement Volume and 1998 Supplement)

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

18 **Article - Health Occupations**

19 1-301.

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

23 (2) "Compensation arrangement" does not include:

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

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

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

7 1. The arrangement is for identifiable services;

8 2. The amount of the remuneration under the arrangement  
9 is consistent with the fair market value of the service and is not determined in a  
10 manner that takes into account, directly or indirectly, the volume or value of any  
11 referrals by the referring health care practitioner; and

12 3. The compensation is provided in accordance with an  
13 agreement that would be commercially reasonable even if no referrals were made to  
14 the health care provider;

15 (iv) Compensation for health care services pursuant to a referral  
16 from a health care practitioner and rendered by a health care entity, that employs or  
17 contracts with an immediate family member of the health care practitioner, in which  
18 the immediate family member's compensation is not based on the referral;

19 (v) An arrangement for compensation which is provided by a health  
20 care entity to a health care practitioner or the immediate family member of the health  
21 care practitioner to induce the health care practitioner or the immediate family  
22 member of the health care practitioner to relocate to the geographic area served by  
23 the health care entity in order to be a member of the medical staff of a hospital, if:

24 1. The health care practitioner or the immediate family  
25 member of the health care practitioner is not required to refer patients to the health  
26 care entity;

27 2. The amount of the compensation under the arrangement  
28 is not determined in a manner that takes into account, directly or indirectly, the  
29 volume or value of any referrals by the referring health care practitioner; and

30 3. The health care entity needs the services of the  
31 practitioner to meet community health care needs and has had difficulty in recruiting  
32 a practitioner; [or]

33 (vi) Payments made for the rental or lease of office space if the  
34 payments are:

35 1. At fair market value; and

36 2. In accordance with an arm's length transaction;

1 (VII) PAYMENTS MADE FOR THE RENTAL OR LEASE OF EQUIPMENT  
2 IF THE PAYMENTS ARE:

- 3 1. AT FAIR MARKET VALUE; AND  
4 2. IN ACCORDANCE WITH AN ARM'S LENGTH TRANSACTION;  
5 OR

6 (VIII) PAYMENTS MADE FOR THE SALE OF PROPERTY OR A HEALTH  
7 CARE PRACTICE IF THE PAYMENTS ARE:

- 8 1. AT FAIR MARKET VALUE;  
9 2. IN ACCORDANCE WITH AN ARM'S LENGTH TRANSACTION;  
10 AND  
11 3. THE REMUNERATION IS PROVIDED IN ACCORDANCE WITH  
12 AN AGREEMENT THAT WOULD BE COMMERCIALY REASONABLE EVEN IF NO  
13 REFERRALS WERE MADE.

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 immediate  
23 family, or the practitioner in combination with the practitioner's immediate family  
24 has a compensation arrangement.

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

34 (1) A health care practitioner when treating a member of a health  
35 maintenance organization as defined in § 19-701 of the Health - General Article if

1 the health care practitioner does not have a beneficial interest in the health care  
2 entity;

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

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

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

11 (i) Personally furnished by:

12 1. The referring health care practitioner;

13 2. A health care practitioner in the same group practice as  
14 the referring health care practitioner; or

15 3. An individual who is employed and personally supervised  
16 by the qualified referring health care practitioner or a health care practitioner in the  
17 same group practice as the referring health care practitioner;

18 (ii) Provided in the same building where the referring health care  
19 practitioner or a health care practitioner in the same group practice as the referring  
20 health care practitioner furnishes services; and

21 (iii) Billed by:

22 1. The health care practitioner performing or supervising the  
23 services; or

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

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

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

30 (ii) The Secretary, in conjunction with the Health Resources  
31 Planning Commission, determines that the health care entity is needed to ensure  
32 appropriate access for the community to the services provided at the health care  
33 entity;

34 (6) A health care practitioner employed or affiliated with a hospital, who  
35 refers a patient to a health care entity that is owned or controlled by a hospital or

1 under common ownership or control with a hospital if the health care practitioner  
2 does not have a direct beneficial interest in the health care entity;

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

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

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

14 (8) A health care practitioner with a beneficial interest in, or  
15 compensation arrangement with, a hospital or related institution as defined in §  
16 19-301 of the Health - General Article or a facility, service, or other entity that is  
17 owned or controlled by a hospital or related institution or under common ownership or  
18 control with a hospital or related institution if:

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

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

23 (9) A health care practitioner when treating an enrollee of a  
24 provider-sponsored organization as defined in § 19-7A-01 of the Health - General  
25 Article if the health care practitioner is referring enrollees to an affiliated health care  
26 provider of the provider-sponsored organization; [or]

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

30 (11) A HEALTH CARE PRACTITIONER WHO REFERS A PATIENT TO A  
31 HOSPITAL IN WHICH THE HEALTH CARE PRACTITIONER HAS A BENEFICIAL  
32 INTEREST IF:

33 (I) THE HEALTH CARE PRACTITIONER IS AUTHORIZED TO  
34 PERFORM SERVICES AT THE HOSPITAL; AND

35 (II) THE OWNERSHIP OR INVESTMENT INTEREST IS IN THE  
36 HOSPITAL ITSELF AND NOT SOLELY IN A SUBDIVISION OF THE HOSPITAL.

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

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
5 July 1, 1999.