
By: **Senator Hafer**
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CHAPTER _____

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.

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

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

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

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

11 1. The arrangement is for identifiable services;

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

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

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

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

28 1. The health care practitioner or the immediate family
29 member of the health care practitioner is not required to refer patients to the health
30 care entity;

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

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

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

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
3 the health care practitioner does not have a beneficial interest in the health care
4 entity;

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

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

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

13 (i) Personally furnished by:

14 1. The referring health care practitioner;

15 2. A health care practitioner in the same group practice as
16 the referring health care practitioner; or

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

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

23 (iii) Billed by:

24 1. The health care practitioner performing or supervising the
25 services; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (II) THE OWNERSHIP OR INVESTMENT INTEREST IS IN THE
38 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.