

HOUSE BILL 1414

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By: **Delegates Ali, Benson, Costa, Elliott, Kipke, McDonough, Montgomery, Oaks, Pena-Melnyk, Reznik, Riley, Stull, F. Turner, V. Turner, and Weldon**

Introduced and read first time: February 8, 2008

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Patient Referrals for Radiation Therapy Services**

3 FOR the purpose of repealing radiation therapy services from the services not included
4 in the definition of in-office ancillary services of health care professionals under
5 the laws relating to patient referrals; providing that certain prohibitions on
6 referrals do not apply to referrals for certain radiation therapy services; and
7 generally relating to patient referrals for radiation therapy.

8 BY repealing and reenacting, with amendments,
9 Article – Health Occupations
10 Section 1-301
11 Annotated Code of Maryland
12 (2005 Replacement Volume and 2007 Supplement)

13 BY repealing and reenacting, without amendments,
14 Article – Health Occupations
15 Section 1-302(a) and (d)(4)
16 Annotated Code of Maryland
17 (2005 Replacement Volume and 2007 Supplement)

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

20 **Article – Health Occupations**

21 1-301.

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

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

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

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

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

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

20 (2) “Compensation arrangement” does not include:

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

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

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

30 1. The arrangement is for identifiable services;

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

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

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

8 (v) An arrangement for compensation which is provided by a
9 health care entity to a health care practitioner or the immediate family member of the
10 health care practitioner to induce the health care practitioner or the immediate family
11 member of the health care practitioner to relocate to the geographic area served by the
12 health care entity in order to be a member of the medical staff of a hospital, if:

13 1. The health care practitioner or the immediate family
14 member of the health care practitioner is not required to refer patients to the health
15 care entity;

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

20 3. The health care entity needs the services of the
21 practitioner to meet community health care needs and has had difficulty in recruiting
22 a practitioner;

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

25 1. At fair market value; and

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

27 (vii) Payments made for the rental or lease of equipment if the
28 payments are:

29 1. At fair market value; and

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

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

33 1. At fair market value;

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

1 3. The remuneration is provided in accordance with an
2 agreement that would be commercially reasonable even if no referrals were made.

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

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

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

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

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

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

23 (g) “Health care entity” means a business entity that provides health care
24 services for the:

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

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

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

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

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

- 1 (1) Spouse;
- 2 (2) Child;
- 3 (3) Child's spouse;
- 4 (4) Parent;
- 5 (5) Spouse's parent;
- 6 (6) Sibling; or
- 7 (7) Sibling's spouse.

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

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

- 12 (i) Magnetic resonance imaging services; **OR**
- 13 (ii) [Radiation therapy services; or
- 14 (iii)] Computer tomography scan services.

15 (1) (1) "Referral" means any referral of a patient for health care services.

16 (2) "Referral" includes:

17 (i) The forwarding of a patient by one health care practitioner
18 to another health care practitioner or to a health care entity outside the health care
19 practitioner's office or group practice; or

20 (ii) The request or establishment by a health care practitioner of
21 a plan of care for the provision of health care services outside the health care
22 practitioner's office or group practice.

23 1-302.

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

27 (1) In which the health care practitioner or the practitioner in
28 combination with the practitioner's immediate family owns a beneficial interest;

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

3 (3) With which the health care practitioner, the practitioner's
4 immediate family, or the practitioner in combination with the practitioner's immediate
5 family has a compensation arrangement.

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

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

9 (i) Personally furnished by:

10 1. The referring health care practitioner;

11 2. A health care practitioner in the same group practice
12 as the referring health care practitioner; or

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

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

19 (iii) Billed by:

20 1. The health care practitioner performing or
21 supervising the services; or

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

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
25 October 1, 2008.