

SENATE BILL 708

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By: **Senators Dyson, Colburn, Lenett, Middleton, and Zirkin**

Introduced and read first time: February 1, 2008

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Patient Referrals – Imaging and Radiation Therapy Services – Accreditation**

3 FOR the purpose of altering the definition of “in-office ancillary services” as it relates
4 to certain referrals by certain health care practitioners so as to include magnetic
5 resonance imaging services, radiation therapy services, and computed
6 tomography scan services; altering certain exceptions to certain patient referral
7 prohibitions; requiring health care entities that furnish magnetic resonance
8 imaging services, radiation therapy services, and computed tomography scan
9 services to receive accreditation from certain organizations by certain dates;
10 authorizing the provisional accreditation of certain health care entities;
11 requiring certain health care entities to maintain certain standards and make
12 available evidence of accreditation; defining a certain term; and generally
13 relating to the referral of patients for resonance imaging services, radiation
14 therapy services, and computed tomography scan services.

15 BY repealing and reenacting, with amendments,
16 Article – Health Occupations
17 Section 1–301, 1–302, 1–303
18 Annotated Code of Maryland
19 (2005 Replacement Volume and 2007 Supplement)

20 BY adding to
21 Article – Health Occupations
22 Section 1–701 to be under the new subtitle “Subtitle 7. Accreditation of
23 Business Entities that Furnish Magnetic Resonance Imaging Services,
24 Computer Tomography Scan Services, and Radiation Therapy Services”
25 Annotated Code of Maryland
26 (2005 Replacement Volume and 2007 Supplement)

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **Article – Health Occupations**

2 1–301.

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

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

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

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

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

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

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

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

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;

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

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

- 1 1. The arrangement is for identifiable services;
- 2 2. The amount of the remuneration under the
3 arrangement is consistent with the fair market value of the service and is not
4 determined in a manner that takes into account, directly or indirectly, the volume or
5 value of any referrals by the referring health care practitioner; and
- 6 3. The compensation is provided in accordance with an
7 agreement that would be commercially reasonable even if no referrals were made to
8 the health care provider;
- 9 (iv) Compensation for health care services pursuant to a referral
10 from a health care practitioner and rendered by a health care entity, that employs or
11 contracts with an immediate family member of the health care practitioner, in which
12 the immediate family member's compensation is not based on the referral;
- 13 (v) An arrangement for compensation which is provided by a
14 health care entity to a health care practitioner or the immediate family member of the
15 health care practitioner to induce the health care practitioner or the immediate family
16 member of the health care practitioner to relocate to the geographic area served by the
17 health care entity in order to be a member of the medical staff of a hospital, if:
- 18 1. The health care practitioner or the immediate family
19 member of the health care practitioner is not required to refer patients to the health
20 care entity;
- 21 2. The amount of the compensation under the
22 arrangement is not determined in a manner that takes into account, directly or
23 indirectly, the volume or value of any referrals by the referring health care
24 practitioner; and
- 25 3. The health care entity needs the services of the
26 practitioner to meet community health care needs and has had difficulty in recruiting
27 a practitioner;
- 28 (vi) Payments made for the rental or lease of office space if the
29 payments are:
- 30 1. At fair market value; and
- 31 2. In accordance with an arm's length transaction;
- 32 (vii) Payments made for the rental or lease of equipment if the
33 payments are:
- 34 1. At fair market value; and
- 35 2. In accordance with an arm's length transaction; or

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

- 3 1. At fair market value;
- 4 2. In accordance with an arm's length transaction; and
- 5 3. The remuneration is provided in accordance with an
6 agreement that would be commercially reasonable even if no referrals were made.

7 (d) "Direct supervision" means a health care practitioner is present on the
8 premises where the health care services or tests are provided and is available for
9 consultation within the treatment area.

10 (e) "Faculty practice plan" means a tax exempt organization established
11 under Maryland law by or at the direction of a university to accommodate the
12 professional practice of members of the faculty who are health care practitioners.

13 (f) "Group practice" means a group of two or more health care practitioners
14 legally organized as a partnership, professional corporation, foundation, not-for-profit
15 corporation, faculty practice plan, or similar association:

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

20 (2) For which substantially all of the services of the health care
21 practitioners who are members of the group are provided through the group and are
22 billed in the name of the group and amounts so received are treated as receipts of the
23 group; and

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

27 (g) "Health care entity" means a business entity that provides health care
28 services for the:

29 (1) Testing, diagnosis, or treatment of human disease or dysfunction;
30 or

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

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

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

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

7 (1) Spouse;

8 (2) Child;

9 (3) Child’s spouse;

10 (4) Parent;

11 (5) Spouse’s parent;

12 (6) Sibling; or

13 (7) Sibling’s spouse.

14 (k) (1) “In-office ancillary services” means those basic health care services
 15 and tests routinely performed in the office of one or more health care practitioners.

16 (2) (I) [Except for a radiologist group practice or an office
 17 consisting solely of one or more radiologists, “in-office ancillary services” does not
 18 include:

19 (i) Magnetic] **“IN-OFFICE ANCILLARY SERVICES” INCLUDES**
 20 **MAGNETIC** resonance imaging services [;

21 (ii) Radiation], **RADIATION** therapy services [;], or

22 [(iii) Computer] **COMPUTER** tomography scan services, **IF THE**
 23 **HEALTH CARE ENTITY FURNISHING THE SERVICES MEETS THE ACCREDITATION**
 24 **REQUIREMENTS SET FORTH IN TITLE 1, SUBTITLE 6 OF THIS ARTICLE; AND**

25 **(II) THE HEALTH CARE ENTITY FURNISHING THE SERVICES**
 26 **IS A RADIOLOGIST GROUP PRACTICE OR AN OFFICE CONSISTING SOLELY OF ONE**
 27 **OR MORE RADIOLOGISTS; OR**

28 **(III) THE SERVICES ARE PROVIDED IN COMPLIANCE WITH §**
 29 **1-302(D)(4)(I)4 AND (II)2 OF THIS SUBTITLE.**

1 (L) **“PERSONALLY SUPERVISED” MEANS THE RESPONSIBILITY OF A**
2 **HEALTH CARE PRACTITIONER TO EXERCISE ON-SITE SUPERVISION OR**
3 **IMMEDIATELY AVAILABLE DIRECTION FOR EMPLOYEES PERFORMING**
4 **IN-OFFICE ANCILLARY SERVICES OR TESTS AS A RESULT OF A REFERRAL TO**
5 **THE HEALTH CARE PRACTITIONER.**

6 [1] (M) (1) “Referral” means any referral of a patient for health care
7 services.

8 (2) “Referral” includes:

9 (i) The forwarding of a patient by one health care practitioner
10 to another health care practitioner or to a health care entity outside the health care
11 practitioner’s office or group practice; or

12 (ii) The request or establishment by a health care practitioner of
13 a plan of care for the provision of health care services outside the health care
14 practitioner’s office or group practice.

15 1–302.

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

19 (1) In which the health care practitioner or the practitioner in
20 combination with the practitioner’s immediate family owns a beneficial interest;

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

23 (3) With which the health care practitioner, the practitioner’s
24 immediate family, or the practitioner in combination with the practitioner’s immediate
25 family has a compensation arrangement.

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

30 (c) Subsection (a) of this section applies to any arrangement or scheme,
31 including a cross-referral arrangement, which the health care practitioner knows or
32 should know has a principal purpose of assuring indirect referrals that would be in
33 violation of subsection (a) of this section if made directly.

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

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

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

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

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

12 (i) **1.** Personally furnished by:

13 [1.] **A.** The referring health care practitioner;

14 [2.] **B.** A health care practitioner in the same group
 15 practice as the referring health care practitioner; or

16 [3.] **C.** An individual who is employed and personally
 17 supervised by the qualified referring health care practitioner or a health care
 18 practitioner in the same group practice as the referring health care practitioner; **OR**

19 **2. FOR MAGNETIC RESONANCE IMAGING SERVICES,**
 20 **RADIATION THERAPY SERVICES, AND COMPUTER TOMOGRAPHY SCAN SERVICES,**
 21 **PERSONALLY FURNISHED BY AN INDIVIDUAL WHO IS EMPLOYED AND**
 22 **PERSONALLY SUPERVISED BY THE QUALIFIED REFERRING HEALTH CARE**
 23 **PRACTITIONER OR A HEALTH CARE PRACTITIONER IN THE SAME GROUP**
 24 **PRACTICE AS THE REFERRING HEALTH CARE PRACTITIONER;**

25 (ii) Provided [in]:

26 **1. IN** the same building where the referring health care
 27 practitioner or a health care practitioner in the same group practice as the referring
 28 health care practitioner furnishes services; [and] **OR**

29 **2. FOR MAGNETIC RESONANCE IMAGING SERVICES,**
 30 **RADIATION THERAPY SERVICES, AND COMPUTER TOMOGRAPHY SCAN SERVICES,**
 31 **DURING THE REGULAR OFFICE HOURS MAINTAINED BY THE QUALIFIED**
 32 **REFERRING HEALTH CARE PRACTITIONER OR A HEALTH CARE PRACTITIONER**
 33 **IN THE SAME GROUP PRACTICE AS THE REFERRING HEALTH CARE**
 34 **PRACTITIONER IN THE SAME BUILDING WHERE THE REFERRING HEALTH CARE**

1 **PRACTITIONER OR A HEALTH CARE PRACTITIONER IN THE SAME GROUP**
2 **PRACTICE FURNISHES SERVICES; AND**

3 (iii) Billed by:

4 1. The health care practitioner performing or
5 supervising the services; or

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

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

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

12 (ii) The Secretary, in conjunction with the Maryland Health
13 Care Commission, determines that the health care entity is needed to ensure
14 appropriate access for the community to the services provided at the health care
15 entity;

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

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

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

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

31 (8) A health care practitioner with a beneficial interest in, or
32 compensation arrangement with, a hospital or related institution as defined in §
33 19-301 of the Health – General Article or a facility, service, or other entity that is
34 owned or controlled by a hospital or related institution or under common ownership or
35 control with a hospital or related institution if:

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

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

5 (9) A health care practitioner when treating an enrollee of a
6 provider-sponsored organization as defined in § 19-7A-01 of the Health - General
7 Article if the health care practitioner is referring enrollees to an affiliated health care
8 provider of the provider-sponsored organization;

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

12 (11) A health care practitioner who refers a patient to a hospital in
13 which the health care practitioner has a beneficial interest if:

14 (i) The health care practitioner is authorized to perform
15 services at the hospital; and

16 (ii) The ownership or investment interest is in the hospital itself
17 and not solely in a subdivision of the hospital.

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

21 1-303.

22 (a) Except as provided in subsection (c) of this section and Title 12 of this
23 article, a health care practitioner making a lawful referral shall disclose the existence
24 of the beneficial interest in accordance with provisions of this section.

25 (b) Prior to referring a patient to a health care entity in which the
26 practitioner, the practitioner's immediate family, or the practitioner in combination
27 with the practitioner's immediate family owns a beneficial interest, the health care
28 practitioner shall:

29 (1) Except if an oral referral is made by telephone, provide the patient
30 with a written statement that:

31 (i) Discloses the existence of the ownership of the beneficial
32 interest or compensation arrangement;

33 (ii) States that the patient may choose to obtain the health care
34 service from another health care entity; and

1 (iii) Requires the patient to acknowledge in writing receipt of the
2 statement;

3 (2) Except if an oral referral is made by telephone, insert in the
4 medical record of the patient a copy of the written acknowledgement;

5 (3) Place on permanent display a written notice that is in a typeface
6 that is large enough to be easily legible to the average person from a distance of 8 feet
7 and that is in a location that is plainly visible to the patients of the health care
8 practitioner disclosing all of the health care entities:

9 (i) In which the practitioner, the practitioner's immediate
10 family, or the practitioner in combination with the practitioner's immediate family
11 owns a beneficial interest; and

12 (ii) To which the practitioner refers patients; and

13 (4) Documents in the medical record of the patient that:

14 (i) A valid medical need exists for the referral; and

15 (ii) The practitioner has disclosed the existence of the beneficial
16 interest to the patient.

17 (c) The provisions of this section do not apply to:

18 (1) A health care practitioner when treating a member of a health
19 maintenance organization as defined in § 19-701 of the Health – General Article and
20 the health care practitioner does not have a beneficial interest in the health care
21 entity; or

22 (2) A health care practitioner who refers a patient:

23 (i) To another health care practitioner in the same group
24 practice as the referring health care practitioner;

25 (ii) For in-office ancillary services, **EXCEPT IN-OFFICE**
26 **ANCILLARY SERVICES AS DEFINED UNDER § 1-301(K)(2)**; or

27 (iii) For health care services provided through or by a health
28 care entity owned or controlled by a hospital.

29 (d) A health care practitioner who fails to comply with any provision of this
30 section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding
31 \$5,000.

1 **SUBTITLE 7. ACCREDITATION OF BUSINESS ENTITIES THAT FURNISH**
2 **MAGNETIC RESONANCE IMAGING SERVICES, COMPUTER TOMOGRAPHY SCAN**
3 **SERVICES, AND RADIATION THERAPY SERVICES.**

4 **1-701.**

5 (A) IN THIS SECTION, "HEALTH CARE ENTITY" HAS THE MEANING
6 STATED IN § 1-301(G) OF THIS TITLE.

7 (B) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTIONS (C) AND (D) OF
8 THIS SECTION, A HEALTH CARE ENTITY THAT FURNISHES MAGNETIC
9 RESONANCE IMAGING SERVICES, COMPUTER TOMOGRAPHY SCAN SERVICES, OR
10 RADIATION THERAPY SERVICES SHALL BE ACCREDITED TO PROVIDE THE
11 SERVICES BY THE AMERICAN COLLEGE OF RADIOLOGY, THE AMERICAN
12 COLLEGE OF RADIATION ONCOLOGY, THE INTERSOCIETAL ACCREDITATION
13 COMMISSION, OR ANOTHER NATIONALLY RECOGNIZED ACCREDITATION
14 ORGANIZATION, AS APPROPRIATE, WHOSE ACCREDITATION STANDARDS HAVE
15 BEEN REVIEWED AND DEEMED ADEQUATE BY THE DEPARTMENT FOR MAGNETIC
16 RESONANCE IMAGING, COMPUTER TOMOGRAPHY SCAN SERVICES, OR
17 RADIATION THERAPY SERVICES.

18 (C) (1) ANY HEALTH CARE ENTITY THAT BEGINS FURNISHING
19 MAGNETIC RESONANCE IMAGING SERVICES, COMPUTER TOMOGRAPHY SCAN
20 SERVICES, OR RADIATION THERAPY SERVICES AFTER OCTOBER 1, 2008, SHALL
21 FILE AN APPLICATION FOR ACCREDITATION WITH ONE OF THE APPROPRIATE
22 ACCREDITING ORGANIZATIONS SET FORTH IN SUBSECTION (B) OF THIS SECTION
23 BY APRIL 1, 2010, OR WITHIN 12 MONTHS OF THE DATE ON WHICH THE HEALTH
24 CARE ENTITY BEGINS FURNISHING THE SERVICES, WHICHEVER PERIOD
25 EXPIRES LATER.

26 (2) ANY HEALTH CARE ENTITY THAT FURNISHED MAGNETIC
27 RESONANCE IMAGINE SERVICES, COMPUTER TOMOGRAPHY SCAN SERVICES, OR
28 RADIATION THERAPY SERVICES ON OR BEFORE OCTOBER 1, 2008, THAT IS NOT
29 ACCREDITED TO PROVIDE THE SERVICES BY ONE OF THE ACCREDITING
30 ORGANIZATIONS SET FORTH IN SUBSECTION (B) OF THIS SECTION SHALL FILE
31 AN APPLICATION FOR ACCREDITATION TO PROVIDE THE SERVICES BY APRIL 1,
32 2010.

33 (D) (1) NOTWITHSTANDING ANY PROVISION OF THIS SECTION, A
34 HEALTH CARE ENTITY THAT FURNISHES MAGNETIC RESONANCE IMAGING
35 SERVICES, COMPUTER TOMOGRAPHY SCAN SERVICES, OR RADIATION THERAPY
36 SERVICES SHALL BE DEEMED PROVISIONALLY ACCREDITED UNDER THIS
37 SECTION UNTIL APRIL 1, 2010, OR FOR A PERIOD OF 12 MONTHS DATING FROM

1 THE DATE ON WHICH THE HEALTH CARE ENTITY BEGAN PROVIDING SERVICES,
2 WHICHEVER PERIOD EXPIRES LATER.

3 (2) A HEALTH CARE ENTITY THAT HAS FILED AN APPLICATION
4 FOR ACCREDITATION AS PROVIDED UNDER SUBSECTION (C) OF THIS SECTION
5 AND HAS NOT BEEN REFUSED ACCREDITATION OR WITHDRAWN ITS
6 APPLICATION SHALL BE DEEMED PROVISIONALLY ACCREDITED FOR AN
7 ADDITIONAL 12-MONTH PERIOD BEGINNING ON THE DATE OF THE FILING OF
8 THE APPLICATION.

9 (E) (1) AFTER A HEALTH CARE ENTITY BECOMES ACCREDITED AS
10 PROVIDED UNDER SUBSECTION (B) OF THIS SECTION, THE ENTITY SHALL AT ALL
11 TIMES MAINTAIN THE ACCREDITATION AND CONFORM THE MANNER IN WHICH
12 IT FURNISHES THE SERVICES TO THE STANDARDS SET BY THE APPROPRIATE
13 ACCREDITING BODY.

14 (2) EVIDENCE OF THE ACCREDITATION SHALL BE MAINTAINED AT
15 EVERY LOCATION IN WHICH ANY MAGNETIC RESONANCE IMAGING SERVICES,
16 RADIATION THERAPY SERVICES, AND COMPUTER TOMOGRAPHY SCAN SERVICES
17 ARE FURNISHED AND SHALL BE MADE AVAILABLE FOR INSPECTION ON
18 REQUEST OF THE DEPARTMENT.

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