

# HOUSE BILL 673

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By: **Delegates Kullen, Ali, Benson, Bohanan, Costa, Donoghue, Kipke, McDonough, Nathan-Pulliam, Oaks, Pena-Melnyk, Reznik, Tarrant, and Weldon**

Introduced and read first time: February 9, 2009

Assigned to: Health and Government Operations

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## 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, computed tomography scan services, and radiation  
6 therapy 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 magnetic resonance imaging services,  
14 computed tomography scan services, and radiation therapy services.

15 BY repealing and reenacting, with amendments,  
16 Article – Health Occupations  
17 Section 1–301, 1–302, and 1–303  
18 Annotated Code of Maryland  
19 (2005 Replacement Volume and 2008 Supplement)

20 BY adding to  
21 Article – Health Occupations  
22 Section 1–601 to be under the new subtitle “Subtitle 6. Accreditation of  
23 Business Entities that Furnish Magnetic Resonance Imaging Services,  
24 Computed Tomography Scan Services, and Radiation Therapy Services”  
25 Annotated Code of Maryland  
26 (2005 Replacement Volume and 2008 Supplement)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 **Article – Health Occupations**

4 1–301.

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

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

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

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

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

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

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

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

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

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

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

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

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

4 1. The arrangement is for identifiable services;

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

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

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

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

21 1. The health care practitioner or the immediate family  
22 member of the health care practitioner is not required to refer patients to the health  
23 care entity;

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

28 3. The health care entity needs the services of the  
29 practitioner to meet community health care needs and has had difficulty in recruiting  
30 a practitioner;

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

33 1. At fair market value; and

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

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

- 1                   1.     At fair market value; and
- 2                   2.     In accordance with an arm's length transaction; or
- 3                   (viii) Payments made for the sale of property or a health care  
4 practice if the payments are:
- 5                   1.     At fair market value;
- 6                   2.     In accordance with an arm's length transaction; and
- 7                   3.     The remuneration is provided in accordance with an  
8 agreement that would be commercially reasonable even if no referrals were made.

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

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

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

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

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

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

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

31                   (1)     Testing, diagnosis, or treatment of human disease or dysfunction;  
32 or

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

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

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

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

9 (1) Spouse;

10 (2) Child;

11 (3) Child’s spouse;

12 (4) Parent;

13 (5) Spouse’s parent;

14 (6) Sibling; or

15 (7) Sibling’s spouse.

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

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

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

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

23 [(iii) Computer] **COMPUTED** tomography scan services, **IF:**

24 (I) **THE HEALTH CARE ENTITY FURNISHING THE SERVICES**  
25 **MEETS THE ACCREDITATION REQUIREMENTS SET FORTH IN SUBTITLE 6 OF**  
26 **THIS TITLE; AND**

27 (II) **1. THE HEALTH CARE ENTITY FURNISHING THE**  
28 **SERVICES IS A RADIOLOGIST GROUP PRACTICE OR AN OFFICE CONSISTING**  
29 **SOLELY OF ONE OR MORE RADIOLOGISTS; OR**

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

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

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

9                           (2) “Referral” includes:

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

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

16 1-302.

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

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

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

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

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

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

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

2 (1) A health care practitioner when treating a member of a health  
3 maintenance organization as defined in § 19–701 of the Health – General Article if the  
4 health care practitioner does not have a beneficial interest in the health care entity;

5 (2) A health care practitioner who refers a patient to another health  
6 care 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  
8 care entity who refers a patient to that health care entity for health care services or  
9 tests, if the services or tests are personally performed by or under the direct  
10 supervision of the referring health care practitioner;

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

13 (i) 1. Personally furnished by:

14 [1.] A. The referring health care practitioner;

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

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

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

26 (ii) Provided [in]:

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

30 2. **FOR MAGNETIC RESONANCE IMAGING SERVICES,  
31 COMPUTED TOMOGRAPHY SCAN SERVICES, AND RADIATION THERAPY SERVICES,  
32 IN THE SAME BUILDING WHERE THE REFERRING HEALTH CARE PRACTITIONER  
33 OR A HEALTH CARE PRACTITIONER IN THE SAME GROUP PRACTICE AS THE**

1 REFERRING HEALTH CARE PRACTITIONER FURNISHES SERVICES DURING THE  
2 REGULAR OFFICE HOURS MAINTAINED BY THE REFERRING HEALTH CARE  
3 PRACTITIONER OR A HEALTH CARE PRACTITIONER IN THE SAME GROUP  
4 PRACTICE AS THE REFERRING HEALTH CARE PRACTITIONER; AND

5 (iii) Billed by:

6 1. The health care practitioner performing or  
7 supervising the services; or

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

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

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

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

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

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

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

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

33 (8) A health care practitioner with a beneficial interest in, or  
34 compensation arrangement with, a hospital or related institution as defined in §  
35 19-301 of the Health – General Article or a facility, service, or other entity that is



1 owned or controlled by a hospital or related institution or under common ownership or  
2 control with a hospital or related institution if:

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

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

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

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

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

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

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

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

23 1-303.

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

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

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

33 (i) Discloses the existence of the ownership of the beneficial  
34 interest or compensation arrangement;

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

3 (iii) Requires the patient to acknowledge in writing receipt of the  
4 statement;

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

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

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

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

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

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

17 (ii) The practitioner has disclosed the existence of the beneficial  
18 interest to the patient.

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

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

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

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

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

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

1 (d) A health care practitioner who fails to comply with any provision of this  
2 section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding  
3 \$5,000.

4 **SUBTITLE 6. ACCREDITATION OF BUSINESS ENTITIES THAT FURNISH**  
5 **MAGNETIC RESONANCE IMAGING SERVICES, COMPUTED TOMOGRAPHY SCAN**  
6 **SERVICES, AND RADIATION THERAPY SERVICES.**

7 **1-601.**

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

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

21 (C) (1) ANY HEALTH CARE ENTITY THAT BEGINS FURNISHING  
22 MAGNETIC RESONANCE IMAGING SERVICES, COMPUTED TOMOGRAPHY SCAN  
23 SERVICES, OR RADIATION THERAPY SERVICES AFTER JULY 1, 2009, SHALL FILE  
24 AN APPLICATION FOR ACCREDITATION WITH ONE OF THE APPROPRIATE  
25 ACCREDITING ORGANIZATIONS SET FORTH IN SUBSECTION (B) OF THIS SECTION  
26 BY JANUARY 1, 2011, OR WITHIN 12 MONTHS OF THE DATE ON WHICH THE  
27 HEALTH CARE ENTITY BEGINS FURNISHING THE SERVICES, WHICHEVER PERIOD  
28 EXPIRES LATER.

29 (2) ANY HEALTH CARE ENTITY THAT FURNISHED MAGNETIC  
30 RESONANCE IMAGING SERVICES, COMPUTED TOMOGRAPHY SCAN SERVICES, OR  
31 RADIATION THERAPY SERVICES ON OR BEFORE JULY 1, 2009, THAT IS NOT  
32 ACCREDITED TO PROVIDE THE SERVICES BY ONE OF THE ACCREDITING  
33 ORGANIZATIONS SET FORTH IN SUBSECTION (B) OF THIS SECTION SHALL FILE  
34 AN APPLICATION FOR ACCREDITATION TO PROVIDE THE SERVICES BY  
35 JANUARY 1, 2011.

36 (D) (1) NOTWITHSTANDING ANY PROVISION OF THIS SECTION, A  
37 HEALTH CARE ENTITY THAT FURNISHES MAGNETIC RESONANCE IMAGING

1 SERVICES, COMPUTED TOMOGRAPHY SCAN SERVICES, OR RADIATION THERAPY  
2 SERVICES SHALL BE DEEMED PROVISIONALLY ACCREDITED UNDER THIS  
3 SECTION UNTIL JANUARY 1, 2011, OR FOR A PERIOD OF 12 MONTHS DATING  
4 FROM THE DATE ON WHICH THE HEALTH CARE ENTITY BEGAN PROVIDING  
5 SERVICES, WHICHEVER PERIOD EXPIRES LATER.

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

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

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

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
23 July 1, 2009.