

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE
Revised

House Bill 673 (Delegate Kullen, *et al.*)
Health and Government Operations

Patient Referrals - Imaging and Radiation Therapy Services - Accreditation

This bill exempts a health care practitioner from the current statutory provision that governs “in-office ancillary services” and prohibits referrals for magnetic resonance imaging (MRI), radiation therapy, or computed tomography (CT) scan services to a health care entity in which the practitioner owns a beneficial interest or has a compensation arrangement if the health care entity meets specified national accreditation requirements and one of two other conditions. The health care entity providing the service must be a radiologist group practice or an office consisting solely of one or more radiologists. Otherwise, the individual furnishing the services must be employed and personally supervised by the referring practitioner or a practitioner in the same group practice during the regular office hours maintained by and in the same building where the referring practitioner or a practitioner in the same group practice provides services. Finally, the bill requires a health care practitioner who makes the referral to disclose to the patient his or her beneficial interest in the entity to which the patient is being referred.

The bill takes effect July 1, 2009.

Fiscal Summary

State Effect: Any decrease in State investigations and disciplinary actions as a result of the bill has minimal or no direct effect on governmental finances.

Local Effect: None.

Small Business Effect: Meaningful for any group practice that performs these services.

Analysis

Current Law: “Group practice” is a group of two or more health care practitioners legally organized as a partnership, professional corporation, foundation, nonprofit corporation, faculty practice plan, or similar association that meets specified conditions. Each practitioner who is a group member must provide substantially the full range of services routinely provided through the joint use of shared office space, facilities, equipment, and personnel. Substantially all of the practitioner’s services must be provided through the group and billed through the group’s name, and amounts received must be treated as the group’s receipts. Overhead expenses of and income from the practice must be distributed according to methods the group determines.

“In-office ancillary services” are basic health services and tests routinely performed in the office of one or more health care practitioners. Except for a radiologist group practice or an office consisting of only one or more radiologists, this does not include MRI, radiation therapy, or CT scan services.

With certain exceptions, a health care practitioner may not refer a patient, or direct an employee of or person under contract with the health care practitioner to refer a patient to a health care entity (1) in which the practitioner or the practitioner and his immediate family owns a beneficial interest; (2) in which the practitioner’s immediate family owns a beneficial interest of 3% or greater; or (3) with which the practitioner, the practitioner’s immediate family, or the practitioner and the practitioner’s immediate family has a compensation arrangement. This is known as self-referral.

Self-referral *is* allowed when a health care practitioner refers a patient to another practitioner in the same group practice as the referring practitioner. In addition, a health care practitioner may refer in-office ancillary services or tests that are (1) personally furnished by the referring health care practitioner, a practitioner in the same group practice as the referring practitioner, or an individual employed and personally supervised by the qualified referring practitioner or a practitioner in the same group practice as the referring practitioner; (2) provided in the same building where the referring practitioner or a practitioner in the same group practice as the referring practitioner furnishes services; and (3) billed by the practitioner performing or supervising the services or a group practice of which the practitioner performing or supervising the services is a member.

Regulations require any facility operating major medical equipment (including MRIs, radiation therapy equipment, and CT scanners) in the State to be licensed by the Department of Health and Mental Hygiene. Licensees are subject to random inspections and have to demonstrate that all operating personnel meet appropriate qualifications. Licensees must also meet specific safety standards and develop and implement a quality assurance program that ensures all personnel supervising or operating major medical equipment follow appropriate use guidelines.

Background: A January 4, 2006 letter of advice from the Attorney General’s Office stated that the State’s self-referral law would bar a patient referral for an MRI if the MRI machine is being leased by the group practice of which the referring practitioner is a member and the test is being performed by the group practice. State law would bar this referral even if the MRI is performed by or under the direct supervision of the referring practitioner. Further, the letter of advice states that the statutory definition of a “health care service” includes MRIs, CT scans, and radiation therapy services and includes ordinary medical activities performed by a physician in the course of treatment. A February 23, 2006 opinion letter affirmed the analysis and conclusions in that letter of advice. The January 2006 letter of advise and February 2006 opinion letter were issued after a ruling from the Circuit Court for Montgomery County in 2005 in which the court ruled that a referral by an orthopedic physician for a patient to have an MRI performed on a machine leased by the orthopedic physician’s group practice met the statutory exception.

In December 2006, the Board of Physicians issued a Declaratory Ruling that a referral by an orthopedic physician for an MRI to be performed on or by an MRI machine owned or leased by the orthopedic practice is an illegal self-referral within the meaning of the Maryland Self-referral Law. In October 2007, the Circuit Court for Montgomery County upheld the board’s decision; an appeal is pending.

Additional Information

Prior Introductions: A similar bill, HB 1142 was introduced during the 2008 session and heard by the House Health and Government Operations Committee. HB 1142 was withdrawn before any further action was taken.

Cross File: None.

Information Source(s): Department of Health and Mental Hygiene, Maryland Insurance Administration, Department of Legislative Services

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