

# HOUSE BILL 782

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CF SB 808

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By: **Delegates Reznik, Bohanan, Branch, Costa, Donoghue, Jameson, Kipke, Krebs, McDonough, Nathan-Pulliam, Oaks, Pena-Melnyk, Tarrant, V. Turner, and Wood**

Introduced and read first time: February 10, 2011

Assigned to: Health and Government Operations

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## A BILL ENTITLED

1 AN ACT concerning

2 **Health Occupations – Imaging and Radiation Therapy Services –**  
3 **Accreditation**

4 FOR the purpose of altering the definition of “in-office ancillary services” as it relates  
5 to certain referrals by certain health care practitioners so as to exclude  
6 magnetic resonance imaging services, computed tomography scan services, and  
7 radiation therapy services unless certain conditions are met; altering certain  
8 exceptions to certain patient referral prohibitions; requiring a certain written  
9 statement to include certain information about health care entities that provide  
10 magnetic resonance imaging services, computed tomography scan services, and  
11 radiation therapy services under certain circumstances; requiring health care  
12 entities that provide magnetic resonance imaging services, computed  
13 tomography scan services, or radiation therapy services on or after a certain  
14 date to be accredited by certain organizations; requiring a health care entity  
15 that becomes accredited to maintain its accreditation, provide services in  
16 conformity with certain standards, and make available evidence of its  
17 accreditation; defining a certain term; and generally relating to the provision of  
18 magnetic resonance imaging services, computed tomography scan services, and  
19 radiation therapy services.

20 BY repealing and reenacting, with amendments,  
21 Article – Health Occupations  
22 Section 1–301, 1–302, and 1–303  
23 Annotated Code of Maryland  
24 (2009 Replacement Volume and 2010 Supplement)

25 BY adding to  
26 Article – Health Occupations

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 1-701 to be under the new subtitle "Subtitle 7. Accreditation of  
2 Business Entities That Furnish Magnetic Resonance Imaging Services,  
3 Computed Tomography Scan Services, and Radiation Therapy Services"  
4 Annotated Code of Maryland  
5 (2009 Replacement Volume and 2010 Supplement)

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

8 **Article – Health Occupations**

9 1-301.

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

11 (b) (1) "Beneficial interest" means ownership, through equity, debt, or  
12 other means, of any financial interest.

13 (2) "Beneficial interest" does not include ownership, through equity,  
14 debt, or other means, of securities, including shares or bonds, debentures, or other  
15 debt instruments:

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

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

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

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

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

27 (c) (1) "Compensation arrangement" means any agreement or system  
28 involving any remuneration between a health care practitioner or the immediate  
29 family member of the health care practitioner and a health care entity.

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

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

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

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

7 1. The arrangement is for identifiable services;

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

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

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

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

24 1. The health care practitioner or the immediate family  
25 member of the health care practitioner is not required to refer patients to the health  
26 care entity;

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

31 3. The health care entity needs the services of the  
32 practitioner to meet community health care needs and has had difficulty in recruiting  
33 a practitioner;

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

36 1. At fair market value; and

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

12                        (d)    “Direct supervision” means a health care practitioner is present on the

13     premises where the health care services or tests are provided and is available for

14     consultation within the treatment area.

15                        (e)    “Faculty practice plan” means a tax–exempt organization established

16     under Maryland law by or at the direction of a university to accommodate the

17     professional practice of members of the faculty who are health care practitioners.

18                        (f)    “Group practice” means a group of two or more health care practitioners

19     legally organized as a partnership, professional corporation, foundation, not–for–profit

20     corporation, faculty practice plan, or similar association:

21                        (1)    In which each health care practitioner who is a member of the

22     group provides substantially the full range of services which the practitioner routinely

23     provides through the joint use of shared office space, facilities, equipment, and

24     personnel;

25                        (2)    For which substantially all of the services of the health care

26     practitioners who are members of the group are provided through the group and are

27     billed in the name of the group and amounts so received are treated as receipts of the

28     group; and

29                        (3)    In which the overhead expenses of and the income from the

30     practice are distributed in accordance with methods previously determined on an

31     annual basis by members of the group.

32                        (g)    “Health care entity” means a business entity that provides health care

33     services for the:

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

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

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

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

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

11           (1)    Spouse;

12           (2)    Child;

13           (3)    Child’s spouse;

14           (4)    Parent;

15           (5)    Spouse’s parent;

16           (6)    Sibling; or

17           (7)    Sibling’s spouse.

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

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

22           (i)    Magnetic] **“IN-OFFICE ANCILLARY SERVICES” DOES NOT**  
23 **INCLUDE MAGNETIC** resonance imaging services[;

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

25           [(iii) Computer] **COMPUTED** tomography scan services, **UNLESS:**

26           **(I)    THE HEALTH CARE ENTITY PROVIDING THE SERVICES**  
27 **MEETS THE ACCREDITATION REQUIREMENTS SET FORTH IN SUBTITLE 7 OF**  
28 **THIS TITLE; AND**

1                   **(II) 1. THE HEALTH CARE ENTITY PROVIDING THE**  
2 **SERVICES IS A RADIOLOGIST GROUP PRACTICE OR AN OFFICE CONSISTING**  
3 **SOLELY OF ONE OR MORE RADIOLOGISTS; OR**

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

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

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

12                   (2) “Referral” includes:

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

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

19 1-302.

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

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

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

27                   (3) With which the health care practitioner, the practitioner’s  
28 immediate family, or the practitioner in combination with the practitioner’s immediate  
29 family has a compensation arrangement.

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

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

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

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

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

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

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

17 (i) 1. Personally furnished by:

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

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

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

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

30 (ii) Provided [in]:

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

1                   **2. FOR MAGNETIC RESONANCE IMAGING SERVICES,**  
2 **COMPUTED TOMOGRAPHY SCAN SERVICES, AND RADIATION THERAPY SERVICES,**  
3 **IN THE SAME BUILDING WHERE THE REFERRING HEALTH CARE PRACTITIONER**  
4 **OR A HEALTH CARE PRACTITIONER IN THE SAME GROUP PRACTICE AS THE**  
5 **REFERRING HEALTH CARE PRACTITIONER FURNISHES SERVICES DURING THE**  
6 **REGULAR OFFICE HOURS MAINTAINED BY THE REFERRING HEALTH CARE**  
7 **PRACTITIONER OR A HEALTH CARE PRACTITIONER IN THE SAME GROUP**  
8 **PRACTICE AS THE REFERRING HEALTH CARE PRACTITIONER; AND**

9                   (iii) Billed by:

10                   1. The health care practitioner performing or  
11 supervising the services; or

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

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

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

18                   (ii) The Secretary, in conjunction with the Maryland Health  
19 Care Commission, determines that the health care entity is needed to ensure  
20 appropriate access for the community to the services provided at the health care  
21 entity;

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

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

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

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



1 (8) A health care practitioner with a beneficial interest in, or  
2 compensation arrangement with, a hospital or related institution as defined in §  
3 19–301 of the Health – General Article or a facility, service, or other entity that is  
4 owned or controlled by a hospital or related institution or under common ownership or  
5 control with a hospital or related institution if:

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

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

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

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

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

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

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

23 (e) A health care practitioner exempted from the provisions of this section in  
24 accordance with subsection (d) shall be subject to the disclosure provisions of § 1–303  
25 of this subtitle.

26 1–303.

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

30 (b) Prior to referring a patient to a health care entity in which the  
31 practitioner, the practitioner’s immediate family, or the practitioner in combination  
32 with the practitioner’s immediate family owns a beneficial interest, the health care  
33 practitioner shall:

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

1 (i) Discloses the existence of the ownership of the beneficial  
2 interest or compensation arrangement;

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

5 (iii) Requires the patient to acknowledge in writing receipt of the  
6 statement;

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

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

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

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

17 (4) [Documents] **DOCUMENT** in the medical record of the patient  
18 that:

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

20 (ii) The practitioner has disclosed the existence of the beneficial  
21 interest to the patient.

22 (c) **(1) WITH RESPECT TO MAGNETIC RESONANCE IMAGING**  
23 **SERVICES, COMPUTED TOMOGRAPHY SCAN SERVICES, AND RADIATION THERAPY**  
24 **SERVICES THAT ARE IN-OFFICE ANCILLARY SERVICES AS DEFINED IN § 1-301**  
25 **OF THIS SUBTITLE, AND PROVIDED ON OR AFTER JULY 1, 2011, THE WRITTEN**  
26 **STATEMENT REQUIRED BY SUBSECTION (B) OF THIS SECTION SHALL INCLUDE**  
27 **THE NAMES, ADDRESSES, AND TELEPHONE NUMBERS OF AT LEAST FIVE OTHER**  
28 **HEALTH CARE ENTITIES LOCATED WITHIN 25 MILES OF THE PRACTITIONER'S**  
29 **OFFICE LOCATION WHERE THE REFERRAL IS MADE THAT ARE CAPABLE OF**  
30 **PROVIDING THE SERVICE FOR WHICH THE PATIENT IS BEING REFERRED.**

31 **(2) IF THERE ARE FEWER THAN FIVE OTHER HEALTH CARE**  
32 **ENTITIES THAT CAN BE LISTED IN ACCORDANCE WITH PARAGRAPH (1) OF THIS**  
33 **SUBSECTION, THE WRITTEN NOTICE SHALL INCLUDE THE NAMES, ADDRESSES,**  
34 **AND TELEPHONE NUMBERS OF ALL OTHER HEALTH CARE ENTITIES LOCATED**  
35 **WITHIN 25 MILES OF THE PRACTITIONER'S OFFICE LOCATION WHERE THE**

1 REFERRAL IS MADE THAT ARE CAPABLE OF PROVIDING THE SERVICE FOR  
2 WHICH THE PATIENT IS BEING REFERRED.

3 (D) The provisions of this section do not apply to:

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

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

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

11 (ii) For in–office ancillary services; or

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

14 (d) A health care practitioner who fails to comply with any provision of this  
15 section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding  
16 \$5,000.

17 **SUBTITLE 7. ACCREDITATION OF BUSINESS ENTITIES THAT FURNISH**  
18 **MAGNETIC RESONANCE IMAGING SERVICES, COMPUTED TOMOGRAPHY SCAN**  
19 **SERVICES, AND RADIATION THERAPY SERVICES.**

20 **1–701.**

21 (A) IN THIS SECTION, “HEALTH CARE ENTITY” HAS THE MEANING  
22 STATED IN § 1–301 OF THIS TITLE.

23 (B) A HEALTH CARE ENTITY THAT PROVIDES MAGNETIC RESONANCE  
24 IMAGING SERVICES, COMPUTED TOMOGRAPHY SCAN SERVICES, OR RADIATION  
25 THERAPY SERVICES ON OR AFTER JANUARY 1, 2012, SHALL BE ACCREDITED TO  
26 PROVIDE THE SERVICES BY THE AMERICAN COLLEGE OF RADIOLOGY, THE  
27 AMERICAN COLLEGE OF RADIATION ONCOLOGY, THE INTERSOCIETAL  
28 ACCREDITATION COMMISSION, THE JOINT COMMISSION’S AMBULATORY CARE  
29 ACCREDITATION PROGRAM, OR ANOTHER NATIONALLY RECOGNIZED  
30 ACCREDITATION ORGANIZATION, AS APPROPRIATE, WHOSE ACCREDITATION  
31 STANDARDS HAVE BEEN REVIEWED AND CONSIDERED ADEQUATE BY THE  
32 DEPARTMENT FOR MAGNETIC RESONANCE IMAGING SERVICES, COMPUTED  
33 TOMOGRAPHY SCAN SERVICES, OR RADIATION THERAPY SERVICES.

1           **(C) (1) AFTER A HEALTH CARE ENTITY BECOMES ACCREDITED AS**  
2 **REQUIRED UNDER SUBSECTION (B) OF THIS SECTION, THE ENTITY SHALL AT**  
3 **ALL TIMES MAINTAIN THE ACCREDITATION AND CONFORM THE MANNER IN**  
4 **WHICH IT PROVIDES SERVICES TO THE STANDARDS SET BY THE APPROPRIATE**  
5 **ACCREDITING BODY.**

6                   **(2) EVIDENCE OF A HEALTH CARE ENTITY'S ACCREDITATION**  
7 **SHALL BE:**

8                           **(I) MAINTAINED AT EVERY LOCATION AT WHICH ANY**  
9 **MAGNETIC RESONANCE IMAGING SERVICES, COMPUTED TOMOGRAPHY SCAN**  
10 **SERVICES, OR RADIATION THERAPY SERVICES ARE PROVIDED; AND**

11                           **(II) MADE AVAILABLE FOR INSPECTION ON REQUEST OF**  
12 **THE DEPARTMENT.**

13           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
14 July 1, 2011.