

HOUSE BILL 408

J2
HB 782/11 – HGO

2lr1695

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

Introduced and read first time: February 1, 2012
Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Health Occupations – Imaging and Radiation Therapy**
3 **Services – 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 2011 Supplement)

25 BY adding to
26 Article – Health Occupations

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 2011 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:

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

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

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

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

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

26 (2) For which substantially all of the services of the health care
27 practitioners who are members of the group are provided through the group and are
28 billed in the name of the group and amounts so received are treated as receipts of the
29 group; and

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

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

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

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

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

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

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

13 (1) Spouse;

14 (2) Child;

15 (3) Child’s spouse;

16 (4) Parent;

17 (5) Spouse’s parent;

18 (6) Sibling; or

19 (7) Sibling’s spouse.

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

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

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

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

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

1 **(I) THE HEALTH CARE ENTITY PROVIDING THE SERVICES**
2 **MEETS THE ACCREDITATION REQUIREMENTS SET FORTH IN SUBTITLE 7 OF**
3 **THIS TITLE; AND**

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

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

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

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

15 (2) “Referral” includes:

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

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

22 1-302.

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

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

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

30 (3) With which the health care practitioner, the practitioner’s
31 immediate family, or the practitioner in combination with the practitioner’s immediate
32 family has a compensation arrangement.

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

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

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

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

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

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

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

21 (i) Personally furnished by:

22 1. The referring health care practitioner;

23 2. A health care practitioner in the same group practice
24 as the referring health care practitioner; [or]

25 3. An individual who is employed and personally
26 supervised by the qualified referring health care practitioner or a health care
27 practitioner in the same group practice as the referring health care practitioner; **OR**

28 **4. FOR MAGNETIC RESONANCE IMAGING SERVICES,**
29 **COMPUTED TOMOGRAPHY SCAN SERVICES, AND RADIATION THERAPY SERVICES,**
30 **AN INDIVIDUAL WHO IS EMPLOYED AND DIRECTLY SUPERVISED BY THE**
31 **QUALIFIED REFERRING HEALTH CARE PRACTITIONER OR A HEALTH CARE**
32 **PRACTITIONER IN THE SAME GROUP PRACTICE AS THE REFERRING HEALTH**
33 **CARE PRACTITIONER;**

34 (ii) Provided [in]:

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

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

12 (iii) Billed by:

13 1. The health care practitioner performing or
14 supervising the services; or

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

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

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

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

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

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

33 (i) The health care practitioner or other member of that single
34 specialty group practice provides the health care services to a patient pursuant to a

1 referral or in accordance with a consultation requested by another health care
2 practitioner who does not have a beneficial interest in the health care entity; or

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

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

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

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

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

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

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

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

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

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

31 1–303.

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

1 (b) Prior to referring a patient to a health care entity in which the
2 practitioner, the practitioner's immediate family, or the practitioner in combination
3 with the practitioner's immediate family owns a beneficial interest, the health care
4 practitioner shall:

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

7 (i) Discloses the existence of the ownership of the beneficial
8 interest or compensation arrangement;

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

11 (iii) Requires the patient to acknowledge in writing receipt of the
12 statement;

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

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

19 (i) In which the practitioner, the practitioner's immediate
20 family, or the practitioner in combination with the practitioner's immediate family
21 owns a beneficial interest; and

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

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

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

26 (ii) The practitioner has disclosed the existence of the beneficial
27 interest to the patient.

28 (c) **(1) WITH RESPECT TO MAGNETIC RESONANCE IMAGING**
29 **SERVICES, COMPUTED TOMOGRAPHY SCAN SERVICES, AND RADIATION THERAPY**
30 **SERVICES THAT ARE IN-OFFICE ANCILLARY SERVICES AS DEFINED IN § 1-301**
31 **OF THIS SUBTITLE AND PROVIDED ON OR AFTER JULY 1, 2012, THE WRITTEN**
32 **STATEMENT REQUIRED BY SUBSECTION (B) OF THIS SECTION SHALL INCLUDE**
33 **THE NAMES, ADDRESSES, AND TELEPHONE NUMBERS OF AT LEAST FIVE OTHER**
34 **HEALTH CARE ENTITIES LOCATED WITHIN 25 MILES OF THE PRACTITIONER'S**

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

3 (2) IF THERE ARE FEWER THAN FIVE OTHER HEALTH CARE
4 ENTITIES THAT CAN BE LISTED IN ACCORDANCE WITH PARAGRAPH (1) OF THIS
5 SUBSECTION, THE WRITTEN NOTICE SHALL INCLUDE THE NAMES, ADDRESSES,
6 AND TELEPHONE NUMBERS OF ALL OTHER HEALTH CARE ENTITIES LOCATED
7 WITHIN 25 MILES OF THE PRACTITIONER'S OFFICE LOCATION WHERE THE
8 REFERRAL IS MADE THAT ARE CAPABLE OF PROVIDING THE SERVICE FOR
9 WHICH THE PATIENT IS BEING REFERRED.

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

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

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

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

18 (ii) For in-office ancillary services; or

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

21 [(d)] (E) A health care practitioner who fails to comply with any provision of
22 this section is guilty of a misdemeanor and on conviction is subject to a fine not
23 exceeding \$5,000.

24 **SUBTITLE 7. ACCREDITATION OF BUSINESS ENTITIES THAT FURNISH**
25 **MAGNETIC RESONANCE IMAGING SERVICES, COMPUTED TOMOGRAPHY SCAN**
26 **SERVICES, AND RADIATION THERAPY SERVICES.**

27 **1-701.**

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

30 (B) A HEALTH CARE ENTITY THAT PROVIDES MAGNETIC RESONANCE
31 IMAGING SERVICES, COMPUTED TOMOGRAPHY SCAN SERVICES, OR RADIATION
32 THERAPY SERVICES ON OR AFTER JANUARY 1, 2013, SHALL BE ACCREDITED TO
33 PROVIDE THE SERVICES BY THE AMERICAN COLLEGE OF RADIOLOGY, THE

1 AMERICAN COLLEGE OF RADIATION ONCOLOGY, THE INTERSOCIETAL
2 ACCREDITATION COMMISSION, THE JOINT COMMISSION'S AMBULATORY CARE
3 ACCREDITATION PROGRAM, OR ANOTHER NATIONALLY RECOGNIZED
4 ACCREDITATION ORGANIZATION, AS APPROPRIATE, WHOSE ACCREDITATION
5 STANDARDS HAVE BEEN REVIEWED AND CONSIDERED ADEQUATE BY THE
6 DEPARTMENT FOR MAGNETIC RESONANCE IMAGING SERVICES, COMPUTED
7 TOMOGRAPHY SCAN SERVICES, OR RADIATION THERAPY SERVICES.

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

13 (2) EVIDENCE OF A HEALTH CARE ENTITY'S ACCREDITATION
14 SHALL BE:

15 (I) MAINTAINED AT EVERY LOCATION AT WHICH ANY
16 MAGNETIC RESONANCE IMAGING SERVICES, COMPUTED TOMOGRAPHY SCAN
17 SERVICES, OR RADIATION THERAPY SERVICES ARE PROVIDED; AND

18 (II) MADE AVAILABLE FOR INSPECTION ON REQUEST OF
19 THE DEPARTMENT.

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
21 July 1, 2012.