

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 408 (Delegate Reznik, *et al.*)
Health and Government Operations

Health Occupations - Imaging and Radiation Therapy Services - Accreditation

This bill modifies a current statutory provision exempting a radiologist group practice or an office consisting solely of one or more radiologists from the prohibition on self-referrals for “in-house ancillary services” (*i.e.*, magnetic resonance imaging (MRI), radiation therapy, or computed tomography (CT) scan services). Specifically, the bill (1) extends the exemption’s applicability to instances in which the individual furnishing the services is employed and directly 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 practitioner provides services; and (2) specifies that, to enjoy the exemption, a health care entity must meet specified national accreditation requirements. 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. If this disclosure is made in a written statement, it must include identifying information for nearby health care entities that are capable of providing the service for which the patient is being referred. Existing penalty provisions apply for failure to make the required disclosure.

The bill takes effect July 1, 2012.

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. Imposition of existing penalty provisions is not expected to materially affect general fund revenues.

Local Effect: Imposition of existing penalty provisions is not expected to materially affect local government revenues.

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 determined by the group.

“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, “in-office ancillary services” do 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.

A health care practitioner who fails to comply with these prohibitions is guilty of a misdemeanor and on conviction is subject to a fine of up to \$5,000.

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 stated 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 advice 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 State 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 and, in January 2011, the Maryland Court of Appeals upheld the lower court's decision. The State Board of Physicians now has one staff dedicated to investigating self-referral cases.

Additional Comments: According to the State Board of Physicians, the cost of obtaining accreditation as specified by the bill is likely to be high and may indirectly affect the cost of health care.

Additional Information

Prior Introductions: Similar bills were introduced in recent sessions. SB 808 of 2011, SB 672 of 2010, and SB 662 of 2009 were all heard by the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken on any of the bills. Likewise HB 782 of 2011, HB 324 of 2010, and HB 673 of 2009 were all heard by the House Health and Government Operations Committee, but no further action was taken on any of the bills.

Cross File: Although not designated as a cross file, SB 505 (Senator Dyson – Education, Health, and Environmental Affairs) is nearly identical.

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

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