

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 441 (Delegate Haddaway-Riccio)
Health and Government Operations

Anesthesia Services - Assignment of Billing Rights and Fees for Management Services - Prohibition

This bill prohibits the billing rights for anesthesia services provided in a freestanding ambulatory care facility from being assigned to a person that has a beneficial interest in the facility. A freestanding ambulatory care facility or a person that has a beneficial interest in the facility is prohibited from charging, directly or indirectly, an anesthesia services provider a fee for specified management services. A person who violates the bill's provisions is guilty of a misdemeanor and on conviction is subject to a fine of up to \$10,000, imprisonment for up to one year, or both.

Fiscal Summary

State Effect: To the extent the bill results in additional complaints and disciplinary activity, special fund expenditures for the State Board of Physicians (MBP) increase to investigate and, where appropriate, pursue disciplinary action against violators. Likewise, general fund revenues may increase minimally due to any fines imposed by MBP. The exact amount of such increase cannot be reliably estimated at this time and depends on the number and complexity of such complaints. The criminal penalty provisions of the bill do not have a material impact on State finances or operations.

Local Effect: The criminal penalty provisions of the bill do not have a material impact on local finances or operations.

Small Business Effect: Potential meaningful for small business freestanding ambulatory care facilities and providers of anesthesia services.

Analysis

Bill Summary: MBP is authorized to take disciplinary action against any licensee that accepts the assignment of billing rights for anesthesia services provided by another health care practitioner or charges, directly or indirectly, a fee for management services to another health care practitioner who provides anesthesia services in a freestanding ambulatory care facility in which the licensee owns a beneficial interest.

A person, with the intent to retaliate, may not knowingly take any action harmful to an individual, including interference with the lawful employment or livelihood of the individual, for providing to a law enforcement officer, the Department of Health and Mental Hygiene, a health occupations board, or the Attorney General any truthful information relating to the commission or possible commission of a violation of the bill.

Current Law: Section 1-301 of the Health Occupations Article defines “beneficial interest” as ownership, through equity, debt, or other means, of any financial interest. Beneficial interest does not include ownership, through equity, debt, or other means, of securities, including shares or bonds, debentures, or other specified debt instruments.

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.

The federal anti-kickback statute (42 U.S.C. § 1320a – 7b) provides criminal penalties for individuals or other entities that knowingly and willfully offer, pay, solicit, or receive remuneration in order to induce or reward the referral of business reimbursable under any of the federal health care programs (including Medicare and Medicaid). Violation of the statute constitutes a felony punishable by a maximum fine of \$25,000, imprisonment up to five years, or both. A violation may also result in the imposition of civil money penalties, exclusion from federal health care programs, and liability under the federal False Claims Act.

The U.S. Department of Health and Human Services has promulgated “safe harbor” regulations (42 CFR § 1001.952) that define practices that are not subject to the anti-kickback statute because such practices would be unlikely to result in fraud or abuse. The safe harbors set forth specific conditions that, if met, assure entities involved of not being prosecuted or sanctioned for the arrangement qualifying for the safe harbor. However, safe harbor protection is afforded only to those arrangements that precisely meet all of the conditions set forth in the safe harbor.

Subject to hearing provisions, a disciplinary panel of MBP may reprimand any licensee, place any licensee on probation, or suspend or revoke a license if a licensee violates any 1 of 41 statutory disciplinary grounds. If after a hearing MBP finds there are grounds to suspend or revoke a physician’s license, MBP may impose a fine subject to regulations instead of or in addition to suspension or revocation. Fines are payable to the general fund.

Additional Information

Prior Introductions: None.

Cross File: SB 980 (Senator Conway) – Education, Health, and Environmental Affairs.

Information Source(s): Office of the Inspector General, U.S. Department of Health and Human Services; Department of Health and Mental Hygiene; Judiciary (Administrative Office of the Courts); Department of Legislative Services

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