

SENATE BILL 539

J2

5lr1077
CF 5lr1418

By: **Senator Conway**

Introduced and read first time: February 6, 2015

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Patient Referrals – Oncologists – Radiation Therapy Services and**
3 **Nondiagnostic Computer Tomography Scan Services**

4 FOR the purpose of altering the definition of “in-office ancillary services” to include certain
5 oncology group practices or offices of oncologists that provide certain radiation
6 therapy services or computer tomography services for a certain purpose; providing
7 that certain prohibitions on referrals do not apply to a referral by certain oncologists
8 for certain radiation therapy services or computer tomography services; requiring
9 certain oncology group practices or offices of oncologists that are exempt from a
10 certain provision of law to provide treatment to certain patients; requiring certain
11 for profit oncology group practices or for profit offices of oncologists that are exempt
12 from a certain provision of law to report certain information to the Department of
13 Health and Mental Hygiene; and generally relating to patient referrals for radiation
14 therapy services and nondiagnostic computer tomography scan services by
15 oncologists.

16 BY repealing and reenacting, with amendments,
17 Article – Health Occupations
18 Section 1–301
19 Annotated Code of Maryland
20 (2014 Replacement Volume)

21 BY repealing and reenacting, without amendments,
22 Article – Health Occupations
23 Section 1–302(a) and (d)(4)
24 Annotated Code of Maryland
25 (2014 Replacement Volume)

26 BY adding to
27 Article – Health Occupations
28 Section 1–302(f)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland
2 (2014 Replacement Volume)

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

5 **Article – Health Occupations**

6 1–301.

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

8 (b) (1) “Beneficial interest” means ownership, through equity, debt, or other
9 means, of any financial interest.

10 (2) “Beneficial interest” does not include ownership, through equity, debt,
11 or other means, of securities, including shares or bonds, debentures, or other debt
12 instruments:

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

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

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

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

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

24 (c) (1) “Compensation arrangement” means any agreement or system
25 involving any remuneration between a health care practitioner or the immediate family
26 member of the health care practitioner and a health care entity.

27 (2) “Compensation arrangement” does not include:

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

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

4 (iii) An arrangement between a health care entity and a health care
5 practitioner or the immediate family member of a health care practitioner for the provision
6 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 arrangement
9 is consistent with the fair market value of the service and is not determined in a manner
10 that takes into account, directly or indirectly, the volume or value of any referrals by the
11 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 the
14 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 the
18 immediate family member's compensation is not based on the referral;

19 (v) An arrangement for compensation which is provided by a health
20 care entity to a health care practitioner or the immediate family member of the health care
21 practitioner to induce the health care practitioner or the immediate family member of the
22 health care practitioner to relocate to the geographic area served by the health care entity
23 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 care
26 entity;

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

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

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

35 1. At fair market value; and

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

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

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

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

9 (1) Spouse;

10 (2) Child;

11 (3) Child’s spouse;

12 (4) Parent;

13 (5) Spouse’s parent;

14 (6) Sibling; or

15 (7) Sibling’s spouse.

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

18 (2) Except for a radiologist group practice or an office consisting solely of
19 one or more radiologists **OR AN ONCOLOGY GROUP PRACTICE OR AN OFFICE**
20 **CONSISTING OF ONE OR MORE ONCOLOGISTS THAT PROVIDES RADIATION THERAPY**
21 **SERVICES OR NONDIAGNOSTIC COMPUTER TOMOGRAPHY SCAN SERVICES TO PLAN**
22 **AND DELIVER RADIATION THERAPY**, “in-office ancillary services” does not include:

23 (i) Magnetic resonance imaging services;

24 (ii) Radiation therapy services; or

25 (iii) Computer tomography scan services.

26 (l) (1) “Referral” means any referral of a patient for health care services.

27 (2) “Referral” includes:

1 (i) The forwarding of a patient by one health care practitioner to
2 another health care practitioner or to a health care entity outside the health care
3 practitioner's office or group practice; or

4 (ii) The request or establishment by a health care practitioner of a
5 plan of care for the provision of health care services outside the health care practitioner's
6 office or group practice.

7 1-302.

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

11 (1) In which the health care practitioner or the practitioner in combination
12 with the practitioner's immediate family owns a beneficial interest;

13 (2) In which the practitioner's immediate family owns a beneficial interest
14 of 3 percent or greater; or

15 (3) With which the health care practitioner, the practitioner's immediate
16 family, or the practitioner in combination with the practitioner's immediate family has a
17 compensation arrangement.

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

19 (4) A health care practitioner who refers in-office ancillary services or tests
20 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 as
24 the referring health care practitioner; or

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

28 (ii) Provided in the same building where the referring health care
29 practitioner or a health care practitioner in the same group practice as the referring health
30 care practitioner furnishes services; and

31 (iii) Billed by:

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

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

5 **(F) (1) AN ONCOLOGY GROUP PRACTICE OR AN OFFICE CONSISTING OF**
6 **ONE OR MORE ONCOLOGISTS THAT PROVIDES RADIATION THERAPY SERVICES OR**
7 **NONDIAGNOSTIC COMPUTER TOMOGRAPHY SCAN SERVICES TO PLAN AND DELIVER**
8 **RADIATION THERAPY THAT IS EXEMPT FROM THE PROVISIONS OF THIS SECTION**
9 **UNDER SUBSECTION (D)(4) OF THIS SECTION SHALL PROVIDE TREATMENT TO ANY**
10 **PATIENT COVERED BY A PRIVATE HEALTH INSURANCE PLAN WITH WHICH THE**
11 **GROUP PRACTICE OR OFFICE HAS CONTRACTED AS A NETWORK PROVIDER,**
12 **MEDICARE, THE MARYLAND MEDICAL ASSISTANCE PROGRAM, OR THE MARYLAND**
13 **CHILDREN’S HEALTH PROGRAM.**

14 **(2) A FOR-PROFIT ONCOLOGY GROUP PRACTICE OR A FOR-PROFIT**
15 **OFFICE CONSISTING OF ONE OR MORE ONCOLOGISTS THAT PROVIDES RADIATION**
16 **THERAPY SERVICES OR NONDIAGNOSTIC COMPUTER TOMOGRAPHY SCAN SERVICES**
17 **TO PLAN AND DELIVER RADIATION THERAPY THAT IS EXEMPT FROM THE**
18 **PROVISIONS OF THIS SECTION UNDER SUBSECTION (D)(4) OF THIS SECTION**
19 **ANNUALLY SHALL REPORT TO THE DEPARTMENT THE NUMBER OF PATIENTS FOR**
20 **WHOM IT PROVIDES TREATMENT WHO ARE COVERED BY MEDICARE, THE**
21 **MARYLAND MEDICAL ASSISTANCE PROGRAM, OR THE MARYLAND CHILDREN’S**
22 **HEALTH PROGRAM.**

23 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
24 October 1, 2015.