

SENATE BILL 1032

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CF HB 929

By: **Senator Conway**

Introduced and read first time: February 17, 2016

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Health Occupations – Prohibited Patient Referrals – Exceptions**

3 FOR the purpose of providing that certain prohibitions on referrals do not apply to a health
4 care practitioner who has a certain beneficial interest or compensation arrangement
5 that meets certain exceptions in federal law or regulation; providing that certain
6 prohibitions on referrals do not apply to a health care practitioner who has a certain
7 beneficial interest or compensation arrangement for which the federal Department
8 of Health and Human Services has issued a certain waiver; limiting certain health
9 care services permissible under a certain federal exception to certain in-office
10 ancillary services; altering certain definitions; making a stylistic change; and
11 generally relating to exceptions for prohibited patient referrals.

12 BY repealing and reenacting, with amendments,
13 Article – Health Occupations
14 Section 1–301 and 1–302
15 Annotated Code of Maryland
16 (2014 Replacement Volume and 2015 Supplement)

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

19 **Article – Health Occupations**

20 1–301.

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

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

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

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

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

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

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

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

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

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

28 1. The arrangement is for identifiable services;

29 2. The amount of the remuneration under the arrangement
30 is consistent with the fair market value of the service and is not determined in a manner
31 that takes into account, directly or indirectly, the volume or value of any referrals by the
32 referring health care practitioner; [and]

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

4 **4. THE SPECIAL RULES ON COMPENSATION**
5 **ESTABLISHED UNDER 42 C.F.R. § 411.354(D) OR A SUCCESSOR PROVISION APPLY**
6 **TO THE ARRANGEMENT;**

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

11 (v) An arrangement for compensation which is provided by a health
12 care entity to a health care practitioner or the immediate family member of the health care
13 practitioner to induce the health care practitioner or the immediate family member of the
14 health care practitioner to relocate to the geographic area served by the health care entity
15 in order to be a member of the medical staff of a hospital, if:

16 1. The health care practitioner or the immediate family
17 member of the health care practitioner is not required to refer patients to the health care
18 entity;

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

22 3. The health care entity needs the services of the
23 practitioner to meet community health care needs and has had difficulty in recruiting a
24 practitioner; AND

25 **4. THE SPECIAL RULES ON COMPENSATION**
26 **ESTABLISHED UNDER 42 C.F.R. § 411.354(D) OR A SUCCESSOR PROVISION APPLY**
27 **TO THE ARRANGEMENT;**

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

30 1. At fair market value; and

31 2. In accordance with an arm's length transaction;

32 (vii) Payments made for the rental or lease of equipment if the
33 payments are:

34 1. At fair market value; and

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

8 **(IX) AN ARRANGEMENT THAT IS NOT A DIRECT COMPENSATION**

9 **ARRANGEMENT OR AN INDIRECT COMPENSATION ARRANGEMENT AS PROVIDED IN**

10 **42 C.F.R. § 411.354(C).**

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

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

13 consultation within the treatment area.

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

15 Maryland law by or at the direction of a university to accommodate the professional practice

16 of members of the faculty who are health care practitioners.

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

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

19 corporation, faculty practice plan, or similar association:

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

21 provides substantially the full range of services which the practitioner routinely provides

22 through the joint use of shared office space, facilities, equipment, and personnel;

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

24 practitioners who are members of the group are provided through the group and are billed

25 in the name of the group and amounts so received are treated as receipts of the group; and

26 (3) In which the overhead expenses of and the income from the practice are

27 distributed in accordance with methods previously determined on an annual basis by

28 members of the group.

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

30 services for the:

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

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, “in-office ancillary services” does not include:

20 (i) Magnetic resonance imaging services;

21 (ii) Radiation therapy services; or

22 (iii) Computer tomography scan services.

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

24 (2) “Referral” includes:

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

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

4 **(3) "REFERRAL" DOES NOT INCLUDE:**

5 **(I) A REQUEST FOR OR THE ESTABLISHMENT OF A PLAN OF**
6 **CARE FOR A HEALTH CARE SERVICE PERSONALLY PERFORMED BY THE HEALTH**
7 **CARE PRACTITIONER WHO MAKES THE REQUEST OR ESTABLISHES THE PLAN OF**
8 **CARE; OR**

9 **(II) A REQUEST FOR, AN ORDER OF, OR THE CERTIFYING OR**
10 **RECERTIFYING OF THE NEED FOR A HEALTH CARE SERVICE BY A HEALTH CARE**
11 **PRACTITIONER THAT IS EXEMPTED FROM THE DEFINITION OF REFERRAL UNDER 42**
12 **C.F.R. § 411.351 OR A SUCCESSOR PROVISION.**

13 1-302.

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

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

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

21 (3) With which the health care practitioner, the practitioner's immediate
22 family, or the practitioner in combination with the practitioner's immediate family has a
23 compensation arrangement.

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

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

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

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

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

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

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

12 (i) Personally furnished by:

13 1. The referring health care practitioner;

14 2. A health care practitioner in the same group practice as
15 the referring health care practitioner; or

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

19 (ii) Provided in the same building where the referring health care
20 practitioner or a health care practitioner in the same group practice as the referring health
21 care practitioner furnishes services; and

22 (iii) Billed by:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (ii) The ownership or investment interest is in the hospital itself and
2 not solely in a subdivision of the hospital; OR

3 (12) A HEALTH CARE PRACTITIONER WHO HAS A BENEFICIAL
4 INTEREST IN OR COMPENSATION ARRANGEMENT WITH A HEALTH CARE ENTITY IF:

5 (I) EXCEPT AS PROVIDED IN SUBSECTION (F) OF THIS SECTION,
6 THE BENEFICIAL INTEREST OR COMPENSATION ARRANGEMENT MEETS AN
7 EXCEPTION PROVIDED IN 42 U.S.C. § 1395NN OR A SUCCESSOR PROVISION OR 42
8 C.F.R. PART 411, SUBPART J OR A SUCCESSOR PROVISION; OR

9 (II) THE BENEFICIAL INTEREST OR COMPENSATION
10 ARRANGEMENT COMPLIES WITH:

11 1. A WAIVER ISSUED BY THE FEDERAL DEPARTMENT OF
12 HEALTH AND HUMAN SERVICES AS PROVIDED FOR IN THE MEDICARE PROGRAM;
13 FINAL WAIVERS IN CONNECTION WITH THE SHARED SAVINGS PROGRAM (80 FED.
14 REG. 66726 THROUGH 66745) (OCTOBER 29, 2015) OR A SUCCESSOR PROVISION; OR

15 2. ANY OTHER WAIVER OF THE APPLICATION OF 42
16 U.S.C. § 1395NN OR A SUCCESSOR PROVISION OR 42 C.F.R. PART 411, SUBPART J
17 OR A SUCCESSOR PROVISION ISSUED BY THE FEDERAL DEPARTMENT OF HEALTH
18 AND HUMAN SERVICES UNDER AUTHORITY GRANTED BY A FEDERAL STATUTE OR
19 REGULATION, INCLUDING § 1899 OF THE FEDERAL SOCIAL SECURITY ACT.

20 (e) A health care practitioner exempted from the provisions of this section in
21 accordance with subsection (d) OF THIS SECTION shall be subject to the disclosure
22 provisions of § 1-303 of this subtitle.

23 (F) FOR PURPOSES OF THE EXCEPTION ESTABLISHED UNDER SUBSECTION
24 (D)(12)(I) OF THIS SECTION, THE HEALTH CARE SERVICES THAT MAY BE
25 PERFORMED UNDER AN EXCEPTION PROVIDED IN 42 U.S.C. 1395NN(B)(2) AND 42
26 C.F.R. 411.355(B) SHALL BE LIMITED TO IN-OFFICE ANCILLARY SERVICES, AS
27 DEFINED IN § 1-301 OF THIS SUBTITLE, AND AS PERMITTED UNDER SUBSECTION
28 (D)(4) OF THIS SECTION.

29 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
30 October 1, 2016.