

Chapter 226

(Senate Bill 369)

AN ACT concerning

Maryland Patient Referral Law – Compensation Arrangements Under Federally Approved Programs and Models

FOR the purpose of exempting, under certain circumstances, a health care practitioner who has a certain compensation arrangement with a health care entity from a certain provision of law that prohibits a health care practitioner from referring a patient or directing certain persons to refer a patient to a certain health care entity; providing that the exemption is null and void if the Maryland Insurance Commissioner issues a certain order; providing that a certain provision of this Act may not be construed to permit certain actions, impose certain obligations, require the disclosure of certain information, authorize a certain payment, permit an arrangement that violates certain provisions of law, modify certain definitions or exceptions, or require a compensation agreement to comply with a certain provision of this Act; establishing a certain filing fee; requiring a certain participation agreement and other documents to be filed for approval with the Commissioner within a certain period of time before a certain exemption is implemented; providing for a certain exception; requiring the Commissioner to make a certain determination within a certain period of time; requiring the Commissioner to issue a certain order to a filer under certain circumstances; requiring the Commissioner to hold a hearing before issuing an order and to give written notice of the hearing to the filer within a certain period of time; requiring the notice to specify certain matters; requiring a filer to submit a revised filing under certain circumstances; requiring the Commissioner to make a new determination under certain circumstances; making a certain filing subject to a certain fee; ~~altering a certain definition;~~ defining a certain ~~terms~~ term; and generally relating to patient referrals, compensation arrangements under federally approved programs and models, and the business of insurance.

~~BY repealing and reenacting, without amendments,
 Article – Health Occupations
 Section 1–301(a) and (g) through (i)
 Annotated Code of Maryland
 (2014 Replacement Volume and 2016 Supplement)~~

BY repealing and reenacting, with amendments,
 Article – Health Occupations
 Section ~~1–301(e), (k), and (l)~~ and 1–302
 Annotated Code of Maryland
 (2014 Replacement Volume and 2016 Supplement)

~~BY adding to
 Article – Health Occupations~~

~~Section 1-301(k)
Annotated Code of Maryland
(2014 Replacement Volume and 2016 Supplement)~~

BY adding to
Article – Insurance
Section 2-112(a)(12) and 15-143
Annotated Code of Maryland
(2011 Replacement Volume and 2016 Supplement)

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

Article – Health Occupations

~~1-301.~~

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

~~(e) (1) “Compensation arrangement” means any agreement or system involving any remuneration, INCLUDING CASH OR IN-KIND COMPENSATION, between a health care practitioner or the immediate family member of the health care practitioner and a health care entity.~~

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

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

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

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

~~1. The arrangement is for identifiable services;~~

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

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

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

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

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

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

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

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

~~1. At fair market value; and~~

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

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

~~1. At fair market value; and~~

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

~~(viii) Payments made for the sale of property or a health care practice if the payments are:~~

~~1. At fair market value;~~

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

~~3. The remuneration is provided in accordance with an agreement that would be commercially reasonable even if no referrals were made.~~

~~(g) "Health care entity" means a business entity that provides health care services for the:~~

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

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

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

~~(i) "Health care service" means medical procedures, tests and services provided to a patient by or through a health care entity.~~

~~(K) "IN-KIND COMPENSATION" MEANS THE SHARING OF STAFF, RESOURCES, INFRASTRUCTURE, TECHNOLOGY, SOFTWARE, DATA, OR ANALYTICS.~~

~~[(k)](L) (1) "In-office ancillary services" means those basic health care services and tests routinely performed in the office of one or more health care practitioners.~~

~~(2) Except for a radiologist group practice or an office consisting solely of one or more radiologists, "in-office ancillary services" does not include:~~

~~(i) Magnetic resonance imaging services;~~

~~(ii) Radiation therapy services; or~~

~~(iii) Computer tomography scan services.~~

~~[(4)](M) (1) "Referral" means any referral of a patient for health care services.~~

~~(2) "Referral" includes:~~

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

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

1-302.

(a) Except as provided in subsection (d) of this section, 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 health care practitioner or the practitioner in combination with the practitioner's immediate family owns a beneficial interest;

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

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

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

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

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

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

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

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

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

(i) Personally furnished by:

1. The referring health care practitioner;
2. A health care practitioner in the same group practice as the referring health care practitioner; or
3. An individual who is employed and personally supervised by the qualified referring health care practitioner or a health care practitioner in the same group practice as the referring health care practitioner;

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

(iii) Billed by:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(12) SUBJECT TO SUBSECTION (F) OF THIS SECTION, A HEALTH CARE PRACTITIONER WHO HAS A COMPENSATION ARRANGEMENT WITH A HEALTH CARE ENTITY, IF THE COMPENSATION ARRANGEMENT IS FUNDED BY OR PAID UNDER:

(I) A MEDICARE SHARED SAVINGS PROGRAM ACCOUNTABLE CARE ORGANIZATION AUTHORIZED UNDER 42 U.S.C. § 1395JJJ;

(II) AS AUTHORIZED UNDER 42 U.S.C. § 1315A:

1. AN ADVANCE PAYMENT ACCOUNTABLE CARE ORGANIZATION MODEL;

2. A PIONEER ACCOUNTABLE CARE ORGANIZATION MODEL; OR

3. A NEXT GENERATION ACCOUNTABLE CARE ORGANIZATION MODEL;

(III) AN ALTERNATIVE PAYMENT MODEL APPROVED BY THE FEDERAL CENTERS FOR MEDICARE AND MEDICAID SERVICES; OR

(IV) ANOTHER MODEL APPROVED BY THE FEDERAL CENTERS FOR MEDICARE AND MEDICAID SERVICES THAT MAY BE APPLIED TO HEALTH CARE SERVICES PROVIDED TO BOTH MEDICARE BENEFICIARIES AND INDIVIDUALS WHO ARE NOT MEDICARE BENEFICIARIES.

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

(F) IF THE MARYLAND INSURANCE COMMISSIONER ISSUES AN ORDER UNDER § 15–143 OF THE INSURANCE ARTICLE THAT A COMPENSATION ARRANGEMENT FUNDED BY OR PAID UNDER A PAYMENT MODEL LISTED IN SUBSECTION (D)(12) OF THIS SECTION VIOLATES THE INSURANCE ARTICLE OR A REGULATION ADOPTED UNDER THE INSURANCE ARTICLE, THE EXEMPTION PROVIDED UNDER SUBSECTION (D)(12) OF THIS SECTION FOR A HEALTH CARE PRACTITIONER WHO HAS THE COMPENSATION ARRANGEMENT WITH A HEALTH CARE ENTITY IS NULL AND VOID.

(G) SUBSECTION (D)(12) OF THIS SECTION MAY NOT BE CONSTRUED TO:

(1) PERMIT AN INDIVIDUAL OR ENTITY TO ENGAGE IN THE INSURANCE BUSINESS, AS DEFINED IN § 1–101 OF THE INSURANCE ARTICLE, WITHOUT OBTAINING A CERTIFICATE OF AUTHORITY FROM THE MARYLAND INSURANCE COMMISSIONER AND SATISFYING ALL OTHER APPLICABLE REQUIREMENTS OF THE INSURANCE ARTICLE;

(2) (I) IMPOSE ADDITIONAL OBLIGATIONS ON A CARRIER PROVIDING INCENTIVE–BASED COMPENSATION TO A HEALTH CARE PRACTITIONER UNDER § 15–113 OF THE INSURANCE ARTICLE; OR

(II) REQUIRE THE DISCLOSURE OF INFORMATION REGARDING THE INCENTIVE-BASED COMPENSATION, EXCEPT AS REQUIRED UNDER § 15-113 OF THE INSURANCE ARTICLE;

(3) AUTHORIZE A HEALTH CARE ENTITY TO KNOWINGLY MAKE A DIRECT OR INDIRECT PAYMENT TO A HEALTH CARE PRACTITIONER AS AN INDUCEMENT TO REDUCE OR LIMIT MEDICALLY NECESSARY SERVICES TO INDIVIDUALS WHO ARE UNDER THE DIRECT CARE OF THE HEALTH CARE PRACTITIONER;

(4) PERMIT AN ARRANGEMENT THAT VIOLATES:

(I) § 14-404(A)(15) OF THIS ARTICLE; OR

(II) § 8-508, § 8-511, § 8-512, § 8-516, OR § 8-517 OF THE CRIMINAL LAW ARTICLE;

(5) NARROW, EXPAND, OR OTHERWISE MODIFY:

(I) ANY DEFINITION IN § 1-301 OF THIS SUBTITLE, INCLUDING THE DEFINITION OF “IN-OFFICE ANCILLARY SERVICES”; OR

(II) ANY EXCEPTION IN SUBSECTION (D)(4) OF THIS SECTION INCLUDING THE EXCEPTION FOR REFERRALS FOR IN-OFFICE ANCILLARY SERVICES OR TESTS; OR

(6) REQUIRE A COMPENSATION ARRANGEMENT TO COMPLY WITH THE PROVISIONS OF SUBSECTION (D)(12) OF THIS SECTION IF THE COMPENSATION ARRANGEMENT IS ~~DESCRIBED IN~~ EXEMPT UNDER ANY OTHER PROVISION OF SUBSECTION (D) OF THIS SECTION.

Article - Insurance

2-112.

(a) Fees for the following certificates, licenses, permits, and services shall be collected in advance by the Commissioner, and shall be paid by the appropriate persons, including health maintenance organizations, to the Commissioner:

(12) FEES FOR REQUIRED FILINGS UNDER § 15-143 OF THIS ARTICLE.....\$125

15-143.

(A) IN THIS SECTION, “PARTICIPATION AGREEMENT” MEANS A CONTRACT THAT:

(1) IS EXECUTED BY A PAYOR OR PROGRAM ADMINISTRATOR AND OTHER PARTICIPATING ENTITIES; AND

(2) DESCRIBES THE REQUIREMENTS FOR PARTICIPATION IN A PAYMENT MODEL SUBJECT TO THIS SECTION.

(B) THIS SECTION APPLIES ONLY TO A PAYMENT MODEL DESCRIBED IN § 1-302(D)(12) OF THE HEALTH OCCUPATIONS ARTICLE:

(1) THAT APPLIES TO INDIVIDUALS COVERED UNDER HEALTH INSURANCE; AND

(2) UNDER WHICH THERE IS CASH COMPENSATION.

(C) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, AT LEAST 60 DAYS BEFORE AN EXEMPTION PROVIDED UNDER § 1-302(D)(12) OF THE HEALTH OCCUPATIONS ARTICLE FOR A PAYMENT MODEL SUBJECT TO THIS SECTION IS IMPLEMENTED, THE PARTICIPATION AGREEMENT AND OTHER DOCUMENTS RELEVANT TO THE PAYMENT MODEL UNDER WHICH A COMPENSATION ARRANGEMENT BETWEEN A HEALTH CARE PRACTITIONER AND A HEALTH CARE ENTITY IS FUNDED OR PAID SHALL BE FILED WITH THE COMMISSIONER.

(2) THE FILING UNDER PARAGRAPH (1) OF THIS SUBSECTION IS NOT REQUIRED IF THE COMPENSATION ARRANGEMENT IS FUNDED FULLY BY OR PAID FULLY UNDER THE MEDICARE OR MEDICAID PROGRAM.

(D) WITHIN 60 DAYS AFTER THE DOCUMENTS REQUIRED UNDER SUBSECTION (C)(1) OF THIS SECTION ARE FILED, THE COMMISSIONER SHALL DETERMINE IF ANY COMPENSATION ARRANGEMENT BETWEEN A HEALTH CARE PRACTITIONER AND A HEALTH CARE ENTITY FUNDED BY OR PAID UNDER THE PAYMENT MODEL:

(1) IS INSURANCE BUSINESS; AND

(2) VIOLATES THIS ARTICLE OR A REGULATION ADOPTED UNDER THIS ARTICLE.

(E) (1) IF THE COMMISSIONER DETERMINES THAT A COMPENSATION ARRANGEMENT IS INSURANCE BUSINESS AND VIOLATES THIS ARTICLE OR A REGULATION ADOPTED UNDER THIS ARTICLE, THE COMMISSIONER SHALL ISSUE AN

ORDER TO THE FILER THAT SPECIFIES THE WAYS IN WHICH THE COMPENSATION ARRANGEMENT VIOLATES THIS ARTICLE OR A REGULATION ADOPTED UNDER THIS ARTICLE.

(2) (I) THE COMMISSIONER SHALL HOLD A HEARING BEFORE ISSUING AN ORDER UNDER PARAGRAPH (1) OF THIS SUBSECTION.

(II) THE COMMISSIONER SHALL GIVE WRITTEN NOTICE OF THE HEARING TO THE FILER AT LEAST 10 DAYS BEFORE THE HEARING.

(III) THE NOTICE SHALL SPECIFY THE MATTERS TO BE CONSIDERED AT THE HEARING.

(3) IF THE COMPENSATION ARRANGEMENT BETWEEN A HEALTH CARE PRACTITIONER AND A HEALTH CARE ENTITY CHANGES DURING ITS TERM:

(I) THE FILER SHALL SUBMIT A REVISED FILING TO THE COMMISSIONER FOR REVIEW OF THE CHANGES; AND

(II) THE COMMISSIONER SHALL MAKE A NEW DETERMINATION, AS PROVIDED UNDER SUBSECTION (D) OF THIS SECTION.

(F) A FILING UNDER SUBSECTION (C) OF THIS SECTION IS SUBJECT TO THE FEE REQUIRED UNDER § 2-112(A)(12) OF THIS ARTICLE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect ~~October~~ June 1, 2017.

Approved by the Governor, April 18, 2017.