

Article - Health Occupations

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§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;

(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;

(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; or

(v) A value-based arrangement that meets the requirements of 42 C.F.R. § 411.357(aa)(1) through (3).

(e) A health care practitioner exempted from the provisions of this section in accordance with subsection (d) of this section 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 exempt under any other provision of subsection (d) of this section.

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