

8. Patient Referrals

HEALTH OCCUPATIONS ARTICLE, §§1-301—1-305

§1–301. Definitions.

(a) *In general.* — In this subtitle the following words have the meanings indicated.

(b) *Beneficial interest.* —

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

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

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

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

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

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

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

(c) *Compensation arrangement.* —

(1) “Compensation arrangement” means any agreement or system involving any remuneration 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. Provided in accordance with an agreement that would be commercially reasonable even if no referrals were made.

(d) *Direct supervision*. — "Direct supervision" means a health care practitioner is present on the premises where the health care services or tests are provided and is available for consultation within the treatment area.

(e) *Faculty practice plan*. — "Faculty practice plan" means a tax-exempt organization established under Maryland law by or at the direction of a university to accommodate the professional practice of members of the faculty who are health care practitioners.

(f) *Group practice*. — "Group practice" means a group of two or more health care practitioners legally organized as a partnership, professional corporation, foundation, nonprofit corporation, faculty practice plan, or similar association:

(1) In which each health care practitioner who is a member of the group provides substantially the full range of services which the practitioner routinely provides through the joint use of shared office space, facilities, equipment, and personnel;

(2) For which substantially all of the services of the health care practitioners who are members of the group are provided through the group and are billed in the name of the group and amounts so received are treated as receipts of the group; and

(3) In which the overhead expenses of and the income from the practice are distributed in accordance with methods previously determined on an annual basis by members of the group.

(g) *Health care entity*. — "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*. — “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*. — “Health care service” means medical procedures, tests and services provided to a patient by or through a health care entity. (j) *Immediate family member*. — “Immediate family member” means a health care practitioner’s:

- (1) Spouse;
- (2) Child;
- (3) Child’s spouse;
- (4) Parent;
- (5) Spouse’s parent;
- (6) Sibling; or
- (7) Sibling’s spouse.

(k) *In-office ancillary services*. —

(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.

(l) *Referral*. —

(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. Prohibited referrals; exceptions; disclosures.

(a) *Prohibited referrals*. — 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) *Payment prohibited.* — 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) *Applicability of subsection (a).* — 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) *Exemptions from section.* — 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.

(e) *Disclosure.* — 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.

§1-303. Disclosure of beneficial interest.

(a) *Required.* — Except as provided in subsection (c) of this section and Title 12 of this article, a health care practitioner making a lawful referral shall disclose the existence of the beneficial interest in accordance with provisions of this section.

(b) *Form and content.* — Prior to referring a patient to a health care entity in which the practitioner, the practitioner's immediate family, or the practitioner in combination with the practitioner's immediate family owns a beneficial interest, the health care practitioner shall:

(1) Except if an oral referral is made by telephone, provide the patient with a written statement that:

(i) Discloses the existence of the ownership of the beneficial interest or compensation arrangement;

(ii) States that the patient may choose to obtain the health care service from another health care entity; and

(iii) Requires the patient to acknowledge in writing receipt of the statement;

(2) Except if an oral referral is made by telephone, insert in the medical record of the patient a copy of the written acknowledgement;

(3) Place on permanent display a written notice that is in a typeface that is large enough to be easily legible to the average person from a distance of 8 feet and that is in a location that is plainly visible to the patients of the health care practitioner disclosing all of the health care entities:

(i) In which the practitioner, the practitioner's immediate family, or the practitioner in combination with the practitioner's immediate family owns a beneficial interest; and

(ii) To which the practitioner refers patients; and

(4) Documents in the medical record of the patient that:

(i) A valid medical need exists for the referral; and

(ii) The practitioner has disclosed the existence of the beneficial interest to the patient.

(c) *Exemptions.* — 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 and the health care practitioner does not have a beneficial interest in the health care entity; or

(2) A health care practitioner who refers a patient:

(i) To another health care practitioner in the same group practice as the referring health care practitioner;

(ii) For in-office ancillary services; or

(iii) For health care services provided through or by a health care entity owned or controlled by a hospital.

(d) *Penalties.* — A health care practitioner who fails to comply with any provision of this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$5,000.

§1-304. Disclosure to third party payors.

(a) *In general.* — A health care practitioner shall disclose the name of a referring health care practitioner on each request for payment or bill submitted to a third party payor, including nonprofit health plans and fiscal intermediaries and carriers, that may be responsible for payment, in whole or in part, of the charges for a health care service, if the health care practitioner knows or has reason to believe:

(1) There has been a referral by a health care practitioner; and

(2) The referring health care practitioner has a beneficial interest in or compensation arrangement with the health care entity that is prohibited under § 1-302 of this subtitle.

(b) *Failure to comply.* — A health care practitioner who knows or should have known of the practitioner's failure to comply with the provisions of this section shall be subject to disciplinary action by the appropriate licensing board.

§1-305. Collections for services provided pursuant to prohibited referral.

(a) *Liability to payor.* — If a referring health care practitioner, a health care entity, or other person furnishing health care services collects any amount of money that was billed in violation of § 1-302(b) of this subtitle and the referring health care practitioner, health care entity, or other person knew or should have known of the violation, the referring health care practitioner, health care entity, or other person is jointly and severally liable to the payor for any amounts collected.

(b) *Liability of recipient of health care services.* — If a claim, bill, or other demand or request for payment for health care services is denied under § 19-712.4 of the Health – General Article or § 15-110 of the Insurance Article, the referring health care practitioner, health care entity, or other person furnishing the health care services may not submit a claim, bill, or other demand or request for payment to the person who received the health care services.