

A BILL TO BE ENTITLED

AN ACT

1
2 relating to financial arrangements between referring health care
3 providers and providers of health care services; providing
4 penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Subtitle A, Title 3, Occupations Code, is
7 amended by adding Chapter 107 to read as follows:

8 CHAPTER 107. FINANCIAL ARRANGEMENTS BETWEEN HEALTH CARE PROVIDERS

9 Sec. 107.001. DEFINITIONS. In this chapter:

10 (1) "Board" means any of the following boards as
11 related to the professions licensed by the board:

12 (A) the Texas State Board of Medical Examiners;

13 (B) the Texas Board of Chiropractic Examiners;

14 (C) the Texas Optometry Board;

15 (D) the Texas State Board of Pharmacy;

16 (E) the State Board of Dental Examiners; and

17 (F) the Texas State Board of Podiatric Medical
18 Examiners.

19 (2) "Comprehensive rehabilitation services" means
20 services provided by a health care professional licensed under
21 Chapter 401, 453, or 454 to provide speech, occupational, or
22 physical therapy services on an outpatient or ambulatory basis.

23 (3) "Designated health services" means clinical
24 laboratory services, physical therapy services, comprehensive

1 rehabilitative services, diagnostic imaging services, and
2 radiation therapy services.

3 (4) "Diagnostic imaging services" means magnetic
4 resonance imaging, nuclear medicine, angiography, arteriography,
5 computed tomography, positron emission tomography, digital
6 vascular imaging, bronchography, lymphangiography, splenography,
7 ultrasound, EEG, EKG, nerve conduction studies, and evoked
8 potentials.

9 (5) "Direct supervision" means supervision by a
10 physician who is physically present and immediately available to
11 provide assistance and direction while services are being
12 performed. The health care provider is considered physically
13 present during brief unexpected absences as well as during routine
14 absences of a short duration if the absences occur during periods in
15 which the health care provider is otherwise scheduled and
16 ordinarily expected to be present and the absences do not conflict
17 with any other applicable Medicare requirement for a certain level
18 of health care provider supervision.

19 (6) "Fair market value" means the value in an
20 arm's-length transaction that is consistent with the general market
21 value. For a rental or lease, fair market value means the value of
22 the rental property for general commercial purposes, without
23 consideration of the property's intended use. The fair market
24 value of a lease or rental of property may not be adjusted to
25 reflect the additional value attributable to the proximity or
26 convenience to the lessor if the lessor is a potential source of
27 patient referrals to the lessee.

1 (7) "Group practice" means a group of two or more
2 health care providers legally organized as a partnership,
3 professional corporation, or similar association:

4 (A) in which each health care provider in the
5 group:

6 (i) provides substantially the full range
7 of services that the health care provider routinely provides,
8 including medical care, consultation, diagnosis, or treatment,
9 through the joint use of shared office space, facilities,
10 equipment, and personnel; and

11 (ii) provides substantially all of the
12 provider's services through the group, bills for the services in
13 the name of the group, and credits payments for the services as
14 receipts of the group; and

15 (B) that distributes the overhead expenses and
16 the income from the group in accordance with the methods previously
17 determined by the members of the group.

18 (8) "Health care provider" means a person licensed
19 under Chapter 155, 201, 256, 351, or 558.

20 (9) "Immediate family member" means a health care
21 provider's spouse, child, child's spouse, grandchild, grandchild's
22 spouse, parent, parent-in-law, or sibling.

23 (10) "Investment interest" means an equity or debt
24 security issued by a person, including shares of stock in a
25 corporation, units or other interests in a partnership, bonds,
26 debentures, notes, or other equity interests or debt instruments.
27 The term does not include any interest excluded under Section

1 107.002.

2 (11) "Investor" means a person owning a legal or
3 beneficial ownership or investment interest in another person,
4 directly or indirectly, including, through an immediate family
5 member, trust, or another person related to the investor in
6 accordance with 42 C.F.R. Section 413.17.

7 (12) "Outside referral for diagnostic imaging
8 services" means a referral of a patient to a group practice or sole
9 provider for diagnostic imaging services:

10 (A) by a physician who:

11 (i) is not a member of the group practice or
12 of the sole provider's practice; and

13 (ii) does not have an investment interest
14 in the group practice or sole provider's practice;

15 (B) for which the group practice or sole provider
16 bills for the technical and the professional fee for the patient;
17 and

18 (C) with respect to which the patient does not
19 become a patient of the group practice or sole provider.

20 (13) "Patient of a group practice" or "patient of a
21 sole provider" means a patient who receives a physical examination,
22 evaluation, diagnosis, and development of a treatment plan if
23 medically necessary by a physician who is a member of the group
24 practice or is a sole provider.

25 (14) "Referral" means a referral of a patient by a
26 health care provider for health care services. The term does not
27 include acts excluded under Section 107.003. The term includes:

1 (A) forwarding a patient to another health care
2 provider or to another person that provides designated health
3 services or another health care item or service; and

4 (B) requesting or establishing a plan of care,
5 including the provision of designated health services or another
6 health care item or service.

7 (15) "Rural area" means a county with a population
8 density not greater than 100 persons per square mile according to
9 the most recent federal decennial census.

10 (16) "Sole provider" means one health care provider
11 licensed under Chapter 155, 201, or 351 who maintains a separate
12 medical office and a medical practice separate from any other
13 health care provider and who bills for services separately from the
14 services provided by any other health care provider. The term does
15 not include a health care provider who shares overhead expenses or
16 professional income with any other person or group practice.

17 Sec. 107.002. EXCLUDED INVESTMENT INTERESTS. This chapter
18 does not apply to:

19 (1) an investment interest in a person that is the sole
20 provider of designated health services in a rural area;

21 (2) an investment interest in notes, bonds,
22 debentures, or other debt instruments issued by a person that
23 provides designated health services as an integral part of a plan to
24 acquire an investor's equity investment interest in the person,
25 provided the interest rate is consistent with fair market value and
26 the maturity date of the notes, bonds, debentures, or other debt
27 instruments issued by the person to the investor is not later than

1 October 1, 2007;

2 (3) an investment interest in real property resulting
3 in a landlord-tenant relationship between the health care provider
4 and the person that holds the equity interest, unless the rent is
5 determined, wholly or partly, by the business volume or
6 profitability of the tenant or exceeds fair market value; or

7 (4) an investment interest in a person that owns or
8 leases and operates a hospital licensed under Chapter 241, Health
9 and Safety Code, or a nursing home licensed under Chapter 242,
10 Health and Safety Code.

11 Sec. 107.003. EXCLUDED REFERRALS. (a) This chapter does
12 not apply to an order, recommendation, or plan by:

13 (1) a radiologist for diagnostic imaging services;

14 (2) a physician specializing in the provision of
15 radiation therapy services for diagnostic imaging services;

16 (3) a medical oncologist for drugs and solutions
17 prepared and administered intravenously to the oncologist's
18 patient and for the supplies and equipment used in connection with
19 the drugs and solutions to treat the patient for cancer and the
20 resulting complications;

21 (4) a cardiologist for cardiac catheterization
22 services;

23 (5) a pathologist for diagnostic clinical laboratory
24 tests and pathological examination services furnished by or under
25 the supervision of the pathologist pursuant to a consultation
26 requested by another physician;

27 (6) except as otherwise provided by this section, a

1 health care provider who is the sole provider or member of a group
2 practice for designated health services or other health care items
3 or services that are:

4 (A) prescribed or provided solely for the
5 patients of the referring provider or group practice; and

6 (B) provided or performed by or under the direct
7 supervision of the referring health care provider or group
8 practice;

9 (7) a health care provider for services provided by an
10 ambulatory surgical center licensed under Chapter 243, Health and
11 Safety Code;

12 (8) a dentist for dental services performed by:

13 (A) a health care provider who is an independent
14 contractor with the dentist or group practice of which the dentist
15 is a member; or

16 (B) an employee of a health care provider
17 described by Paragraph (A);

18 (9) a physician for infusion therapy services to a
19 patient of that physician or a member of that physician's group
20 practice;

21 (10) a nephrologist for renal dialysis services and
22 supplies, except laboratory services; or

23 (11) a health care provider whose principal
24 professional practice consists of treating patients in the
25 patients' private residences for services rendered in the private
26 residences, except for services rendered by a home and community
27 support services agency licensed under Chapter 142, Health and

1 Safety Code, including services at a patient's private home, an
2 independent living center, and an assisted living facility, but not
3 including a skilled nursing facility.

4 (b) Effective July 1, 2010, a person licensed under Chapter
5 155, 201, or 351 may refer a patient to a sole provider or group
6 practice for diagnostic imaging services, excluding radiation
7 therapy services, for which the sole provider or group practice
8 bills both the technical and the professional fee for or on behalf
9 of the patient, if the referring person does not have an investment
10 interest in the practice. The diagnostic imaging service referred
11 to a group practice or sole provider under this subsection must be a
12 diagnostic imaging service normally provided within the scope of
13 practice to the patients of the group practice or sole provider.
14 The group practice or sole provider may not accept more than 15
15 percent of its patients receiving diagnostic imaging services from
16 outside referrals, excluding radiation therapy services.

17 Sec. 107.004. DUTIES OF BOARDS. (a) Each board and, for
18 hospitals, the Texas Board of Health, shall encourage each person
19 licensed by the board to use the declaratory statement procedure to
20 determine the applicability of this chapter or any rule adopted
21 under this chapter to the license holder.

22 (b) A board shall submit to the Texas Board of Health the
23 name of any person in which a provider investment interest has been
24 approved under this chapter.

25 (c) The Texas Board of Health by rule shall provide for
26 periodic quality assurance and utilization review of a person
27 approved under Subsection (b).

1 Sec. 107.005. REQUIREMENTS FOR ACCEPTING OUTSIDE REFERRALS
2 FOR DIAGNOSTIC IMAGING. (a) A group practice or sole provider may
3 accept outside referrals for diagnostic imaging services only if
4 the practice or provider complies with this section.

5 (b) The diagnostic imaging services may be provided only by
6 the group practice or sole provider or by a full-time or part-time
7 employee of the group practice or sole provider.

8 (c) The physicians comprising the group practice or the
9 physician who is a sole provider:

10 (1) must hold all equity in the practice, and each
11 physician must provide at least 75 percent of the physician's
12 professional services to the practice; or

13 (2) must be incorporated under the Texas Non-Profit
14 Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil
15 Statutes), be exempt under Section 501(c)(3), Internal Revenue Code
16 of 1986, be part of a foundation in existence before January 1,
17 1999, and exist for the purposes of patient care, medical
18 education, and research.

19 (d) The group practice or sole provider may not enter into,
20 extend, or renew any contract with a practice management company
21 that provides a financial incentive, directly or indirectly, based
22 on an increase in outside referrals for diagnostic imaging services
23 from a group practice or sole provider managed by the same practice
24 management company.

25 (e) The group practice or sole provider must bill for the
26 professional and technical service on behalf of the patient. The
27 group practice or sole provider may not share any portion of the

1 payment or any type of consideration, directly or indirectly, with
2 the referring health care provider.

3 (f) A group practice or sole provider that has a Medicaid
4 provider agreement with the Texas Board of Health must furnish
5 diagnostic imaging services to the practice's or provider's
6 Medicaid patients and may not refer a Medicaid recipient to a
7 hospital for outpatient diagnostic imaging services unless the
8 physician furnishes the hospital with documentation demonstrating
9 the medical necessity for the referral. If necessary, the Texas
10 Board of Health may apply for a federal waiver to implement this
11 subsection.

12 Sec. 107.006. ANNUAL REPORT OF REFERRALS FOR DIAGNOSTIC
13 IMAGING. A group practice or sole provider that accepts outside
14 referrals for diagnostic imaging shall annually report to the Texas
15 Board of Health the number of outside referrals accepted for
16 diagnostic imaging services and the total number of all patients
17 receiving diagnostic imaging services.

18 Sec. 107.007. ANNUAL STATEMENT OF REFERRALS FOR DIAGNOSTIC
19 IMAGING. (a) Each managing physician member of a group practice
20 and each sole provider who accepts outside referrals for diagnostic
21 imaging services shall annually submit to the Texas Board of Health
22 a statement signed under oath declaring that each group practice or
23 sole provider is in compliance with the percentage limitations for
24 accepting outside referrals and the requirements for accepting
25 outside referrals under Section 107.005.

26 (b) The Texas Board of Health may verify a statement
27 submitted by a group practice or sole provider under this section.

1 Sec. 107.008. PROHIBITED REFERRALS. (a) Except as
2 provided by this chapter, a health care provider may not:

3 (1) refer a patient for designated health services to
4 a person in which the health care provider is an investor or has an
5 investment interest; or

6 (2) refer a patient for any other health care item or
7 service to a person in which the health care provider is an investor
8 or has an investment interest unless:

9 (A) the provider's investment interest is in
10 registered securities purchased on a national exchange or
11 over-the-counter market and issued by a publicly held corporation
12 that:

13 (i) has shares traded on a national
14 exchange or on the over-the-counter market; and

15 (ii) has total assets at the end of the
16 corporation's most recent fiscal quarter that exceeded \$50 million;
17 or

18 (B) for a person other than a publicly held
19 corporation and a referring provider's investment interest in the
20 person, the person:

21 (i) does not have more than 50 percent of
22 the value of the investment interests held by investors who are in a
23 position to make referrals to the entity;

24 (ii) offers terms for an investment
25 interest to an investor who is in a position to make referrals to
26 the person that are not different from the terms offered to
27 investors who are not in a position to make referrals;

1 (iii) offers terms for an investor who is in
2 a position to make referrals to the person that are not related to
3 the previous or expected volume of referrals from that investor to
4 the entity; and

5 (iv) does not require that an investor make
6 referrals or be in a position to make referrals to the entity as a
7 condition for becoming or remaining an investor.

8 (b) A person described by Subsection (a)(2)(A) or (B):

9 (1) may not loan funds to or guarantee a loan for an
10 investor who is in a position to make referrals to the person if the
11 investor uses any part of the loan to obtain the investment
12 interest; and

13 (2) may only distribute to an investor an amount that
14 represents a return on the investment interest directly
15 proportional to the amount of the capital investment, including the
16 fair market value of any preoperational services rendered and
17 invested in the person by that investor.

18 Sec. 107.009. PROHIBITED CLAIMS AND PAYMENTS. (a) A person
19 may not present a claim for payment to any individual, third-party
20 payor, or other person for a service furnished pursuant to a
21 referral prohibited under this chapter.

22 (b) A person that collects an amount billed in violation of
23 this chapter shall refund the amount on a timely basis to the
24 individual, third-party payor, or other person.

25 Sec. 107.010. CIVIL PENALTY. (a) A person that presents or
26 causes to be presented a claim for payment prohibited under Section
27 107.009 is subject to a civil penalty of not more than \$15,000 for

1 each claim. The attorney general may bring an action in the name of
2 the state to impose and collect a penalty under this subsection.

3 (b) A health care provider or other person that enters into
4 an arrangement, including a cross-referral arrangement, for which
5 the person knows or should know has a principal purpose of assuring
6 referrals by a health care provider to a particular person that, if
7 the health care provider directly made the referrals, would be in
8 violation of this chapter, is subject to a civil penalty of not more
9 than \$100,000. The attorney general may bring an action in the name
10 of the state to impose and collect a penalty under this subsection.

11 Sec. 107.011. VIOLATION OF CHAPTER; PENALTIES. (a) A group
12 practice or sole provider that accepts an outside referral for
13 diagnostic imaging services in violation of this chapter or accepts
14 outside referrals for diagnostic imaging services in excess of the
15 percentage limitation established by Section 107.005 violates this
16 chapter and is subject to penalties under this section.

17 (b) A violation of this chapter by a health care provider
18 constitutes grounds for disciplinary action to be taken by the
19 appropriate licensing board as provided by Chapter 164, 201, 202,
20 263, or 351. A hospital licensed under Chapter 241, Health and
21 Safety Code, that violates this section is subject to Subchapter C,
22 Chapter 241, Health and Safety Code, as if the hospital had violated
23 a rule or minimum standard under that chapter.

24 Sec. 107.012. DISCRIMINATION BY HOSPITAL. A hospital
25 licensed under Chapter 241, Health and Safety Code, may not
26 discriminate against or otherwise penalize a health care provider
27 for complying with this chapter.

1 Sec. 107.013. CERTAIN FACILITIES EXEMPT. (a) Section
2 107.008(a)(1) does not apply to referrals:

3 (1) to radiation therapy centers managed by an entity
4 or subsidiary or general partner of the center that performs
5 radiation therapy services before April 1, 2002; or

6 (2) for radiation therapy performed at not more than
7 one additional office of any entity described by Subdivision (1)
8 before February 1, 2003, that had a binding purchase contract on and
9 a nonrefundable deposit paid for a linear accelerator to be used at
10 the additional office.

11 (b) The physical site of the radiation treatment centers
12 described by Subsection (a) may be relocated as a result of:

13 (1) an act of God;

14 (2) fire;

15 (3) a strike;

16 (4) an accident;

17 (5) war;

18 (6) an eminent domain action by a governmental body;

19 or

20 (7) refusal by the lessor to renew a lease.

21 (c) A relocation under Subsection (b) is limited to
22 relocation of an existing facility to a replacement location within
23 the county of the existing facility on written notification to the
24 licensing board.

25 (d) A health care provider that meets the requirements of
26 Section 107.008(a)(2) and Subsection (a) must disclose the
27 investment interest to the provider's patients in writing and

1 obtain the patient's written consent to service or treatment in
2 light of the disclosure before rendering services.

3 Sec. 107.014. RESTRICTIONS CUMULATIVE. The restrictions of
4 this chapter are in addition to the restrictions of Chapter 102.

5 SECTION 2. This Act takes effect September 1, 2003.