

By: Thompson

H.B. No. 3281

A BILL TO BE ENTITLED

AN ACT

1
2 relating to financial arrangements between referring health care
3 providers and providers of designated health services and supplies;
4 providing 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 112 to read as follows:

8 CHAPTER 112. RULES REGARDING HEALTH CARE PROVIDER REFERRAL

9 Sec. 112.001. DEFINITIONS. In this chapter:

10 (1) "Academic medical center" means an accredited
11 medical school or accredited academic hospital that provides
12 substantial academic or clinical teaching services in a field or
13 fields of medical specialties, together with affiliated hospitals.

14 (2) "Affiliated hospital" means a medical hospital
15 that is affiliated in a business arrangement with an academic
16 medical center, the medical staff of which is composed of a majority
17 of physicians on the faculty of the academic medical center, and a
18 majority of the patient admissions of which come from that faculty.

19 (3) "Designated health services" means:

20 (A) ambulatory surgery center services;

21 (B) clinical laboratory services;

22 (C) diagnostic imaging services;

23 (D) dialysis services;

24 (E) endoscopic services;

- 1 (F) electromyogram and other neurological
2 testing;
- 3 (G) home health services;
- 4 (H) inpatient and outpatient hospital services;
- 5 (I) lithotripsy;
- 6 (J) occupational therapy services;
- 7 (K) physical rehabilitation and therapy
8 services;
- 9 (L) radiation oncology and chemotherapy oncology
10 services; and
- 11 (M) speech-language pathology services.
- 12 (4) "Designated health supplies" means:
- 13 (A) durable medical equipment and supplies;
- 14 (B) outpatient prescription drugs;
- 15 (C) parental and enteral nutrients, equipment,
16 and supplies; and
- 17 (D) prosthetics, orthotics, and prosthetic
18 devices and supplies.
- 19 (5) "Diagnostic imaging services" means general
20 radiography, magnetic resonance imaging, nuclear medicine,
21 angiography, computed tomography, positron emission tomography,
22 and ultrasound to include cardiac echo and obstetrical ultrasound.
- 23 (6) "Health care provider" means any person licensed
24 as a health professional or authorized to practice in health care
25 under Subtitles B and C, Title 3.
- 26 (7) "Immediate family member" means the spouse, child,
27 child's spouse, grandchild, grandchild's spouse, parent,

1 parent-in-law, or sibling of a health care provider who is an
2 individual.

3 (8) "Investment interest" means an equity or debt
4 security issued by a person, including shares of stock in a
5 corporation, units or other interests in a partnership, bonds,
6 debentures, notes, or other equity interests or debt instruments.
7 The term does not include an interest in real property resulting in
8 a landlord-tenant relationship between a health care provider and
9 another person in which the equity interest is held, unless the
10 rent:

11 (A) is determined, in whole or in part, by the
12 business volume or profitability of the tenant; or

13 (B) exceeds fair market value.

14 (9) "Investor" means a person who directly or
15 indirectly holds a legal, beneficial ownership, or investment
16 interest, including an interest held through an immediate family
17 member, trust, or another person related to the investor within the
18 meaning of 42 C.F.R. Section 413.17.

19 (10) "Licensing authority" means the department,
20 board, office, or other agency of the state that regulates a health
21 care provider that is subject to this chapter.

22 (11) "Outside referral for designated health services
23 or supplies" means a referral of a patient to a person for
24 designated health services or supplies by a health care provider
25 who does not have an investment interest in the person.

26 (12) "Patient" means a person who receives a physical
27 examination, evaluation, diagnosis, or treatment by a health care

1 provider.

2 (13) "Referral" means a request by a health care
3 provider for, or ordering of, designated health services or
4 designated health supplies for a patient. The term does not include
5 the performance of a designated health service or provision of a
6 designated health supply for a patient by a health care provider or
7 another person that performs or provides the designated health
8 service or supply:

9 (A) under the direct supervision of the patient's
10 health care provider;

11 (B) performed or provided in the same building in
12 which the patient's health care provider operates the provider's
13 medical practice; and

14 (C) with respect to which the performance or
15 provision of the designated health service or supply results in a
16 total financial cost to the patient or the patient's payor equal to
17 or less than \$250 in a year.

18 (14) "Third party payor" means:

19 (A) a person authorized to engage in business
20 involving the payment of money or another thing of value in the
21 event of loss resulting from disability incurred as a result of
22 accident or sickness, as described in the Insurance Code;

23 (B) a health insurance plan offered by an
24 employer under the provisions of the Employee Retirement and
25 Insurance Security Act of 1974 (29 U.S.C. Section 1002);

26 (C) a publicly funded program of health care
27 services, including Medicaid or the state child health plan; or

1 (D) any person, other than a patient, that pays a
2 health care provider to provide designated health services or
3 supplies, including an insurance company or a health maintenance
4 organization.

5 Sec. 112.002. PROHIBITED REFERRALS AND CLAIMS FOR PAYMENT.

6 (a) A health care provider may not refer a patient for the
7 provision of designated health services or supplies to a person in
8 which the health care provider is directly or indirectly an
9 investor or has an investment interest.

10 (b) A health care provider or other person may not present a
11 claim for payment to any person or third party payor for a
12 designated health service or supply furnished pursuant to a
13 referral prohibited under this section.

14 Sec. 112.003. ALLOWED REFERRALS. Section 112.002 does not
15 apply to:

16 (1) the referral by a health care provider on the
17 faculty of an academic medical center to the academic medical
18 center or an affiliated hospital;

19 (2) the referral by a health care provider who is
20 employed by a person that is under the common control and governance
21 of a corporate parent that also has under its common control and
22 governance a health maintenance organization regulated under
23 Chapter 843, Insurance Code;

24 (3) a referral by a health care provider if the health
25 care provider's investment interest is in registered securities
26 purchased on a national exchange and issued by a publicly held
27 corporation:

1 (A) the shares of which are traded on a national
2 exchange; and

3 (B) the total assets of which at the end of the
4 corporation's most recent fiscal quarter exceeded \$200 million; or

5 (4) a referral of a patient for designated health
6 services or supplies the cost of which is being reimbursed or paid
7 for by a third party payor that has entered into a contract with the
8 referring health care provider as described in Section 112.007.

9 Sec. 112.004. ENFORCEMENT. (a) Any health care provider or
10 other person that presents or causes to be presented a bill or a
11 claim for service for a designated health service or supply
12 furnished pursuant to a referral that is prohibited by Section
13 112.002 is subject to a civil penalty of not more than \$15,000 for
14 each bill or claim.

15 (b) The licensing authority that regulates the health care
16 provider shall bring an action to impose and collect the civil
17 penalty. A penalty collected under this section must be maintained
18 in a segregated account outside the state treasury by the licensing
19 authority to be used in the enforcement of this chapter. If there
20 is no licensing authority that regulates the health care provider
21 or other person against whom the civil penalty should be imposed,
22 the attorney general may bring the action to impose and collect the
23 penalty and the penalty collected under this section must be
24 maintained in a segregated account outside the state treasury by
25 the Office of the Attorney General to be used in the enforcement of
26 this chapter and other statutes for protection of health care
27 consumers.

1 (c) A health care provider or other person that enters into
2 an agreement or other arrangement that the provider or person knows
3 or should know has a material purpose of assuring referrals to a
4 particular person which, if the health care provider directly made
5 referrals to that person, would be in violation of this chapter, is
6 subject to a civil penalty of not more than \$100,000 for each
7 agreement or arrangement.

8 (d) The licensing authority that regulates the health care
9 provider shall bring an action to impose and collect the civil
10 penalty. All penalties collected must be maintained in a
11 segregated account outside the state treasury by the licensing
12 authority to be used in the enforcement of this chapter. If there
13 is no licensing authority that regulates the health care provider
14 or other person against whom the civil penalty should be imposed,
15 the attorney general may bring the action to impose and collect the
16 penalty and the penalties collected shall be maintained in a
17 segregated account outside the state treasury by the Office of the
18 Attorney General to be used in the enforcement of this chapter and
19 other statutes for protection of health care consumers.

20 (e) If a health care provider or other person collects any
21 amount that was billed in violation of this chapter, the provider or
22 person shall refund the amount to the third party payor or patient,
23 not later than the 45th day after the date of receipt of payment.

24 (f) In addition to the penalties or other remedies in this
25 chapter, an action for an injunction or other relief to enforce this
26 chapter may be brought by the attorney general in the name of the
27 state and against the health care provider or other person alleged

1 to have violated this chapter to restrain the violation by
2 temporary restraining order, temporary injunction, or permanent
3 injunction.

4 (g) An action brought under this section may be commenced in
5 the district court of the county in which the health care provider
6 or other person against whom the action is brought resides, has its
7 principal place of business, or has done business, or in the
8 district court of the county in which the transaction occurred, or,
9 on the consent of the parties, in a district court of Travis County.
10 The court may issue temporary orders and temporary or permanent
11 injunctions to restrain and prevent violations of this chapter and
12 the injunctive relief shall be issued without bond.

13 (h) In addition to the request for a temporary restraining
14 order or permanent injunction in a proceeding brought under this
15 section, the attorney general may request, and the trier of fact may
16 award, civil penalties otherwise authorized under this chapter.

17 (i) In an action under this section, the court may make
18 additional orders or judgments as necessary to compensate a third
19 party payor or patient.

20 (j) A person who violates an injunction under this section
21 shall forfeit and pay to the state a civil penalty of not more than
22 \$10,000 for each violation, not to exceed a total of \$50,000. For
23 the purposes of this section, the district court issuing the
24 injunction shall retain jurisdiction and the cause shall be
25 continued and in these cases the attorney general, acting in the
26 name of the state, may petition for recovery of civil penalties
27 under this section. A penalty collected under this subsection must

1 be maintained in a segregated account outside the state treasury by
2 the licensing authority that regulates the person against whom the
3 civil penalty is being imposed to be used in the enforcement of the
4 provisions of this chapter. If there is no licensing authority that
5 regulates the health care provider or other person against whom the
6 civil penalty should be imposed, the penalties collected shall be
7 maintained in a segregated account outside the state treasury by
8 the Office of the Attorney General to be used in the enforcement of
9 this chapter and other statutes for protection of health care
10 consumers.

11 (k) In bringing an action under this section, the attorney
12 general acts in the name of the state and does not establish an
13 attorney-client relationship with another person, including a
14 third party payor or patient.

15 (l) A third party payor or another health care provider may
16 maintain an action against a health care provider or other person
17 that violates this chapter.

18 (m) In a suit filed under Subsection (i), a third party
19 payor may obtain:

20 (1) the amount of money paid by the third party payor
21 to the health care provider or other person for a service or supply
22 furnished pursuant to a referral prohibited by this chapter and if
23 the trier of fact finds that the conduct of the defendant was
24 committed knowingly, the third party payor may also recover an
25 award of not more than three times the amount of the payment;

26 (2) an order enjoining a violation of this chapter;

27 (3) all orders necessary to restore to the third party

1 payor all sums of money that were acquired by the health care
2 provider or other person in violation of this chapter; and

3 (4) any other relief which the court deems proper.

4 (n) In a suit filed under Subsection (i), a health care
5 provider may obtain:

6 (1) an order enjoining a violation of this chapter;
7 and

8 (2) any other relief that the court deems proper.

9 (o) Each third party payor or health care provider who files
10 an action under Subsection (i) and prevails in that action shall be
11 awarded court costs and reasonable and necessary attorney's fees.

12 (p) The court, on a showing of good cause, may allow the
13 attorney general, as a representative of the public, to intervene
14 in the action to which this section applies. The attorney general
15 shall file its motion for intervention with the court before which
16 the action is pending and serve a copy of the motion on each party to
17 the action.

18 Sec. 112.005. LIMITATION ON FILING SUIT. (a) An action
19 under Section 112.004 must be brought before the fourth anniversary
20 of the date on which a violation of this chapter has occurred.

21 (b) Not later than the 61st day before the date a third party
22 payor or health care provider files an action under Section
23 112.004(i), the third party payor or health care provider shall
24 give a defendant health care provider written notice of the
25 intention to maintain the action, stating in reasonable detail the
26 nature of the alleged violation.

27 (c) A health care provider who receives a notice under this

1 section may correct the violation as provided by Section 112.006
2 during the period beginning on the date the notice is received and
3 ending on the 60th day after that date. A health care provider who
4 corrects a violation as provided in Section 112.006 is not liable to
5 a third party payor for the violation.

6 Sec. 112.006. EXCEPTION FROM LIABILITY. A health care
7 provider is not liable to a third party payor for a violation of
8 this chapter if, prior to or during the 60-day period of time
9 following the provider's receipt of the notice described in Section
10 112.005, the health care provider pays to the third party payor the
11 amount of money paid by the third party payor to the health care
12 provider for a designated health service or supply furnished
13 pursuant to a referral prohibited by this chapter.

14 Sec. 112.007. WAIVER BY CONTRACT. A third party payor may
15 waive its claims for liability under Section 112.004 by contract
16 with a health care provider if the health care provider does not
17 provide more than 25 percent of the designated health services or
18 supplies in a medical specialty in a county in which the health care
19 provider offers their services. A patient or a person other than a
20 third party payor who is financially responsible for a patient's
21 care may not waive claims for liability under Section 112.004.

22 Sec. 112.008. REPORTING AND DISCLOSURE OF REFERRALS. (a) A
23 health care provider who refers a patient for the provision of
24 designated health services or supplies pursuant to Section 112.003
25 to a person in which the health care provider is an investor or has
26 an investment interest shall provide the licensing authority with a
27 quarterly report containing the total number of the referrals and

1 all claims data for those referrals required by the Center for
2 Health Statistics of the Department of State Health Services.

3 (b) A person providing designated health services or
4 supplies that performs services or provides supplies for a
5 referring health care provider that has an investment interest in
6 the person shall report to the Center for Health Statistics of the
7 Department of State Health Services the identity of the referring
8 health care provider, the exact nature of the investment interest,
9 and the total number of all patients receiving designated health
10 services or supplies that were referred by the provider, together
11 with additional claims data required by the center.

12 (c) A health care provider making a referral permitted under
13 Section 112.003 must:

14 (1) disclose the provider's investment interest to the
15 provider's patients in writing;

16 (2) advise the provider's patients that the patient
17 may choose to have another person provide the designated health
18 services or supplies; and

19 (3) obtain the patient's written consent after the
20 disclosure and prior to the provision of the designated health
21 service or supply.

22 (d) A report required by this section must be made to the
23 appropriate licensing agency and the Center for Health Statistics
24 of the Department of State Health Services on a form provided to
25 each health care provider by the center.

26 (e) A health care provider shall pay to the Center for
27 Health Statistics of the Department of State Health Services a fee

1 in the amount of \$500 with the initial disclosure made to the center
2 and each year that the health care provider provides a report to the
3 center.

4 (f) The executive commissioner of the Health and Human
5 Services Commission on behalf of the Center for Health Statistics
6 of the Department of State Health Services shall adopt rules
7 specifying the procedures and forms health care providers must use
8 to comply with this section. A health care provider that violates
9 rules adopted by the executive commissioner is subject to a civil
10 penalty of not more than \$15,000 for each violation. The center
11 shall bring an action to impose and collect penalties under this
12 section. All penalties collected under this section must be
13 maintained in a segregated account outside the state treasury by
14 the Center for Health Statistics of the Department of State Health
15 Services to be used in the enforcement of this chapter. Each
16 calendar month that the health care provider is in violation of the
17 rules constitutes a separate violation.

18 Sec. 112.009. DISCIPLINARY ACTION. A violation of this
19 chapter by a health care provider is grounds for disciplinary
20 action to be taken by the licensing authority that regulates the
21 health care provider.

22 SECTION 2. This Act applies only to conduct relating to
23 designated health services or supplies that are provided on or
24 after September 1, 2007.

25 SECTION 3. This Act takes effect September 1, 2005.