

By: Brown of Kaufman

H.B. No. 3317

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 in rural  
4 areas; providing penalties.

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

6 SECTION 1. Subtitle A, Title 3, Occupations Code is amended  
7 by adding Chapter 111 to read as follows:

8 CHAPTER 111. SELF-REFERRAL BY HEALTH CARE PROVIDERS

9 Sec. 111.001. SHORT TITLE. This chapter may be cited as the  
10 "Rural Access to Health Care Act."

11 Sec. 111.002. APPLICATION OF CHAPTER. This chapter applies  
12 only to an entity located in a county with a population of 50,000 or  
13 less.

14 Sec. 111.003. LEGISLATIVE FINDINGS. (a) It is recognized  
15 by the Legislature that the referral of a patient by a health care  
16 provider of designated health services in which the referring  
17 health care provider has an interest represents a potential  
18 conflict of interest.

19 (b) The Legislature finds these referral practices may  
20 limit or eliminate access to health care services in rural areas,  
21 may result in over-utilization of health care services, may  
22 increase costs to the health care system, and may adversely affect  
23 the quality of health care.

24 (c) The Legislature also recognizes, however, that it may be

1 necessary under certain market conditions for providers to own  
2 entities providing health care services, and to refer patients to  
3 such entities, as long as certain safeguards are present in the  
4 arrangement.

5 (d) It is the intent of the Legislature to provide guidance  
6 to health care providers regarding prohibited patient referrals  
7 between health care providers and entities providing health care  
8 services in rural communities and to protect the people of rural  
9 Texas from unnecessary and costly health care expenditures.

10 Sec. 111.004. DEFINITIONS. For the purpose of this  
11 chapter, the word, phrase, or term:

- 12 (1) "Designated health services" means:
- 13 (A) ambulatory surgery center services;
  - 14 (B) clinical laboratory services;
  - 15 (C) diagnostic imaging services;
  - 16 (D) dialysis services;
  - 17 (E) durable medical equipment and supplies;
  - 18 (F) endoscopic services;
  - 19 (G) electromyogram and other neurological  
20 testing;
  - 21 (H) home health services;
  - 22 (I) inpatient and outpatient hospital services;
  - 23 (J) lithotripsy;
  - 24 (K) occupational therapy services;
  - 25 (L) outpatient prescription drugs;
  - 26 (M) parental and enteral nutrients, equipment  
27 and supplies;

1 (N) physical rehabilitation and therapy  
2 services;

3 (O) prosthetics, orthotics, and prosthetic  
4 devices and supplies;

5 (P) radiation oncology and chemotherapy oncology  
6 services; and

7 (Q) speech-language pathology services.

8 (2) "Diagnostic imaging services" means general  
9 radiography, magnetic resonance imaging, nuclear medicine,  
10 angiography, computed tomography, positron emission tomography,  
11 and ultrasound to include cardiac echo and obstetrical ultrasound.

12 (3) "Entity" means a sole proprietorship,  
13 partnership, corporation, foundation, trust, unincorporated  
14 association or other business entity.

15 (4) "Health care provider" means any individual or  
16 entity licensed as a health professional or authorized to practice  
17 in health care under Title 3, Subtitles B and C of this Code.

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

21 (6) "Investment interest" means an equity or debt  
22 security issued by an entity, including, without limitation, shares  
23 of stock in a corporation, units or other interests in a  
24 partnership, bonds, debentures, notes, or other equity interests or  
25 debt instruments; provided, however, that an investment interest in  
26 real property resulting in a landlord-tenant relationship between  
27 the health care provider and the entity in which the equity interest

1 is held, unless the rent is determined, in whole or in part, by the  
2 business volume or profitability of the tenant or exceeds fair  
3 market value shall be excepted from this definition.

4 (7) "Investor" means a person or entity owning a legal  
5 or beneficial ownership or investment interest, directly or  
6 indirectly, including, without limitation, through an immediate  
7 family member, trust, or another entity related to the investor  
8 within the meaning of 42 C.F.R. Section 413.17, in an entity.

9 (8) "Licensing authority" means the department,  
10 board, office or other agency of the state that regulates health  
11 care providers that are subject to this chapter.

12 (9) "Patient" means a person who receives a physical  
13 examination, evaluation, diagnosis, or treatment by a health care  
14 provider.

15 (10) "Payor" means an entity, including a third party  
16 payor or other insurance company, a health maintenance organization  
17 or another organization that pays a health care provider to provide  
18 designated health services.

19 (11) "Referral" means a request by a health care  
20 provider for, or ordering of, designated health care services for a  
21 patient. The term does not include the performance of a designated  
22 health service for a patient by a health care provider or an entity  
23 which provides or supplies the designated health service (i) under  
24 the direct supervision of the patient's health care provider;  
25 (ii) performed in the same building in which the patient's health  
26 care provider operates his or her medical practice; and  
27 (iii) where the performance or supply of the designated health

1 service results in a total financial cost to the patient or the  
2 patient's payor or third party payor of no more than \$250 per year  
3 per patient.

4 (12) "Third party payor" means:

5 (A) a company authorized to engage in business  
6 involving the payment of money or another thing of value in the  
7 event of loss resulting from disability incurred as a result of  
8 sickness or ill health, as defined in the Insurance Code;

9 (B) a health insurance plan offered by an  
10 employer under the provisions of the Employee Retirement and  
11 Insurance Security Act of 1974; or

12 (C) a publicly funded program of health care  
13 services, including but not limited to Medicaid or the Children's  
14 Health Insurance Program.

15 Sec. 111.005. PROHIBITED REFERRALS AND CLAIMS FOR PAYMENT.

16 (a) A health care provider may not refer a patient for the  
17 provision of designated health services to an entity:

18 (1) in which the health care provider or the health  
19 care provider's immediate family member is directly or indirectly  
20 an investor or has an investment interest; and

21 (2) which is located within a 30-mile radius of a  
22 hospital which is:

23 (i) located in a county with a population of  
24 50,000 or less; or

25 (ii) designated as a critical access  
26 hospital under the authority of and in compliance with 42 U.S.C.  
27 Section 1395i-4; or

1 (iii) designated as a sole community  
2 hospital under the authority of and in compliance with 42 U.S.C.  
3 Section 1395ww(d)(5)(D)(iii).

4 (b) No claim for payment may be presented by a health care  
5 provider or entity to any individual, payor, third party payor or  
6 other entity for a service furnished pursuant to a referral  
7 prohibited under this section.

8 Sec. 111.006. EXCEPTIONS. The provisions of Section  
9 111.005 shall not apply where the health care provider's investment  
10 interest is in registered securities purchased on a national  
11 exchange and issued by a publicly held corporation:

12 (1) whose shares are traded on a national exchange;  
13 and

14 (2) whose total assets at the end of the corporation's  
15 most recent fiscal quarter exceeded \$200 million.

16 Sec. 111.007. ENFORCEMENT. (a) Any health care provider  
17 or entity that presents or causes to be presented a bill or a claim  
18 for service for a service for which payment may not be made under  
19 Section 111.005(b) shall be subject to a civil penalty of not more  
20 than \$15,000 for each such service to be imposed and collected by  
21 the licensing authority that regulates the health care provider or  
22 entity against whom the civil penalty is being imposed. All  
23 penalties collected hereunder shall be maintained in a segregated  
24 account by the licensing authority to be used in the enforcement of  
25 the provisions of this chapter. If there is no licensing authority  
26 that regulates the health care provider or entity against whom the  
27 civil penalty described herein should be imposed, the penalties

1 collected hereunder shall be maintained in a segregated account by  
2 the Office of the Attorney General to be used in the enforcement of  
3 the provisions of this chapter and other statutes for protection of  
4 health care consumers.

5 (b) Any health care provider or entity that enters into an  
6 agreement or scheme, such as a cross-referral arrangement, which  
7 the health care provider or entity knows or should know has a  
8 material purpose of assuring referrals by the health care provider  
9 to a particular entity which, if the health care provider directly  
10 made referrals to such entity, would be in violation of this  
11 chapter, shall be subject to a civil penalty of not more than  
12 \$100,000 for each such circumvention arrangement or scheme to be  
13 imposed and collected by the licensing authority that regulates the  
14 health care provider or entity against whom the civil penalty is  
15 being imposed. All penalties collected hereunder shall be  
16 maintained in a segregated account by the licensing authority to be  
17 used in the enforcement of the provisions of this chapter. If there  
18 is no licensing authority that regulates the health care provider  
19 or entity against whom the civil penalty described herein should be  
20 imposed, the penalties collected hereunder shall be maintained in a  
21 segregated account by the Office of the Attorney General to be used  
22 in the enforcement of the provisions of this chapter and other  
23 statutes for protection of health care consumers.

24 (c) If a health care provider or entity collects any amount  
25 that was billed in violation of this chapter, the health care  
26 provider or entity shall refund such amount within 45 days of  
27 receipt of payment to the payor, third party payor or patient,

1 whichever is applicable.

2 (d) Notwithstanding the penalties or any other remedy  
3 contained in this chapter, the Attorney General may maintain an  
4 action for an injunction or other relief to enforce the provisions  
5 of this chapter.

6 (e) An action for an injunction or other relief to enforce  
7 the provisions of this chapter may be brought by the Attorney  
8 General in the name of the State and against the health care  
9 provider or other entity alleged to have violated a provision of  
10 this chapter to restrain such a violation by temporary restraining  
11 order, temporary injunction, or permanent injunction.

12 (f) An action brought under this section may be commenced in  
13 the district court of the county in which the health care provider  
14 or entity against whom it is brought resides, has its principal  
15 place of business or has done business, or in the district court of  
16 the county where the transaction occurred, or, on the consent of the  
17 parties, in a district court of Travis County. The court may issue  
18 temporary orders and temporary or permanent injunctions to restrain  
19 and prevent violations of this chapter and such injunctive relief  
20 shall be issued without bond.

21 (g) In addition to the request for a temporary restraining  
22 order or permanent injunction in a proceeding brought under this  
23 section, the Attorney General may request, and the trier of fact may  
24 award, the civil penalties to be paid to the State as contained in  
25 this section or as otherwise contained in this chapter.

26 (h) The court may make such additional orders or judgments  
27 as are necessary to compensate a payor, third party payor or patient



1 as contained in this section.

2 (i) Any person who violates the terms of an injunction under  
3 this section shall forfeit and pay to the State a civil penalty of  
4 not more than \$10,000 per violation, not to exceed a total of  
5 \$50,000. For the purposes of this section, the district court  
6 issuing the injunction shall retain jurisdiction and the cause  
7 shall be continued and in these cases the Attorney General, acting  
8 in the name of the State, may petition for recovery of civil  
9 penalties under this section. All penalties collected hereunder  
10 shall be maintained in a segregated account by the licensing  
11 authority that regulates the person against whom the civil penalty  
12 is being imposed to be used in the enforcement of the provisions of  
13 this chapter. If there is no licensing authority that regulates the  
14 health care provider or entity against whom the civil penalty  
15 described herein should be imposed, the penalties collected  
16 hereunder shall be maintained in a segregated account by the Office  
17 of the Attorney General to be used in the enforcement of the  
18 provisions of this chapter and other statutes for protection of  
19 health care consumers.

20 (j) In bringing an action under this section, the Attorney  
21 General acts in the name of the State and does not establish an  
22 attorney-client relationship with another person, including a  
23 third party payor or patient.

24 (k) A payor, third party payor or another health care  
25 provider may maintain an action against a health care provider or  
26 other entity that violates a provision of this chapter.

27 (l) In a suit filed under this section, a payor or third

1 party payor may obtain:

2 (1) The amount of money paid by the payor or third  
3 party payor to the health care provider for a service furnished  
4 pursuant to a referral prohibited by this chapter. If the trier of  
5 fact finds that the conduct of the defendant was committed  
6 knowingly, the payor or third party payor may also recover an award  
7 of not more than three times the amount of the payment;

8 (2) An order enjoining a violation of this chapter;

9 (3) All orders necessary to restore to the payor or  
10 third party payor all sums of money which were acquired by the  
11 health care provider in violation of this chapter; and

12 (4) Any other relief which the court deems proper.

13 (m) In a suit filed under this section a health care  
14 provider may obtain:

15 (1) An order enjoining a violation of this chapter;  
16 and

17 (2) Any other relief which the court deems proper.

18 (n) Each payor, third party payor or health care provider  
19 filing an action under this section and who prevails in that action  
20 under this section shall be awarded court costs and reasonable and  
21 necessary attorney's fees.

22 (o) The court, on a showing of good cause, may allow the  
23 Attorney General, as a representative of the public, to intervene  
24 in the action to which this section applies. The Attorney General  
25 shall file its motion for intervention with the court before which  
26 the action is pending and serve a copy of the motion on each party to  
27 the action.

1           Sec. 111.008. LIMITATION ON FILING SUIT. (a) An action  
2 under Section 111.007 must be brought within four years after the  
3 date on which a violation of a provision of this chapter has  
4 occurred.

5           (b) Not later than the 61st day before the date a payor,  
6 third party payor or health care provider files an action under  
7 Section 111.007, the payor, third party payor or health care  
8 provider shall give the health care provider written notice of its  
9 intention to maintain the action, stating in reasonable detail the  
10 nature of the alleged violation.

11           (c) A health care provider who receives a notice under this  
12 section may correct the violation as provided by Section 111.009  
13 during the period beginning on the date the notice is received and  
14 ending on the 60th day after that date. A health care provider who  
15 corrects a violation as provided in Section 111.009 is not liable to  
16 a payor or third party payor for the violation.

17           Sec. 111.009. EXCEPTION FROM LIABILITY. A health care  
18 provider is not liable to a payor or third party payor for a  
19 violation of this chapter if, prior to or during the 60-day period  
20 of time following its receipt of the notice described in Section  
21 111.008, the health care provider pays to all payors and third party  
22 payors the amount of money paid by all payors and third party payors  
23 to the health care provider for a service furnished pursuant to a  
24 referral prohibited by this chapter.

25           Sec. 111.010. DISCIPLINARY ACTION. A violation of this  
26 chapter by a health care provider shall constitute grounds for  
27 disciplinary action to be taken by the licensing authority that

1 regulates the health care provider pursuant to Occupations Code,  
2 Title 3, Subtitles B and C.

3 SECTION 2. EFFECTIVE DATE. (a) This Act takes effect on  
4 September 1, 2005.

5 (b) This Act applies to patient referrals for designated  
6 health services that are provided on or after September 1, 2006.