

By: Madla

S.B. No. 1241

A BILL TO BE ENTITLED

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AN ACT

relating to financial arrangements between referring health care providers and providers of designated health services in rural areas; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS

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

CHAPTER 111. SELF-REFERRAL BY HEALTH CARE PROVIDERS

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

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

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

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

(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.