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HOUSE BILL NO. 2237

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Health, Welfare and Institutions
on January 25, 2005)

(Patron Prior to Substitute—Delegate O'Bannon)

A BILL to amend and reenact §§ 54.1-2411 and 54.1-2413 of the Code of Virginia, relating to exemptions to the Practitioner Self-Referral Act.

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2411 and 54.1-2413 of the Code of Virginia are amended and reenacted as follows:

§ 54.1-2411. Prohibited referrals and payments; exceptions.

A. Unless the practitioner directly provides health services within the entity and will be personally involved with the provision of care to the referred patient, or has been granted an exception by the Board or satisfies the provisions of ~~subsection~~ *subsections D or E* of this section *or of subsections D or E of § 54.1-2413*, a practitioner shall not refer a patient for health services to an entity outside the practitioner's office or group practice if the practitioner or any of the practitioner's immediate family members is an investor in such entity.

B. The Board may grant an exception to the prohibitions in this chapter, and may permit a practitioner to invest in and refer to an entity, regardless of whether the practitioner provides direct services within such entity, if there is a demonstrated need in the community for the entity and all of the following conditions are met:

1. Individuals other than practitioners are afforded a bona fide opportunity to invest in the entity on the same and equal terms as those offered to any referring practitioner;

2. No investor-practitioner is required or encouraged to refer patients to the entity or otherwise generate business as a condition of becoming or remaining an investor;

3. The services of the entity are marketed and furnished to practitioner-investors and other investors on the same and equal terms;

4. The entity does not issue loans or guarantee any loans for practitioners who are in a position to refer patients to such entity;

5. The income on the practitioner's investment is based on the practitioner's equity interest in the entity and is not tied to referral volumes; and

6. The investment contract between the entity and the practitioner does not include any covenant or clause limiting or preventing the practitioner's investment in other entities.

Unless the Board, the practitioner, or entity requests a hearing, the Board shall determine whether to grant or deny an exception within ~~ninety~~ 90 days of the receipt of a written request from the practitioner or entity, stating the facts of the particular circumstances and certifying compliance with the conditions required by this subsection. The Board's decision shall be a final administrative decision and shall be subject to judicial review pursuant to the Administrative Process Act (§ 2.2-4000 et seq.).

C. When an exception is granted pursuant to subsection B:

1. The practitioner shall disclose his investment interest in the entity to the patient at the time of referral. If alternative entities are reasonably available, the practitioner shall provide the patient with a list of such alternative entities and shall inform the patient of the option to use an alternative entity. The practitioner shall also inform the patient that choosing another entity will not affect his treatment or care;

2. Information on the practitioner's investment shall be provided if requested by any third party payor;

3. The entity shall establish and utilize an internal utilization review program to ensure that practitioner-investors are engaging in appropriate and necessary utilization; and

4. In the event of a conflict of interests between the practitioner's ownership interests and the best interests of any patient, the practitioner shall not make a referral to such entity, but shall make alternative arrangements for the referral.

D. Further, a practitioner may refer patients for health services to a publicly traded entity in which such practitioner has an investment interest, without applying for or receiving an exception from the Board, if all of the following conditions are met:

1. The entity's stock is listed for trading on the New York Stock Exchange or the American Stock Exchange or is a national market system security traded under an automated interdealer quotation system operated by the National Association of Securities Dealers;

2. The entity had, at the end of the corporation's most recent fiscal year, total net assets of at least \$50,000,000 related to the furnishing of health services;

3. The entity markets and furnishes its services to practitioner-investors and other practitioners on the

60 same and equal terms;

61 4. All stock of the entity, including the stock of any predecessor privately held company, is one class
62 without preferential treatment as to status or remuneration;

63 5. The entity does not issue loans or guarantee any loans for practitioners who are in a position to
64 refer patients to such entity;

65 6. The income on the practitioner's investment is not tied to referral volumes and is based on the
66 practitioner's equity interest in the entity; and

67 7. The practitioner's investment interest does not exceed one half of one percent of the entity's total
68 equity.

69 *E. In addition, a practitioner may refer a patient to such practitioner's immediate family member or*
70 *such immediate family member's office or group practice for health services if all of the following*
71 *conditions are met:*

72 1. *The health services to be received by the patient referred by the practitioner are within the scope*
73 *of practice of the practitioner's immediate family member or the treating practitioner within such*
74 *immediate family member's office or group practice;*

75 2. *The practitioner's immediate family member or the treating practitioner within such immediate*
76 *family member's office or group practice is qualified and duly licensed to provide the health services to*
77 *be received by the patient referred to the practitioner;*

78 3. *The primary purpose of any such referral is to obtain the appropriate professional health services*
79 *for the patient being referred, which are to be rendered by the referring practitioner's immediate family*
80 *member or by the treating practitioner within such immediate family member's office or group practice*
81 *who is qualified and licensed to provide such professional health services; and*

82 4. *The primary purpose of the referral shall not be for the provision of designated health services as*
83 *defined in 42 U.S.C. § 1395nn and the regulations promulgated thereunder.*

84 § 54.1-2413. Additional conditions related to practitioner-investors.

85 A. No hospital licensed in ~~this~~ the Commonwealth shall discriminate against or otherwise penalize
86 any practitioner for compliance with the provisions of this chapter.

87 B. No practitioner, other health care worker, or entity shall enter into any agreement, arrangement, or
88 scheme intended to evade the provisions of this chapter by inducing patient referrals in a manner which
89 would be prohibited by this chapter if the practitioner made the referrals directly.

90 C. No group practice shall be formed for the purpose of facilitating referrals that would otherwise be
91 prohibited by this chapter.

92 D. Notwithstanding the provisions of this chapter, a practitioner may refer a patient who is a member
93 of a health maintenance organization to an entity in which the practitioner is an investor if the referral is
94 made pursuant to a contract with the health maintenance organization.

95 *E. Notwithstanding the provisions of this chapter, a referral to an entity with which the referring*
96 *practitioner or his immediate family member has an arrangement that would qualify for an exception*
97 *under federal practitioner self-referral law, 42 U.S.C. § 1395nn, as amended, or any regulations adopted*
98 *pursuant thereto, permitting a practitioner or an immediate family member of a practitioner to maintain*
99 *an ownership or investment interest in an entity that provides designated health services, shall not be in*
100 *violation of this chapter, regardless of the type of health service provided or the source of payment for*
101 *such service.*