

CHAPTER 414

HEALTH CARE PRACTITIONER SELF-REFERRALS

§2081. Short title

This chapter may be known and cited as the "Health Care Practitioner Self-referral Act." [PL 1993, c. 308, §1 (NEW).]

SECTION HISTORY

PL 1993, c. 308, §1 (NEW).

§2082. Legislative finding

The Legislature finds that referral of patients by a health care practitioner to a facility in which the referring health care practitioner has an investment interest may present a potential conflict of interest, which could be harmful to the public health or welfare. [PL 1993, c. 308, §1 (NEW).]

SECTION HISTORY

PL 1993, c. 308, §1 (NEW).

§2083. Applicability

This chapter applies to referrals for health services made on or after January 1, 1994. However, if a health care practitioner acquired an investment interest in a facility before January 1, 1993, this chapter does not apply to referrals by that health care practitioner to that facility before January 1, 1997. [PL 1993, c. 308, §1 (NEW).]

SECTION HISTORY

PL 1993, c. 308, §1 (NEW).

§2084. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 1993, c. 308, §1 (NEW).]

1. **Bureau.** "Bureau" means the Bureau of Insurance.
[PL 1993, c. 308, §1 (NEW).]
2. **Facility.** "Facility" means any sole proprietorship, partnership, firm, corporation or other business that provides health services.
[PL 1993, c. 308, §1 (NEW).]
3. **Group practice.** "Group practice" means a group of 2 or more health care practitioners legally organized as a partnership, professional corporation, nonprofit corporation or similar association in which:
 - A. Each health care practitioner who is a member, an employee or an independent contractor of the group provides substantially the full range of services that the health care practitioner routinely provides, including consultation, diagnosis or treatment, through the use of office space, facilities, equipment or personnel of the group; [PL 1993, c. 308, §1 (NEW).]
 - B. The services of the health care practitioners are provided through the group and payments received for health services are treated as receipts of the group; and [PL 1993, c. 308, §1 (NEW).]
 - C. The overhead expenses and the income from the practice are distributed by methods previously determined by the group. [PL 1993, c. 308, §1 (NEW).][PL 1993, c. 308, §1 (NEW).]

4. Health care practitioner. "Health care practitioner" means an individual regulated under the laws of this State to provide health services. "Health care practitioners" include, without limitation, acupuncturists, chiropractors, dentists, dental hygienists, nurses, occupational therapists, optometrists, pharmacists, physical therapists, physicians including allopathic and osteopathic physicians, physician assistants, podiatrists, psychologists, clinical social workers, speech therapists and audiologists or hearing aid dealers and examiners.

[PL 1993, c. 308, §1 (NEW).]

5. Health services. "Health services" means diagnosis, treatment and rehabilitative services for an injured, disabled or sick person.

[PL 1993, c. 308, §1 (NEW).]

6. Immediate family member. "Immediate family member" means a health care practitioner's parent, spouse, child or child's spouse.

[PL 1993, c. 308, §1 (NEW).]

7. Investment interest. "Investment interest" means an equity or debt security issued by a facility, including, without limitation, shares of stock in a corporation, units or other interests in a partnership, bonds, debentures, notes or other equity interests or debt instruments, except that investment interest does not include interest in a hospital licensed under state law.

[PL 1993, c. 308, §1 (NEW).]

8. Investor. "Investor" means an individual who owns, whose immediate family owns or who directly or indirectly owns a controlling interest in another facility that owns an investment interest in a facility that provides health services.

[PL 1993, c. 308, §1 (NEW).]

9. Office practice. "Office practice" includes the facility or facilities at which a health care practitioner, on a regular basis, provides or supervises the provision of professional health services to individuals.

[PL 1993, c. 308, §1 (NEW).]

10. Referral. "Referral" means a referral of a patient for health services, including, without limitation:

A. The forwarding of a patient by one health care practitioner to another health care practitioner or a facility outside the health care practitioner's office practice or group practice that provides health services; or [PL 1993, c. 308, §1 (NEW).]

B. The establishment by a health care practitioner of a plan of care outside the health care practitioner's office practice or group practice that includes the provision of any health services.

[PL 1993, c. 308, §1 (NEW).]

[PL 1993, c. 308, §1 (NEW).]

SECTION HISTORY

PL 1993, c. 308, §1 (NEW).

§2085. Prohibited referrals and claims for payment

1. Prohibited referrals. A health care practitioner may refer a patient to an outside facility in which that health care practitioner is an investor only when that health care practitioner directly provides health services within the facility and will be personally involved with the provision of care to the referred patient.

[PL 1993, c. 308, §1 (NEW).]

2. Exemption. Referrals by a health care practitioner are exempt from this chapter if the bureau determines that there is demonstrated need in the community for the facility and alternative financing is not available. A health care practitioner does not have to demonstrate a need for alternative financing

if the practitioner has sufficient financial resources in the provider's practice without seeking financing from outside sources other than conventional bank loans. Demonstrated need in the community for the facility exists when:

A. There is no facility of reasonable quality that provides an appropriate service, or the bureau determines that the quality of health care services would be improved in the community, such as by providing new specialty or subspecialty services without increasing overall health care costs and utilization above levels likely to occur if such an exemption were not granted; [PL 1999, c. 553, §2 (AMD).]

B. Use of existing facilities is onerous or creates too great a hardship for patients; [PL 1993, c. 308, §1 (NEW).]

C. The facility is formed to own or lease medical equipment that replaces obsolete or otherwise inadequate equipment in or under the control of a hospital located in a federally designated health manpower shortage area; or [PL 1993, c. 308, §1 (NEW).]

D. The facility meets other standards established by rule by the bureau, including a standard allowing the bureau to determine whether the fees charged for the health services are competitive with fees charged for those services outside the community. "Community" must be defined by rule by the bureau. The following requirements must be met to be exempt under this section.

(1) Individuals who are not in a position to refer patients to a facility must be given a bona fide opportunity to invest in that facility on the same terms as those offered a referring health care practitioner.

(2) A health care practitioner who invests may not be required or encouraged to make referrals to the facility or otherwise generate business as a condition of becoming or remaining an investor.

(3) The facility shall market or furnish its services to investors who are referring health care practitioners and to other investors on equal terms.

(4) The facility may not loan funds or guarantee loans for health care practitioners who are in a position to refer patients to that facility.

(5) The income on the health care practitioner's investment must be tied to the health care practitioner's equity in the facility rather than to the volume of referrals made.

(6) An investment contract between the facility and the health care practitioner may not include a covenant or noncompetition clause that prevents a health care practitioner from investing in other facilities.

(7) When making a referral, a health care practitioner shall disclose to the patient being referred to the facility that health care practitioner's investment interest in that facility. If alternative facilities are reasonably available, the health care practitioner shall provide the patient with a list of alternative facilities. The health care practitioner shall inform the patient that the patient has the option to use an alternative facility and the patient will not be treated differently by the health care practitioner if the patient chooses to use another facility. This subparagraph applies to all investors who are health care practitioners, including those who provide direct care or services for their patients in facilities outside their office practice.

(8) If a 3rd-party payor requests information regarding a health care practitioner's investment interest, that information must be disclosed.

(9) The facility shall establish an internal utilization review program.

(10) If a health care practitioner's financial interest in a facility is incompatible with a referred patient's interest, the health care practitioner shall make alternative arrangements for that patient's care. [PL 1993, c. 308, §1 (NEW).]

The bureau shall make its determination on a request for an exemption within 90 days of a completed written request.

[PL 1999, c. 553, §1, 2 (AMD).]

3. Exception. It is not a violation of this chapter for a health care practitioner to refer a patient to a publicly traded facility in which that health care practitioner has an investment interest when:

A. The facility is listed for trading on the New York Stock Exchange or on 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; [PL 1993, c. 308, §1 (NEW).]

B. The facility, at the end of its most recent fiscal year, had total net assets of at least \$50,000,000 related to the furnishing of health services; [PL 1993, c. 308, §1 (NEW).]

C. Investment interest obtained after the effective date of this chapter is traded on the exchanges listed in paragraph A; [PL 1993, c. 308, §1 (NEW).]

D. The facility markets or furnishes its services to investors who are referring health care practitioners and to other health care practitioners on equal terms; [PL 1993, c. 308, §1 (NEW).]

E. All stock held in that facility, including stock held in the predecessor privately held facility, is of one class without preferential treatment as to status or remuneration; [PL 1993, c. 308, §1 (NEW).]

F. The facility does not loan funds or guarantee loans for health care practitioners who are in a position to make referrals to a facility; [PL 1993, c. 308, §1 (NEW).]

G. The income on the health care practitioner's investment is tied to the health care practitioner's equity in the facility rather than to the volume of referrals made; and [PL 1993, c. 308, §1 (NEW).]

H. The investment interest does not exceed 1/2 of 1% of the facility's total equity. [PL 1993, c. 308, §1 (NEW).]

[PL 1993, c. 308, §1 (NEW).]

4. Compelling practitioner. A health care practitioner may not compel or coerce, or attempt to compel or coerce, any other health care practitioner to violate any provision of this chapter.

[PL 1993, c. 308, §1 (NEW).]

5. Third-party referrals. A health care practitioner may not participate in any arrangement or plan that is designed to evade the prohibitions in this chapter by using a 3rd party to redirect referrals that are prohibited under subsection 1 if the 3rd party was not involved in the referral.

[PL 1993, c. 308, §1 (NEW).]

6. Alternate facilities. If compliance with the community need and alternative financing criteria is not practical, the health care practitioner shall identify to the patient reasonably available alternative facilities. The bureau, by rule, shall designate when compliance is not practical.

[PL 1993, c. 308, §1 (NEW).]

7. Bureau opinion. Health care practitioners may request that the bureau render an advisory opinion as to whether a referral to an existing or proposed facility under specified circumstances violates the provision of this chapter. The bureau's opinion is presumptively correct as to whether the provisions of this chapter are violated.

[PL 1993, c. 308, §1 (NEW).]

8. Health organizations. Notwithstanding any provision of this chapter, a health care practitioner may refer a patient who is a member of a health maintenance organization or a preferred provider organization licensed in this State for health services to a facility outside that health care practitioner's office or group practice in which that health care practitioner is an investor when the referral is made pursuant to a contract with the organization.

[PL 1993, c. 308, §1 (NEW).]

SECTION HISTORY

PL 1993, c. 308, §1 (NEW). PL 1999, c. 553, §§1,2 (AMD).

§2086. Penalties

A facility or a health care practitioner that makes or causes to be made a referral prohibited under section 2085 or presents or causes to be presented a bill or claim for service that the facility or health care practitioner knows or should know is prohibited by section 2085 is subject to a civil penalty of no more than \$2,000 for each referral, bill or claim. [PL 1993, c. 308, §1 (NEW).]

A violation of this chapter by a health care practitioner or a facility constitutes grounds for disciplinary action by the applicable licensing body. [PL 1993, c. 308, §1 (NEW).]

SECTION HISTORY

PL 1993, c. 308, §1 (NEW).

§2087. Rulemaking

The bureau shall implement this chapter pursuant to rules adopted in accordance with the Maine Administrative Procedure Act. The rules must include but are not limited to: [PL 1993, c. 308, §1 (NEW).]

1. Administration. Standards and procedures for the administration of this chapter; [PL 1993, c. 308, §1 (NEW).]

2. Exceptions. Procedures and criteria for exceptions to the prohibitions set forth in section 2085; [PL 1993, c. 308, §1 (NEW).]

3. Compliance. Procedures and criteria for determining practical compliance with the community needs and alternative financing criteria in section 2085; [PL 1993, c. 308, §1 (NEW).]

4. Complete opinion. Procedures and criteria for determining when a written request for an opinion set forth in section 2085 is complete; and [PL 1993, c. 308, §1 (NEW).]

5. Applicability. Procedures and criteria for advising health care practitioners of the applicability of this chapter to practices pursuant to written requests. [PL 1993, c. 308, §1 (NEW).]

SECTION HISTORY

PL 1993, c. 308, §1 (NEW).

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