

§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).]

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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).

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