

# MAINE STATE LEGISLATURE

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L.D. 789

(Filing No. H-467 )

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STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
116TH LEGISLATURE  
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 585, L.D. 789, Bill, "An Act to Restrict the Referral of Patients by a Physician to Certain Facilities in Which the Physician Has a Financial Interest"

Amend the bill by striking out the title and substituting the following:

'An Act to Restrict Self-referral by Health Care Practitioners'

Further amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

'Sec. 1. 22 MRSA c. 414 is enacted to read:

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."

§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.

§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.

**COMMITTEE AMENDMENT**

2 **§2084. Definitions**

4 As used in this chapter, unless the context otherwise  
6 indicates, the following terms have the following meanings.

8 1. Bureau. "Bureau" means the Bureau of Insurance.

10 2. Facility. "Facility" means any sole proprietorship,  
12 partnership, firm, corporation or other business that provides  
14 health services.

16 3. Group practice. "Group practice" means a group of 2 or  
18 more health care practitioners legally organized as a  
20 partnership, professional corporation, nonprofit corporation or  
22 similar association in which:

24 A. Each health care practitioner who is a member, an  
26 employee or an independent contractor of the group provides  
28 substantially the full range of services that the health  
30 care practitioner routinely provides, including  
32 consultation, diagnosis or treatment, through the use of  
34 office space, facilities, equipment or personnel of the  
36 group;

38 B. The services of the health care practitioners are  
40 provided through the group and payments received for health  
42 services are treated as receipts of the group; and

44 C. The overhead expenses and the income from the practice  
46 are distributed by methods previously determined by the  
48 group.

50 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.

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

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

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

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

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

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

22           A. The forwarding of a patient by one health care  
23           practitioner to another health care practitioner or a  
24           facility outside the health care practitioner's office  
25           practice or group practice that provides health services; or

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

32           **§2085. Prohibited referrals and claims for payment**

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

42           2. Exemption. Referrals by a health care practitioner are  
43           exempt from this chapter if the bureau determines that there is  
44           demonstrated need in the community for the facility and  
45           alternative financing is not available. Demonstrated need in the  
46           community for the facility exists when:

48           A. There is no facility of reasonable quality that provides  
49           appropriate service;

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COMMITTEE AMENDMENT "A" to H.P. 585, L.D. 789

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B. Use of existing facilities is onerous or creates too great a hardship for patients;

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

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

2 are reasonably available, the health care practitioner  
3 shall provide the patient with a list of alternative  
4 facilities. The health care practitioner shall inform  
5 the patient that the patient has the option to use an  
6 alternative facility and the patient will not be  
7 treated differently by the health care practitioner if  
8 the patient chooses to use another facility. This  
9 subparagraph applies to all investors who are health  
10 care practitioners, including those who provide direct  
11 care or services for their patients in facilities  
12 outside their office practice.

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

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

18 (10) If a health care practitioner's financial  
19 interest in a facility is incompatible with a referred  
20 patient's interest, the health care practitioner shall  
21 make alternative arrangements for that patient's care.

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

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

28 A. The facility is listed for trading on the New York Stock  
29 Exchange or on the American Stock Exchange or is a national  
30 market system security traded under an automated interdealer  
31 quotation system operated by the National Association of  
32 Securities Dealers;

33 B. The facility, at the end of its most recent fiscal year,  
34 had total net assets of at least \$50,000,000 related to the  
35 furnishing of health services;

36 C. Investment interest obtained after the effective date of  
37 this chapter is traded on the exchanges listed in paragraph  
38 A;

39 D. The facility markets or furnishes its services to  
40 investors who are referring health care practitioners and to  
41 other health care practitioners on equal terms;

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COMMITTEE AMENDMENT "A" to H.P. 585, L.D. 789

2 E. All stock held in that facility, including stock held in  
4 the predecessor privately held facility, is of one class  
6 without preferential treatment as to status or remuneration;

8 F. The facility does not loan funds or guarantee loans for  
10 health care practitioners who are in a position to make  
12 referrals to a facility;

14 G. The income on the health care practitioner's investment  
16 is tied to the health care practitioner's equity in the  
18 facility rather than to the volume of referrals made; and

20 H. The investment interest does not exceed 1/2 of 1% of the  
22 facility's total equity.

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

30 5. Third-party referrals. A health care practitioner may  
32 not participate in any arrangement or plan that is designed to  
34 evade the prohibitions in this chapter by using a 3rd party to  
36 redirect referrals that are prohibited under subsection 1 if the  
38 3rd party was not involved in the referral.

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

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.

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.

**§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.

A violation of this chapter by a health care practitioner or a facility constitutes grounds for disciplinary action by the applicable licensing body.

**§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:

1. Administration. Standards and procedures for the administration of this chapter;

2. Exceptions. Procedures and criteria for exceptions to the prohibitions set forth in section 2085;

3. Compliance. Procedures and criteria for determining practical compliance with the community needs and alternative financing criteria in section 2085;

4. Complete opinion. Procedures and criteria for determining when a written request for an opinion set forth in section 2085 is complete; and

5. Applicability. Procedures and criteria for advising health care practitioners of the applicability of this chapter to practices pursuant to written requests.

**FISCAL NOTE**

The Bureau of Insurance will incur some minor additional costs to carry out certain responsibilities relating to exemptions for health care practitioners and to adopt rules for that same subject area. These costs can be absorbed within the bureau's existing budgeted resources.

The additional workload and administrative costs associated with the minimal number of new cases filed in the court system can be absorbed within the budgeted resources of the Judicial



2 Department. The collection of additional fines may increase  
3 General Fund revenues by a minor amount.'

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6 **STATEMENT OF FACT**

8 The original bill prohibited a physician from referring  
9 patients to a laboratory, facility or pharmacy in which that  
10 physician has a financial interest.

12 The amendment makes the following changes to the bill.

14 1. It broadens the applicability of the ban on  
15 self-referral to include all regulated health care practitioners.

16 2. It broadens the ban to include referrals to all  
17 facilities providing health services.

18 3. It provides a limited grandfather provision for existing  
19 arrangements. If investment interest in a facility was acquired  
20 before January 1, 1993, referrals to that facility may continue  
21 until January 1, 1997.

22 4. It creates an exemption for investments and referral to  
23 facilities when there is a demonstrated need for the service in  
24 the community and when alternative financing is not available.  
25 The Bureau of Insurance determines whether to approve or deny  
26 applications for the exemption according to standards in the law  
27 and other standards established through rulemaking. Health care  
28 practitioners must meet 10 specific criteria to be entitled to  
29 the exemption.

30 5. It clarifies that ownership interests in publicly traded  
31 facilities are exempt under most circumstances.

32 6. It adds a penalty for violation of the law. Health care  
33 practitioners violating the law are subject to civil penalties of  
34 up to \$2,000 per referral. Violation of the law may also  
35 constitute grounds for disciplinary action by the applicable  
36 licensing board.

37 7. It adds a fiscal note.  
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Reported by the Committee on Business Legislation  
Reproduced and distributed under the direction of the Clerk of the  
House  
5/27/93 (Filing No. H-467)