



H.B. 71

125th General Assembly
(As Introduced)

**Reps. Peterson, Hughes, Wolpert, Kearns, Carano, G. Smith, Allen,
Aslanides, DeBose**

BILL SUMMARY

- Adds inpatient hospital services to the health services for which a physician or podiatrist may not make a referral if the physician or podiatrist or an immediate family member has an ownership or investment interest in the hospital or a compensation arrangement with it.

CONTENT AND OPERATION

Prohibited referrals

(R.C. 4731.65; R.C. 4731.22 and 4731.66 (not in the bill))

With exceptions, current law prohibits certain referrals by physicians and podiatrists.¹ No physician or podiatrist may refer a patient to a person or private entity for certain health services if the physician or podiatrist, or a member of the physician or podiatrist's immediate family, has either of the following: (1) an ownership or investment interest in the person or entity whether through debt, equity, or other means or (2) any compensation arrangement involving any remuneration, directly or indirectly, overtly or covertly, in cash or in kind with the person or entity.² No person or private entity to which a physician or podiatrist

¹ "Physicians" include doctors of medicine and doctors of osteopathic medicine.

² Current law provides for the State Medical Board to adopt rules defining "immediate family." However, no such rule has been adopted. An official with the Board stated that it relies on federal regulations limiting physician referrals. Those federal regulations define "immediate family member" as a husband or wife; natural or adoptive parent, child, or sibling; stepparent, stepchild, stepbrother, or stepsister; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law; grandparent or grandchild; and spouse of a grandparent or grandchild. (42 Code of Federal Regulations 411.351.)

refers a patient in violation of the prohibition on referrals may bill the patient or a third-party payer, governmental health care program, or other private or governmental entity for the health service rendered pursuant to the referral.³ Additionally, no person or private entity is permitted to knowingly enter into an arrangement or scheme, including a cross-referral arrangement, that has a principal purpose of assuring referrals by a physician or podiatrist to a particular person or private entity that, if the physician or podiatrist directly made referrals to the person or entity, would violate the prohibition on referrals. The State Medical Board is authorized to limit, revoke, or suspend a physician or podiatrist's certificate to practice, refuse to register a physician or podiatrist, refuse to reinstate a certificate, or reprimand or place on probation a physician or podiatrist for a second or subsequent violation of these prohibitions (R.C. 4731.22, not in the bill).

The health services subject to the prohibition on referrals under current law are clinical laboratory services, home health care services, and outpatient prescription drugs. The bill adds a fourth health service: inpatient hospital services. "Inpatient hospital services" are defined by the bill as the use of facilities, personnel, and supplies in the admission, diagnosis, prevention, or treatment of an individual's medical condition, disease, or impairment, or for the assessment of health of an individual during a hospital inpatient admission, including services a hospital provides for its patients that are furnished either by the hospital or by others under arrangements with the hospital. The bill provides that "inpatient hospital services" do not include professional services performed by a health care practitioner if a third-party payer or governmental health care program reimburses the services independently and not as part of the inpatient hospital services.

A "referral," under current law, includes a request by a physician or podiatrist for an item or service. The bill provides instead that a "referral" includes a request by a physician or podiatrist for a designated health service, which is a clinical laboratory service, home health care service, outpatient prescription drug, or inpatient hospital service.

Exceptions

(R.C. 4731.67 and 4731.68; ancillary section: 4731.70)

Current law excepts certain referrals by a physician or podiatrist from the prohibited referrals. One of these exceptions is that referrals for in-office ancillary

³ *A person or private entity that collects an amount billed in violation of the prohibition is liable for the amount collected. The amount collected must be refunded on a timely basis. (R.C. 4731.69 (not in the bill).)*

services are not subject to the prohibition if the third-party payer is aware of and has agreed in writing to reimburse the services notwithstanding the financial arrangement between the physician or podiatrist and the provider of the services. The bill specifies that this exception does not apply to inpatient hospital services.

The bill also eliminates two exceptions. First, a referral to a hospital for a service subject to the prohibition is no longer exempt from the prohibition when all of the following are the case: (1) the financial arrangement between the referring physician or immediate family member and hospital consists of an ownership or investment in the hospital and not a compensation arrangement, (2) the ownership or investment interest is in the hospital itself and not merely in a subdivision of the hospital, and (3) the referring physician is authorized to perform services at the hospital. Second, a referral to a hospital is no longer exempt when the hospital's financial relationship with the physician, podiatrist, or immediate family member does not relate to the provision of a service subject to the prohibition. However, the bill provides that remuneration by a hospital to a physician, podiatrist, or immediate family member is not to be considered a compensation arrangement subject to the prohibition if the remuneration does not relate to the provision of a clinical laboratory service, home health care service, outpatient prescription drug, or inpatient hospital service.

HISTORY

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