

BILL ANALYSIS

Senate Research Center
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S.B. 925
By: Deuell
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DIGEST AND PURPOSE

Studies have shown that physicians who have ownership in diagnostic facilities to which they refer patients order more services than physicians without such financial interest. As proposed, S.B. 925 brings Texas into alignment with the federal physician self-referral statute, which applies to the referrals of Medicare and Medicaid patients.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Board of Health in SECTION 1 (Section 107.004, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 3A, Occupations Code, as follows:

CHAPTER 107. FINANCIAL ARRANGEMENTS BETWEEN HEALTH CARE PROVIDERS

Sec. 107.001. DEFINITIONS. Defines “board,” “comprehensive rehabilitation services,” “designated health services,” “diagnostic imaging services,” “direct supervision,” “fair market value,” “group practice,” “health care provider,” “immediate family member,” “investment interest,” “investor,” “outside referral for diagnostic imaging services,” “patient of a group practice,” “referral,” “rural area,” and “sole provider.”

Sec. 107.002. EXCLUDED INVESTMENT INTERESTS. Provides that this chapter does not apply to certain investment interest.

Sec. 107.003. EXCLUDED REFERRALS. (a) Provides that this chapter does not apply to an order, recommendation, or plan by certain physicians or health care providers.

(b) Authorizes a person licensed under Chapter 155 (License to Practice Medicine), 201 (Chiropractors), or 351 (Optometrists and Therapeutic Optometrists) to refer a patient to a sole provider or group practice for diagnostic imaging services, excluding radiation therapy services, for which the sole provider or group practice bills both the technical and the professional fee for or on behalf of the patient, if the referring person does not have an investment interest in the practice, effective July 1, 2010. Requires the diagnostic imaging service referred to a group practice or sole provider under this subsection to be a diagnostic imaging service normally provided within the scope of practice to the patients of the group practice or sole provider. Prohibits the group practice or sole provider from accepting more than 15 percent of its patients receiving diagnostic imaging services from outside referrals, excluding radiation therapy services.

Sec. 107.004. DUTIES OF BOARDS. (a) Requires each board and, for hospitals, the Texas Board of Health (TBH), to encourage each person licensed by the board to use the declaratory statement procedure to determine the applicability of this chapter or any rule adopted under this chapter to the license holder.

(b) Requires a board to submit to TBH the name of any person in which a provider investment interest has been approved under this chapter.

(c) Requires TBH by rule to provide for periodic quality assurance and utilization review of a person approved under Subsection (b).

Sec. 107.005. REQUIREMENTS FOR ACCEPTING OUTSIDE REFERRALS FOR DIAGNOSTIC IMAGING. (a) Authorizes a group practice or sole provider to accept outside referrals for diagnostic imaging services only if the practice or provider complies with this section.

(b) Authorizes the diagnostic imaging services to be provided only by the group practice or sole provider or by a full-time or part-time employee of the group practice or sole provider.

(c) Requires the physicians comprising the group practice or the physician who is a sole provider to take certain actions.

(d) Prohibits the group practice or sole provider from entering into, extending, or renewing any contract with a practice management company that provides a financial incentive, directly or indirectly, based on an increase in outside referrals for diagnostic imaging services from a group practice or sole provider managed by the same practice management company.

(e) Requires the group practice or sole provider to bill for the professional and technical service on behalf of the patient. Prohibits the group practice or sole provider from sharing any portion of the payment or any type of consideration, directly or indirectly, with the referring health care provider.

(f) Requires a group practice or sole provider that has a Medicaid provider agreement with TBH to furnish diagnostic imaging services to the practice's or provider's Medicaid patients and prohibits the referral of a Medicaid recipient to a hospital for outpatient diagnostic imaging services unless the physician furnishes the hospital with documentation demonstrating the medical necessity for the referral. Authorizes TBH, if necessary, to apply for a federal waiver to implement this subsection.

Sec. 107.006. ANNUAL REPORT OF REFERRALS FOR DIAGNOSTIC IMAGING. Requires a group practice or sole provider that accepts outside referrals for diagnostic imaging to annually report to TBH the number of outside referrals accepted for diagnostic imaging services and the total number of all patients receiving diagnostic imaging services.

Sec. 107.007. ANNUAL STATEMENT OF REFERRALS FOR DIAGNOSTIC IMAGING. (a) Requires each managing physician member of a group practice and each sole provider who accepts outside referrals for diagnostic imaging services to annually submit to TBH a statement signed under oath declaring that each group practice or sole provider is in compliance with the percentage limitations for accepting outside referrals and the requirements for accepting outside referrals under Section 107.005.

(b) Authorizes TBH to verify a statement submitted by a group practice or sole provider under this section.

Sec. 107.008. PROHIBITED REFERRALS. (a) Prohibits a health care provider, except as provided by this chapter, from certain patient referrals.

(b) Prohibits a person described by Subsection (a)(2)(A) or (B) from taking certain actions.

Sec. 107.009. PROHIBITED CLAIMS AND PAYMENTS. (a) Prohibits a person from presenting a claim for payment to any individual, third-party payor, or other person for a service furnished pursuant to a referral prohibited under this chapter.

(b) Requires person that collects an amount billed in violation of this chapter to refund the amount on a timely basis to the individual, third-party payor, or other person.

Sec. 107.010. CIVIL PENALTY. (a) Provides that a person that presents or causes to be presented a claim for payment prohibited under Section 107.009 is subject to a civil penalty of not more than \$15,000 for each claim. Authorizes the attorney general to bring an action in the name of the state to impose and collect a penalty under this subsection.

(b) Provides that a health care provider or other person that enters into an arrangement, including a cross-referral arrangement, for which the person knows or should know has a principal purpose of assuring referrals by a health care provider to a particular person that, if the health care provider directly made the referrals, would be in violation of this chapter, is subject to a civil penalty of not more than \$100,000. Authorizes the attorney general to bring an action in the name of the state to impose and collect a penalty under this subsection.

Sec. 107.011. VIOLATION OF CHAPTER; PENALTIES. (a) Provides that a group practice or sole provider that accepts an outside referral for diagnostic imaging services in violation of this chapter or accepts outside referrals for diagnostic imaging services in excess of the percentage limitation established by Section 107.005 violates this chapter and is subject to penalties under this section.

(b) Provides that a violation of this chapter by a health care provider constitutes grounds for disciplinary action to be taken by the appropriate licensing board as provided by Chapter 164 (Disciplinary Actions and Procedures), 201 (Chiropractors), 202 (Podiatrists), 263 (License denial and disciplinary proceedings), or 351 (Optometrists and Therapeutic Optometrists). Provides that a hospital licensed under Chapter 241, Health and Safety Code (Hospitals), that violates this section is subject to Subchapter C, Chapter 241, Health and Safety Code (Enforcement), as if the hospital had violated a rule or minimum standard under that chapter.

Sec. 107.012. DISCRIMINATION BY HOSPITAL. Prohibits a hospital licensed under Chapter 241, Health and Safety Code, from discriminating against or otherwise penalizing a health care provider for complying with this chapter.

Sec. 107.013. CERTAIN FACILITIES EXEMPT. (a) Provides that Section 107.008(a)(1) does not apply to referrals for certain radiation therapy and centers.

(b) Authorizes the physical site of the radiation treatment centers described by Subsection (a) to be relocated as a result of certain occurrences.

(c) Provides that a relocation under Subsection (b) is limited to relocation of an existing facility to a replacement location within the county of the existing facility on written notification to the licensing board.

(d) Requires a health care provider that meets the requirements of Section 107.008(a)(2) and Subsection (a) to disclose the investment interest to the provider's patients in writing and obtain the patient's written consent to service or treatment in light of the disclosure before rendering services.

Sec. 107.014. RESTRICTIONS CUMULATIVE. Provides that the restrictions of this chapter are in addition to the restrictions of Chapter 102 (Solicitation of Patients).

SECTION 2. Effective date: September 1, 2003.