

103^D CONGRESS
1ST SESSION

S. 337

To amend the Public Health Service Act to prohibit physicians from referring patients to health entities in which they have a financial relationship, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 4 (legislative day, JANUARY 5), 1993

Mr. BINGAMAN (for himself and Mr. METZENBAUM) introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

A BILL

To amend the Public Health Service Act to prohibit physicians from referring patients to health entities in which they have a financial relationship, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Ethics in Referrals
5 and Billing Act”.

6 **SEC. 2. AMENDMENT TO PUBLIC HEALTH SERVICE ACT.**

7 (a) IN GENERAL.—The Public Health Service Act is
8 amended—

1 (1) by redesignating title XXVII (42 U.S.C.
2 300cc et seq.) as title XXVIII; and

3 (2) by inserting after title XXVI the following
4 new title:

5 **“TITLE XXVII—PHYSICIAN**
6 **REFERRAL AND BILLING**
7 **“Subtitle A—Prohibition on**
8 **Referrals**

9 **“SEC. 2701. PROHIBITION.**

10 “(a) IN GENERAL.—Except as provided in section
11 2702, if a physician (or immediate family member of such
12 physician) has a financial relationship with an entity—

13 “(1) the physician may not make a referral to
14 the entity for the furnishing of health or health-re-
15 lated items or services; and

16 “(2) neither the entity nor the physician may
17 present, or cause to be presented, to any person (in-
18 cluding an individual, entity or third-party payor) a
19 claim, bill or other demand for payment for health
20 or health-related items or services furnished pursu-
21 ant to a referral prohibited by this section.

22 “(b) FINANCIAL RELATIONSHIP.—For purposes of
23 subsection (a), the term ‘financial relationship’ means—

24 “(1) except as provided in subsections (a), (b)
25 and (c) of section 2702, an ownership or investment

1 interest (whether through debt, equity or otherwise)
 2 in the entity; or

3 “(2) except as provided in subsections (a) and
 4 (d) of section 2702, a compensation arrangement (as
 5 defined in section 2709(1)) between the physician
 6 (or immediate family member of the physician) and
 7 the entity.

8 **“SEC. 2702. EXCEPTIONS TO FINANCIAL RELATIONSHIP**
 9 **PROVISIONS.**

10 “(a) OWNERSHIP AND COMPENSATION ARRANGE-
 11 MENT PROHIBITIONS.—Section 2701(a) shall not apply in
 12 the following cases:

13 “(1) PHYSICIANS’ SERVICES.—In the case of
 14 physicians’ services (as defined in section 2709(8))
 15 provided or supervised personally by the referring
 16 physician or provided or supervised personally by an-
 17 other physician in the same group practice (as de-
 18 fined in paragraph 2709(4)) as the referring physi-
 19 cian.

20 “(2) IN-OFFICE ANCILLARY SERVICES.—In the
 21 case of health or health-related items or services—

22 “(A) that are furnished—

23 “(i) personally by the referring physi-
 24 cian;

1 “(ii) personally by a physician who is
2 a member of the same group practice as
3 the referring physician; or

4 “(iii) personally by individuals who
5 are employed by such physician or group
6 practice and who are personally supervised
7 by the physician or by another physician in
8 the group practice; and

9 “(B) that are billed—

10 “(i) by the physician performing or
11 supervising the services;

12 “(ii) by a group practice of which
13 such physician is a member; or

14 “(iii) by an entity that is wholly
15 owned by such physician or such group
16 practice, if the ownership or investment in-
17 terest in such services meets such other re-
18 quirements as the Secretary may by regu-
19 lation impose as needed to protect against
20 patient and payor abuse.

21 “(3) PREPAID PLANS.—In the case of services
22 furnished by a public or private entity (which may
23 be a health maintenance organization or a competi-
24 tive medical plan organized under the laws of any
25 State) that—

1 “(A) is a health maintenance organization
2 (as defined in section 1301); or

3 “(B) complies with such other require-
4 ments as the Secretary may by regulation im-
5 pose.

6 “(4) OTHER RELATIONSHIPS.—In the case of
7 any other financial relationship that the Secretary
8 determines, and specifies in regulations, does not
9 pose a risk of payor or patient abuse.

10 “(b) OWNERSHIP OR INVESTMENT PROHIBITION FOR
11 OWNERSHIP OF PUBLICLY-TRADED SECURITIES.—

12 “(1) IN GENERAL.—Ownership of investment
13 securities (including shares or bonds, debentures,
14 notes, or other debt instruments) that were pur-
15 chased on terms equally available to the public and
16 that are in a corporation that—

17 “(A) (i) is listed for trading on—

18 “(I) the New York Stock Exchange;

19 “(II) the American Stock Exchange;

20 or

21 “(III) another exchange approved by
22 the Secretary; or

23 “(ii) is a national market system security
24 traded under an automated interdealer

1 quotation system operated by the National As-
2 sociation of Securities Dealers; and

3 “(B) had, at the end of the corporation’s
4 most recent fiscal year, total assets exceeding
5 \$100,000,000, and stockholder equity in excess
6 of \$50,000,000;

7 shall not be considered to be an ownership or invest-
8 ment interest described in section 2701(b)(1), except
9 that any ownership or investment in an entity pro-
10 viding any health or health-related item or service in
11 which investments, solicitations, or other induce-
12 ments to invest are made exclusively or primarily to
13 physicians either prior to or in the course of a public
14 offering would be considered to be a financial rela-
15 tionship for purposes of this section.

16 “(2) ADDITIONAL REQUIREMENTS.—Paragraph
17 (1) shall only apply in the case of a corporation that
18 has not loaned funds to, or guaranteed a loan for,
19 an investor who is in a position to make or influence
20 referrals to, furnish items or services to, or other-
21 wise generate business for the corporation if the in-
22 vestor used any part of such loan to obtain the in-
23 vestment interest.

24 “(c) ADDITIONAL EXCEPTIONS RELATED TO OWN-
25 ERSHIP OR INVESTMENT PROHIBITION.—For purposes of

1 section 2701(b)(1), a physician shall not be considered as
2 having an ownership or investment interest in an entity
3 in the following cases:

4 “(1) HOSPITAL OWNERSHIP.—In the case of
5 health or health-related items or services provided by
6 a hospital, if—

7 “(A) the referring physician performs serv-
8 ices at the hospital;

9 “(B) the ownership or investment interest
10 is in the hospital itself (and not merely in a
11 subdivision thereof) subject to the requirements
12 of subsection (b); and

13 “(C) at least 60 percent of the hospital is
14 owned by physicians performing services at the
15 hospital.

16 “(2) RURAL PROVIDERS.—In the case of an en-
17 tity that is furnishing health or health-related items
18 or services, if—

19 “(A) the entity is located in a rural area
20 (as defined in section 1886(d)(2)(D) of the So-
21 cial Security Act);

22 “(B) the referring physician maintains a
23 practice in the same area; and

24 “(C) the patient receiving the services is a
25 resident of the same area;

1 except that, an entity described in subparagraph (A)
2 may provide the requested services in cases where
3 the referring physician certifies that an actual emer-
4 gency exists.

5 “(3) AMBULATORY SURGERY CENTERS.—In the
6 case of health or health-related items or services
7 that are provided by an ambulatory surgical center,
8 if such items or services are provided in connection
9 with a surgical procedure performed by the referring
10 physician or a member of the referring physician’s
11 group practice.

12 “(d) EXCEPTIONS RELATING TO OTHER COMPENSA-
13 TION ARRANGEMENTS.—

14 “(1) IN GENERAL.—For purposes of section
15 2701(b)(2), the following shall not be considered to
16 be compensation arrangements.

17 “(A) RENTAL OF OFFICE SPACE.—Pay-
18 ments made by a lessee to a lessor for the use
19 of premises if—

20 “(i) the lease agreement is in writing
21 and signed by the parties;

22 “(ii) the lease specifies the premises
23 covered by the lease;

24 “(iii) in cases where the lease is in-
25 tended to provide the lessee with access to

1 the premises for periodic intervals of time,
2 rather than on a full-time basis for the
3 term of the lease, and the lease specifies
4 exactly the schedule of such intervals, their
5 precise length, and the exact rent for such
6 intervals; and

7 “(iv) the aggregate rental charge is
8 set in advance, is consistent with fair mar-
9 ket value in arms-length transactions and
10 is not determined in a manner that takes
11 into account the volume or value of any re-
12 ferrals or other business generated between
13 the parties.

14 “(B) RENTAL OF EQUIPMENT.—Payments
15 made by a lessee of equipment to the lessor of
16 the equipment for the use of the equipment if—

17 “(i) the lease agreement is in writing
18 and signed by the parties;

19 “(ii) the lease specifies the equipment
20 covered by the lease;

21 “(iii) in cases where the lease is in-
22 tended to provide the lessee with use of the
23 equipment for periodic intervals of time,
24 rather than on a full-time basis for the
25 term of the lease, the lease specifies ex-

1 actly the schedule of such intervals, their
2 precise length, and the exact rent for such
3 interval; and

4 “(iv) the aggregate rental charge set
5 in advance and is consistent with fair mar-
6 ket value in arms-length transactions.

7 “(C) PAYMENTS FOR OTHER ITEMS OR
8 SERVICES.—Payments made by an entity to a
9 physician who is not employed by the entity as
10 compensation for—

11 “(i) specified consultative services if—

12 “(I) abnormal test results have
13 been obtained that require additional
14 interpretation or consultation; or

15 “(II) such services are specifi-
16 cally requested by the referring physi-
17 cian on a specified patient, such serv-
18 ices are furnished by a physician other
19 than the referring physician (or by
20 another physician who is a member of
21 the same group practice) and where
22 the consulting physician furnishes a
23 written report for that patient;

1 “(ii) the interpretation of tissue pa-
2 thology or Pap smear slides or the provi-
3 sion of other cytology services;

4 “(iii) employment-related health care
5 services, including a payment by a self-in-
6 sured employer for services rendered to
7 employees or their families under the
8 terms of a health insurance plan; and

9 “(iv) any services required by local,
10 State or Federal licensure, accreditation or
11 other health and safety provisions:

12 except that the services described in this clause
13 shall only be exempt for purposes of section
14 2701(b)(2) if, (aa) the services are provided
15 pursuant to an agreement that is set out in
16 writing; (bb) the agreement specifies the serv-
17 ices to be provided by the parties; (cc) in cases
18 where the agreement is intended to provide for
19 the services on a periodic, sporadic or part-time
20 basis, rather than on a full-time basis for the
21 term of the agreement, the agreement specifies
22 exactly the schedule of such intervals, their pre-
23 cise length, and the exact charge for such inter-
24 vals; (dd) the aggregate compensation paid over
25 the term of the agreement is consistent with

1 fair market value in arms-length transactions;
2 and (ee) the services performed under the
3 agreement do not involve the counseling or pro-
4 motion of a business arrangement or other ac-
5 tivity that violates any State or Federal law.

6 “(D) EMPLOYMENT AND SERVICE AR-
7 RANGEMENTS WITH HOSPITALS.—An arrange-
8 ment between a hospital or nursing facility and
9 a physician (or immediate family member) for
10 the employment of the physician (or family
11 member) or for the provision of administrative
12 services by the physician, if—

13 “(i) the arrangement is for identifi-
14 able services;

15 “(ii) the amount of the remuneration
16 under the arrangement—

17 “(I) is consistent with the fair
18 market value of the services provided;
19 and

20 “(II) is not determined in a man-
21 ner that takes into account (directly
22 or indirectly) the volume or value of
23 any referrals by the referring physi-
24 cian;

1 “(iii) the remuneration is provided
2 pursuant to an agreement which would be
3 commercially reasonable even if no refer-
4 rals were made to the hospital; and

5 “(iv) the arrangement meets such
6 other requirements as the Secretary may
7 impose by regulation as needed to protect
8 against program or patient abuse.

9 “(E) EMPLOYEES.—Payments to an em-
10 ployee, who is an immediate family member of
11 a physician, if the payments—

12 “(i) are for bona fide employment
13 services;

14 “(ii) are generally consistent with the
15 compensation paid to other employees for
16 the same or similar services; and

17 “(iii) do not constitute, directly or in-
18 directly, payments or remuneration for re-
19 ferrals from the immediate family member.

20 “(F) PHYSICIAN RECRUITMENT.—Pay-
21 ments provided by a hospital to a physician to
22 induce the physician to relocate to the geo-
23 graphic area served by the hospital in order to
24 be a member of the medical staff of the hos-
25 pital, if—

1 “(i) the physician is not required to
2 refer patients to the hospital;

3 “(ii) the amount of the remuneration
4 under the arrangement is not determined
5 in a manner that takes into account (di-
6 rectly or indirectly) the volume or value of
7 any referrals by the referring physician;
8 and

9 “(iii) the remuneration does not con-
10 tinue for more than 2 years.

11 “(G) ISOLATED TRANSACTIONS.—An iso-
12 lated financial transaction (such as a one-time
13 sale of property) if—

14 “(i) the amount of the payment under
15 the transaction—

16 “(I) is consistent with the fair
17 market value of the items or property
18 sold; and

19 “(II) is not determined in a man-
20 ner that takes into account (directly
21 or indirectly) the volume or value of
22 any referrals by the referring physi-
23 cian; and

24 “(ii) the remuneration is provided
25 pursuant to an agreement that would be

1 commercially reasonable even if no refer-
2 rals were involved.

3 “(H) SALARIED PHYSICIANS IN A GROUP
4 PRACTICE.—Payment by a group practice of the
5 salary of a physician member of the group prac-
6 tice.

7 “(I) PROVISION OF CERTAIN ITEMS, DE-
8 VICES, AND SUPPLIES.—The provision of infor-
9 mation, items, devices, or supplies by a labora-
10 tory to a physician that are incident to, or nec-
11 essary for—

12 “(i) the collection, transportation, or
13 testing of specimens by the laboratory pro-
14 viding such information, items, devices or
15 supplies; or

16 “(ii) the communication of results by
17 the laboratory providing such information,
18 items, devices, or supplies.

19 “(2) OTHER REQUIREMENTS.—The Secretary
20 may by regulation impose such other requirements
21 as are needed to protect against patient and payor
22 abuse.

1 **“SEC. 2703. CLARIFICATION REGARDING CERTAIN REFER-**
2 **RALS.**

3 “(a) WHAT CONSTITUTES A REFERRAL.—In the case
4 of—

5 “(1) a health or health-related item or service,
6 the request by a physician for the health or health
7 related item or service, including the request by a
8 physician for a consultation with another physician,
9 and any test or procedure ordered by, or to be per-
10 formed by or under the supervision of that other
11 physician shall constitute a referral by a referring
12 physician;

13 “(2) a request or establishment of a plan of
14 care by a physician which includes the provision of
15 the health or health related items or services, such
16 request or establishment shall constitute a referral
17 by a referring physician; and

18 “(3) the prescription of the drug by a physician
19 constitutes a referral by a referring physician, but
20 only if the physician directs the patient to the spe-
21 cific pharmacy, home intravenous drug therapy pro-
22 vider or other entity dispensing the drug.

23 “(b) NONREFERRALS.—The following shall not con-
24 stitute a referral by a referring physician:

25 “(1) FURNISHING OF PROFESSIONAL SERV-
26 ICES.—A request by a physician for physician’s serv-

1 ices consisting solely of professional services to be
2 furnished personally by that physician or under that
3 physician's personal supervision.

4 “(2) CLINICAL DIAGNOSTIC TESTS.—A request
5 by a pathologist for clinical diagnostic laboratory
6 tests and pathological examination services, if such
7 services are furnished by (or under the supervision
8 of) such pathologist pursuant to a consultation re-
9 quested by another physician.

10 “(3) DIAGNOSTIC X-RAYS.—Except as provided
11 in subsection (a)(1), a request by a radiologist for
12 diagnostic x-ray or imaging services, if such services
13 are furnished by (or under the direct or personal su-
14 pervision of) such radiologist pursuant to a consulta-
15 tion requested by another physician.

16 “(4) RADIATION THERAPY.—Except as provided
17 in subsection (a)(1), a request by a physician spe-
18 cializing in the provision of radiation therapy serv-
19 ices for such services, if such services are furnished
20 by (or under the direct or personal supervision of)
21 such physician specializing in the provision of radi-
22 ation therapy services pursuant to a consultation re-
23 quested by another physician.

24 “(5) SPECIALIZED CANCER PHARMACY.—A re-
25 ferral by a physician to a specialized cancer treat-

1 ment pharmacy, if the pharmacy is engaged in the
2 specific practice of preparing and distributing intra-
3 venous drugs and solutions used in the diagnosis
4 and treatment of cancer and the complications
5 thereof and is not engaged in distributing general
6 pharmaceuticals to the public.

7 “(6) RENAL DIALYSIS PROVIDER.—A referral
8 by a physician to a renal dialysis provider in con-
9 junction with a renal dialysis procedure performed
10 under the supervision of the physician.

11 **“SEC. 2704. DISCLOSURE OF INFORMATION.**

12 “Each claim, bill or other demand for health or
13 health related items or services shall identify the referring
14 physician by name and appropriate physician identifica-
15 tion number, as determined by the Secretary pursuant to
16 section 2705.

17 **“SEC. 2705. REPORTING REQUIREMENTS.**

18 “(a) OWNERSHIP ARRANGEMENT INFORMATION.—
19 Each entity providing health or health-related items or
20 services shall make available to the Secretary, and to any
21 payor (including a patient or third party payor), if re-
22 quested by such payor, information concerning the entity’s
23 ownership arrangements, including—

24 “(1) the covered items and services provided by
25 the entity; and

1 “(2) the names and Unique Physician Identi-
2 fication Numbers, or other appropriate identification
3 number, of all physicians with an ownership or in-
4 vestment interest (as described in subsection
5 2701(b)(1)) in the entity, or whose immediate rel-
6 atives have such an ownership or investment.

7 “(b) FORM AND MANNER.—The information required
8 under subsection (a) shall be made available in such form,
9 manner, and at such times as the Secretary shall require.

10 “(c) CONSULTATIONS.—The Secretary shall consult
11 with all interested parties to determine how best to make
12 the information required under subsection (a) available
13 and establish appropriate procedures to carry out such de-
14 termination.

15 “(d) REPORT BY SECRETARY.—Not later than the
16 end of the first calendar quarter after the first full year
17 during which this title is in effect, and annually thereafter,
18 the Secretary shall prepare and submit to the appropriate
19 committees of Congress a report containing—

20 “(1) summaries of the information submitted to
21 the Secretary by entities under this title for the pe-
22 riod for which the report is being submitted;

23 “(2) the actions taken by the Secretary and
24 other entities to remain in compliance with this title;
25 and

1 “(3) recommendations for legislation to improve
2 this title if appropriate.

3 **“SEC. 2706. REGULATIONS.**

4 “The Secretary shall promulgate such regulations as
5 may be necessary to carry out the purposes of this title.
6 If the Secretary determines that additional exceptions to
7 the requirements of section 2701 are in the public interest,
8 and will not result in patient or program abuse, the Sec-
9 retary may by regulation prescribe additional exceptions.

10 **“SEC. 2707. SANCTIONS.**

11 “(a) PAYMENT.—No person (including an individual,
12 entity or third party payor) shall be required to pay any
13 claim, bill, or other demand for payment for health or
14 health-related items or services furnished pursuant to a
15 referral prohibited under section 2701.

16 “(b) LIABILITY ON COLLECTION.—If a person col-
17 lects on any amounts that were billed in violation of sec-
18 tion 2701, such person shall be liable to the payor for any
19 amounts so collected.

20 “(c) INSURANCE PROVISION WITH RESPECT TO
21 NONPAYMENT.—A policy of accident or health insurance
22 issued by any third-party payor, including every subscriber
23 contract issued by a hospital service corporation, health
24 service corporation, medical expense indemnity corpora-
25 tion or mutual insurance company that provides coverage

1 for health or health-related items or services shall include
2 a provision prohibiting the payment of any claim, bill or
3 other demand for payment for the provision of a health
4 or health related item or service furnished pursuant to a
5 referral prohibited under section 2701.

6 “(d) PATTERNS OF CLAIMS.—A third-party payor
7 that is subject to subsection (c) shall report to the Sec-
8 retary any pattern that may exist in the submission of
9 claims, bills or other demands for payment that are sub-
10 mitted in violation of section 2701, not later than 60 days
11 after that date on which such third-party payor has knowl-
12 edge of such pattern.

13 “(e) NO REQUIREMENT OF AUDIT.—Notwithstand-
14 ing the requirements of subsections (b), (c) and (d), a
15 third-party payor providing reimbursements for health or
16 health-related items or services shall not be required to
17 audit or investigate any claim, bill or other demand for
18 payment for such items or services that are furnished pur-
19 suant to a referral.

20 “(f) KNOWLEDGE OF VIOLATION.—Any person or en-
21 tity that presents or causes to be presented, on a repeated
22 basis, a bill or claim that such person or entity knows,
23 or should have known, is for a service for which payment
24 may not be made under subsection (a), and any physician
25 that makes referrals, on a repeated basis, that are prohib-

1 ited under section 2701, shall be subject to a civil money
2 penalty of not more than \$15,000 for each such service
3 or referral. The provisions of section 1128A of the Social
4 Security Act (other than the first sentence of subsection
5 (a) and subsection (b)) shall apply to any civil money pen-
6 alty assessed under the previous sentence in the same
7 manner as such provisions apply to a penalty or proceed-
8 ing under section 1128A(a).

9 “(g) CONCERTED ACTION IN VIOLATION OF SUB-
10 TITLE.—

11 “(1) IN GENERAL.—Any person or entity that
12 enters into an arrangement or scheme (such as a
13 cross-referral arrangement) that the person or entity
14 knows, or should have known, has a principal pur-
15 pose of assuring referrals by a physician to a par-
16 ticular entity which, if the physician directly made
17 referrals to such entity, would be in violation of this
18 section, shall be subject to a civil money penalty of
19 not more than \$100,000 for each such arrangement
20 or scheme. The provisions of section 1128A of the
21 Social Security Act (other than the first sentence of
22 subsection (a) and subsection (b)) shall apply to a
23 civil money penalty assessed under the previous sen-
24 tence in the same manner as such provisions apply
25 to a penalty or proceeding under section 1128A.

1 “(2) OTHER CONCERTED ACTIONS.—The Sec-
2 retary may through regulations define such other ar-
3 rangements whose purpose is to circumvent the pur-
4 poses of this subtitle. A violation of such regulations
5 shall be subject to a civil money penalty of not more
6 than \$100,000 for each such arrangement or
7 scheme. The provisions of section 1128A of the So-
8 cial Security Act (other than the first sentence of
9 subsection (a) and subsection (b)) shall apply to a
10 civil money penalty under the previous sentence in
11 the same manner as such provisions apply to a pen-
12 alty or proceeding under section 1128A(a).

13 “(h) SUSPENSION OF LABORATORY CERTIFI-
14 CATION.—If the Secretary finds, after reasonable notice
15 and opportunity for a hearing, that a laboratory which
16 holds a certificate pursuant to section 353 has violated
17 section 2701, the Secretary may suspend, revoke or limit
18 such certification in accordance with the procedures estab-
19 lished in section 353(k).

20 “(i) EXCLUSION FROM OTHER PROGRAMS.—The
21 Secretary may exclude from participation in any program
22 under title XVIII of the Social Security Act, any individ-
23 ual or entity that the Secretary determines has violated
24 section 2701 and may direct that such individual and en-

1 tity be excluded from participation in any State health
2 care program receiving Federal funds.

3 “(j) FAILURE TO REPORT INFORMATION.—Any per-
4 son who knowingly fails to comply with a reporting re-
5 quirement imposed under this title shall be subject to a
6 civil money penalty of not more than \$10,000 for each
7 day for which such required reporting is not complied
8 with. The provisions of section 1128A of the Social Secu-
9 rity Act (other than the first sentence of subsection (a)
10 and subsection (b)) shall apply to a civil money penalty
11 assessed under the previous sentence in the same manner
12 as such provisions apply to a penalty or proceeding under
13 section 1128A(a).

14 **“SEC. 2708. RIGHT OF PERSON INJURED.**

15 “Any person who pays any claim, bill or other de-
16 mand for payment for health or health-related items or
17 services, where the person furnishing the items or services
18 knew or should have known that they were furnished pur-
19 suant to a referral prohibited under section 2701, may sue
20 therefore in any district court in the United States in the
21 district in which the defendant resides or is found or has
22 an agent, without respect to the amount in controversy,
23 and shall recover the amount of his payment, the cost of
24 suit, including a reasonable attorney’s fee.

1 **“SEC. 2709. DEFINITIONS.**

2 “As used in this subtitle:

3 “(1) COMPENSATION ARRANGEMENT.—The
4 term ‘compensation arrangement’ means any pay-
5 ment (whether directly or indirectly, overtly or cov-
6 ertly, in cash or in kind) made by an entity to a
7 physician (or immediate family member).

8 “(2) EMPLOYEE.—The term ‘employee’ means
9 an individual who would be considered to be em-
10 ployed by an entity under the usual common law
11 rules applicable in determining the employer-em-
12 ployee relationship (as applied for purposes of sec-
13 tion 3121(d)(2) of the Internal Revenue Code of
14 1986).

15 “(3) FAIR MARKET VALUE.—The term ‘fair
16 market value’ means the value of items or services
17 in arms length transactions, consistent with the gen-
18 eral market value of such items or services, and,
19 with respect to rentals or leases, the value of rental
20 property for general commercial purposes (not tak-
21 ing into account its intended use) and, in the case
22 of a lease of space or equipment, not adjusted to re-
23 flect the additional value the prospective lessee or
24 lessor would attribute to the proximity or conven-
25 ience to sources of referrals or business.

1 “(4) GROUP PRACTICE.—The term ‘group prac-
2 tice’ means a group of two or more physicians le-
3 gally organized as a partnership, professional cor-
4 poration, foundation, not-for-profit corporation, fac-
5 ulty practice plan, or similar association—

6 “(A) in which each physician who is a
7 member of the group provides substantially the
8 full range of services which the physician rou-
9 tinely provides (including medical care, con-
10 sultation, diagnosis, or treatment) through the
11 joint use of shared office space, facilities, equip-
12 ment, and personnel;

13 “(B) for which substantially all of the serv-
14 ices of the physicians who are members of the
15 group are provided through the group and are
16 billed in the name of the group and amounts so
17 received are treated as receipts of the group;

18 “(C) in which the overhead expenses of
19 and the income from the practice are distrib-
20 uted in accordance with methods previously de-
21 termined by members of the group; and

22 “(D) which meets such other standards as
23 the Secretary may impose by regulation.

24 In the case of a faculty practice plan associated with
25 a hospital with an approved medical residency train-

1 ing program in which physician members may pro-
2 vide a variety of different specialty services and pro-
3 vide professional services both within and outside the
4 group (as well as perform other tasks such as re-
5 search), subparagraph (D) shall be applied only with
6 respect to the services provided within the faculty
7 practice plan.

8 “(5) HEALTH AND HEALTH-RELATED ITEMS
9 AND SERVICES.—The term ‘health and health-relat-
10 ed items and services’ shall be construed to have the
11 broadest meaning practicable, and shall include, at
12 a minimum, the medical and other health services
13 specified in section 1861(s) of the Social Security
14 Act.

15 “(6) IMMEDIATE FAMILY MEMBER.—The term
16 ‘immediate family member’ shall include spouses,
17 natural and adoptive parents, natural and adoptive
18 children, natural and adopted siblings, stepparents,
19 stepchildren and stepsiblings, fathers-in-law, moth-
20 ers-in-law, brothers-in-law, sisters-in-law, sons-in-law
21 and daughters-in-law, grandparents and grand-
22 children, and such additional family members as
23 may be specified in regulations adopted by the Sec-
24 retary.

1 “(7) PHYSICIAN.—The term ‘physician’
2 means—

3 “(A) a doctor of medicine or osteopathy le-
4 gally authorized to practice medicine and per-
5 form surgery by the State in which such indi-
6 vidual performs such function or action;

7 “(B) a doctor of dental surgery or of den-
8 tal medicine who is legally authorized to prac-
9 tice dentistry in the State in which such indi-
10 vidual performs such functions;

11 “(C) a doctor of podiatric medicine;

12 “(D) a doctor of optometry; or

13 “(E) a chiropractor.

14 “(8) PHYSICIAN SERVICES.—The term ‘physi-
15 cian services’ means professional services performed
16 by physicians, including surgery, consultation, and
17 home, office and institutional calls.

18 “(9) REMUNERATION.—The term ‘remunera-
19 tion’ means the provision of something of value that
20 is not incident to the entity’s performance of, or the
21 physician’s payment for, the services that are the
22 subject of the referral.

23 “(10) THIRD PARTY PAYOR.—The term ‘third
24 party payor’ means any health care insurer, includ-
25 ing any hospital services corporation, health services

1 corporation, medical expense indemnity corporation,
2 mutual insurance company, or self-insured corpora-
3 tion, that provides coverage for health or health-re-
4 lated items or service.

5 **“SEC. 2710. NO EXEMPTION FROM ANTITRUST LAWS.**

6 “Nothing in this title shall be construed to create any
7 immunity to any civil or criminal action under any Federal
8 or State antitrust law, or to alter or restrict in any matter
9 the applicability of any Federal or State antitrust law.

10 **“Subtitle B—Restrictions on Billing**

11 **“SEC. 2721. PROHIBITION.**

12 “(a) BILLING OF OTHERS FOR ANCILLARY SERV-
13 ICES.—Except as provided in section 2722, it shall be un-
14 lawful for any person (including any individual or entity)
15 who furnishes ancillary health services (as defined in sec-
16 tion 2724(e)) to present or cause to be presented, a claim,
17 bill or demand for payment to any person other than the
18 patient receiving such services.

19 “(b) BILLING OF RECIPIENT OF SERVICES.—It shall
20 be unlawful for any physician, or the agent of any physi-
21 cian, to present, or cause to be presented, a claim, bill
22 or demand for payment for ancillary services to any recipi-
23 ent of such services unless the services covered by the
24 claim, bill or demand were furnished—

1 “(1) personally by or under the supervision of
2 the referring physician;

3 “(2) personally by or under the supervision of
4 a physician who is a member of the same group
5 practice as the referring physician; or

6 “(3) personally by individuals who are employed
7 by such physician or group practice and who are
8 personally supervised by the physician or by another
9 physician in the group practice.

10 **“SEC. 2722. EXCEPTIONS.**

11 “Notwithstanding the provisions of section 2721, a
12 person who furnishes ancillary health services to an indi-
13 vidual may present, or cause to be presented, a claim, bill
14 or demand for payment for actual services rendered to—

15 “(1) an immediate family member of the recipi-
16 ent of the services or any other person legally re-
17 sponsible for the debts or care of the recipient of the
18 services;

19 “(2) a third-party payor designated by the re-
20 cipient of the services;

21 “(3) a health maintenance organization in
22 which the recipient of the services is enrolled;

23 “(4) a hospital or skilled nursing facility where
24 the recipient of the services was an inpatient or out-
25 patient at the time the services were provided;

1 “(5) an employer where the recipient of the
2 services is an employee of such employer and the
3 employer is responsible for payment for the services;

4 “(6) a governmental agency or specified agent,
5 on behalf of the recipient of the services;

6 “(7) a substance abuse program where the cli-
7 ents of such a program were the recipient of the
8 services;

9 “(8) a clinic or other health care provider that
10 has been designated (or that is operated by an orga-
11 nization that has been designated) as tax-exempt
12 pursuant to section 501(c)(3) of the Internal Reve-
13 nue Code of 1986, whose purpose is the promotion
14 of public health, where the services rendered relate
15 to testing for sexually transmitted disease, acquired
16 immune deficiency syndrome, pregnancy, pregnancy
17 termination or other conditions where the Secretary
18 has determined that compliance with section 2721
19 could seriously compromise the recipient’s need for
20 confidentiality;

21 “(9) a person engaged in bona fide research
22 studies;

23 “(10) the party requesting the ancillary health
24 services where Federal, State or local law requires

1 that the identity of the recipient be kept confiden-
2 tial;

3 “(11) another person furnishing the same ancil-
4 lary health services for which payment is sought
5 (hereafter referred to in this paragraph as the ‘re-
6 questing party’) where the person presenting, or
7 causing to be presented, the claim, bill or demand
8 for payment furnished the services at the request of
9 the requesting party, except that the requesting
10 party may not be a facility owned or operated by the
11 physician requesting the ancillary health service; and

12 “(12) an entity approved to receive such claims,
13 bills or demands by the Secretary in regulations.

14 The persons described in paragraphs (1) through (12)
15 may present, or cause to be presented, a claim, bill or de-
16 mand for payment for such ancillary services to the re-
17 sponsible party.

18 **“SEC. 2723. SANCTIONS.**

19 “(a) PAYMENT.—No payment may be made for a
20 service that is provided in violation of section 2721.

21 “(b) COLLECTION OF AMOUNTS.—

22 “(1) LIABILITY ON COLLECTION.—If a person
23 collects any amounts that were billed in violation of
24 section 2721(a), such person shall be liable for, and
25 shall refund on a timely basis to the individual from

1 whom such amounts were collected, any amounts so
2 collected.

3 “(2) COLLECTION BY PHYSICIAN.—If a physi-
4 cian collects any amounts from a recipient of serv-
5 ices, or from another person on behalf of the recipi-
6 ent of services (including a third-party payor), that
7 were billed in violation of section 2721(b), such phy-
8 sician shall be liable for, and shall refund on a time-
9 ly basis to the recipient or person, any amounts so
10 collected.

11 “(c) REPEATED CLAIMS.—Any person that presents,
12 or causes to be presented, on a repeated basis a bill or
13 a claim that such person knows, or should have known,
14 is for a service for which payment may not be made under
15 subsection (a), or for which a refund has not been made
16 under subsection (b), shall be subject to a civil money pen-
17 alty of not more than \$5,000 for each such bill or claim.
18 The provisions of section 1128A of the Social Security Act
19 (other than the first sentence of subsection (a) and sub-
20 section (b)) shall apply to a civil money penalty assessed
21 under the previous sentence in the same manner as such
22 provisions apply to a penalty or proceeding under such
23 section 1128A(a).

24 “(d) SUSPENSION OF LABORATORY CERTIFI-
25 CATION.—If the Secretary finds, after reasonable notice

1 and opportunity for a hearing, that a laboratory which
2 holds a certificate pursuant to section 353 has violated
3 section 2721, the Secretary may suspend, revoke or limit
4 such certification in accordance with the procedures estab-
5 lished in section 353(k).

6 “(e) EXCLUSION FROM OTHER PROGRAMS.—

7 “(1) AUTHORITY.—The Secretary may exclude
8 from participation in any program under title XVIII
9 of the Social Security Act, any individual or entity
10 that the Secretary determines has violated section
11 2721 and may direct that such individual and entity
12 be excluded from participation in any State health
13 care program receiving Federal funds.

14 “(2) APPLICATION OF OTHER LAW.—The provi-
15 sions of section 1128(e) of the Social Security Act
16 shall apply to any exclusion under paragraph (1) in
17 the same manner as such provisions apply to a pro-
18 ceeding under such section 1128.

19 **“SEC. 2724. REGULATIONS.**

20 “The Secretary shall by regulation impose such other
21 requirements as may be necessary to implement the pur-
22 poses of this subtitle.

23 **“SEC. 2725. DEFINITIONS.**

24 “As used in this subtitle:

1 “(1) ANCILLARY HEALTH SERVICES.—The term
2 ‘ancillary health services’ means—

3 “(A) diagnostic laboratory tests;

4 “(B) diagnostic x-ray tests and other diag-
5 nostic imaging services including CT and mag-
6 netic resonance imaging services;

7 “(C) other diagnostic tests;

8 “(D) durable medical equipment; and

9 “(E) physical therapy services.

10 “(2) GROUP PRACTICE.—The term ‘group prac-
11 tice’ means a group of two or more physicians le-
12 gally organized as a partnership, professional cor-
13 poration, foundation, not-for-profit corporation, fac-
14 ulty practice plan, or similar association—

15 “(A) in which each physician who is a
16 member of the group provides substantially the
17 full range of services that the physician rou-
18 tinely provides (including medical care, con-
19 sultation, diagnosis, or treatment) through the
20 joint use of shared office space, facilities, equip-
21 ment, and personnel;

22 “(B) for which substantially all of the serv-
23 ices of the physicians who are members of the
24 group are provided through the group and are

1 billed in the name of the group and amounts so
2 received are treated as receipts of the group;

3 “(C) in which the overhead expenses of
4 and the income from the practice are distrib-
5 uted in accordance with methods previously de-
6 termined by members of the group; and

7 “(D) which meets such other standards as
8 the Secretary may impose by regulation.

9 In the case of a faculty practice plan associated with
10 a hospital with an approved medical residency train-
11 ing program in which physician members may pro-
12 vide a variety of different specialty services and pro-
13 vide professional services both within and outside the
14 group (as well as perform other tasks such as re-
15 search), the definition of such term shall be limited
16 with respect to the services provided outside of the
17 faculty practice plan.

18 “(3) IMMEDIATE FAMILY MEMBER.—The term
19 ‘immediate family member’ shall include spouses,
20 natural and adoptive parents, natural and adoptive
21 children, natural and adopted siblings, stepparents,
22 stepchildren and stepsiblings, fathers-in-law, moth-
23 ers-in-law, brothers-in-law, sisters-in-law, sons-in-law
24 and daughters-in-law, grandparents and grand-
25 children, and such additional family members as

1 may be specified in regulations adopted by the Sec-
2 retary.

3 “(4) PHYSICIAN.—The term ‘physician’ has the
4 same meaning given such term in section 2709(7).

5 “(5) THIRD PARTY PAYOR.—The term ‘third
6 party payor’ has the same meaning given such term
7 in section 2709(10).”.

8 (b) CONFORMING AMENDMENTS.—

9 (1) Sections 2701 through 2714 of the Public
10 Health Service Act (42 U.S.C. 300cc through
11 300cc–15) are redesignated as sections 2801
12 through 2814, respectively.

13 (2)(A) Sections 465(f) and 497 of such Act (42
14 U.S.C. 286(f) and 289) are amended by striking out
15 “2701” each place that such appears and inserting
16 in lieu thereof “2801”.

17 (B) Section 305(i) of such Act (42 U.S.C.
18 242c(i)) is amended by striking out “2711” each
19 place that such appears and inserting in lieu thereof
20 “2811”.

21 **SEC. 3. EFFECTIVE DATE.**

22 (a) IN GENERAL.—Except as provided in this section,
23 this Act shall become effective July 1, 1994.

24 (b) EXCEPTIONS.—Notwithstanding subsection (a)—

1 (1) section 2707(c) of the Public Health Service
2 Act (as added by section 2(a)) shall become effective
3 on July 1, 1994, and shall apply to all policies, con-
4 tracts and certificates delivered or issued for delivery
5 on or after such date and, as to those policies, con-
6 tracts and certificates delivered or issued for delivery
7 prior to such date, on the date such policies, con-
8 tracts or certificates are renewed, modified, altered
9 or amended, except that the Secretary may adopt
10 such regulations and take such steps as may be ap-
11 propriate prior to such effective date; and

12 (2) subtitle B of title XXVII of the Public
13 Health Service Act (as added by section 2(a)) shall
14 become effective on July 1, 1994.

15 (c) REGULATIONS.—Not later than July 1, 1994, the
16 Secretary of Health and Human Services shall promulgate
17 such regulations as may be appropriate to carry out this
18 Act.

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