

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 87th General Assembly  
3 Regular Session, 2009

# A Bill

HOUSE BILL 1108

4  
5 By: Representative L. Smith  
6  
7

## For An Act To Be Entitled

8  
9 AN ACT TO PREVENT PHYSICIANS FROM REFERRING  
10 PATIENTS TO MEDICAL IMAGING ENTITIES IN WHICH THE  
11 PHYSICIANS HAVE A FINANCIAL INTEREST; AND FOR  
12 OTHER PURPOSES.  
13

## Subtitle

14  
15 AN ACT TO PREVENT PHYSICIANS FROM  
16 REFERRING PATIENTS TO MEDICAL IMAGING  
17 ENTITIES IN WHICH THE PHYSICIANS HAVE A  
18 FINANCIAL INTEREST.  
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20

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
22

23 SECTION 1. Arkansas Code Title 17, Chapter 95 is amended to add an  
24 additional subchapter to read as follows:  
25

26 Subchapter 8. Physician Referrals to Medical Imaging Entities.  
27

28 17-95-801. Definitions.

29 As used in this subchapter:

30 (1)(A) "Beneficial interest" means ownership through equity,  
31 debt, or other means of any financial interest in a medical imaging entity.

32 (B) "Beneficial interest" does not include ownership,  
33 through equity, debt, or other means of securities, including shares or  
34 bonds, debentures, or other debt instruments;

35 (i) In a corporation that is traded on a national  
36 exchange or over the counter on the national market system;



1 (ii) That at the time of acquisition, were purchased  
2 at the same price and on the same terms generally available to the public;

3 (iii) That are available to individuals who are not  
4 in a position to refer patients to the medical imaging entity on the same  
5 terms that are offered to physicians who may refer patients to the medical  
6 imaging entity;

7 (iv) That are unrelated to the past or expected  
8 volume of referrals from the physician to the medical imaging entity; and

9 (v) That are not marketed differently to physicians  
10 who may make referrals than they are marketed to other individuals;

11 (2)(A) "Compensation arrangement" means any agreement or system  
12 involving any remuneration between a physician or the immediate family of the  
13 physician and a medical imaging entity.

14 (B) "Compensation arrangement" does not include:

15 (i) Compensation or shares under a faculty practice  
16 plan or a professional corporation affiliated with a teaching hospital and  
17 composed of physicians who are members of the faculty of a university;

18 (ii) Amounts paid under a bona fide employment  
19 agreement or independent contractor agreement having a term of at least one  
20 (1) year between a medical imaging entity and a physician or an immediate  
21 family member of the physician, if:

22 (a) The arrangement is for identifiable  
23 services;

24 (b) The amount of the remuneration under the  
25 arrangement is consistent with the fair market value of the service and is  
26 not determined in a manner that takes into account, directly or indirectly,  
27 the volume or value of any referrals by the referring physician; and

28 (c) The compensation is provided in accordance  
29 with an agreement that would be commercially reasonable even if no referrals  
30 were made to the physician;

31 (iii) Compensation for medical imaging services  
32 pursuant to a referral from a physician and rendered by a medical imaging  
33 entity that employs or contracts with an immediate family member of the  
34 physician if the immediate family member's compensation is not based on the  
35 referral;

36 (iv) An arrangement for compensation that is

1 provided by a medical imaging entity to a physician or an immediate family  
2 member of the physician to induce the physician or the immediate family  
3 member of the physician to relocate to the geographic area served by the  
4 medical imaging entity in order to be a member of the medical staff of a  
5 hospital or related institution if:

6 (a) The physician or the immediate family  
7 member of the physician is not required to refer patients to the medical  
8 imaging entity;

9 (b) The amount of the compensation under the  
10 arrangement is not determined in a manner that takes into account, directly  
11 or indirectly, the volume or value of any referrals by the referring  
12 physician; and

13 (c) The medical imaging entity needs the  
14 services of the physician to meet community health care needs and has had  
15 difficulty in recruiting physicians;

16 (v) Payments made for the rental or lease of office  
17 space if the payments are:

18 (a) At fair market value;

19 (b) In accordance with an arm's length  
20 transaction;

21 (c) Is not determined in a manner that takes  
22 into account, directly or indirectly, the volume or value of any referrals by  
23 the referring physician; and

24 (d) Provided in accordance with an agreement  
25 that would be commercially reasonable even if no referrals were made by the  
26 referring physician;

27 (vi) Payments made for the rental or lease of  
28 equipment if the payments are:

29 (a) At fair market value;

30 (b) In accordance with an arm's length  
31 transaction;

32 (c) Is not determined in a manner that takes  
33 into account, directly or indirectly, the volume or value of any referrals by  
34 the referring physician; and

35 (d) Provided in accordance with an agreement  
36 that would be commercially reasonable even if no referrals were made by the

1 referring physician;

2 (vii) Payments made for the sale of property or a  
 3 physician's practice if the payments are:

4 (a) At fair market value;

5 (b) In accordance with an arm's length  
 6 transaction;

7 (c) Is not determined in a manner that takes  
 8 into account, directly or indirectly, the volume or value of any referrals by  
 9 the referring physician; or

10 (d) Provided in accordance with an agreement  
 11 that would be commercially reasonable even if no referrals were made; and

12 (viii) Any other compensation arrangement between a  
 13 physician or a physician's immediate family member and a hospital or related  
 14 institution that satisfies the requirements of an exception to the  
 15 prohibitions established by Section 1395nn of Title 42 of the United States  
 16 Code or a regulation promulgated under 42 U.S.C § 1395nn;

17 (3) "Direct supervision" means a physician is present on the  
 18 premises where the medical imaging services or tests are provided and is  
 19 available for consultation within the treatment area;

20 (4) "Faculty practice plan" means a tax-exempt organization  
 21 established under Arkansas law by or at the direction of a university to  
 22 accommodate the professional practice of members of the faculty who are  
 23 physicians;

24 (5) "Group practice" means a group of two (2) or more physicians  
 25 legally organized as a partnership, professional corporation, foundation,  
 26 not-for-profit corporation, faculty practice plan, or similar association:

27 (A) In which each physician who is a member of the group  
 28 provides substantially the full range of services that the physician  
 29 routinely provides through the joint use of shared office space, facilities,  
 30 equipment, and personnel;

31 (B) For which substantially all of the services of the  
 32 physicians who are members of the group are provided through the group and  
 33 are billed in the name of the group and amounts so received are treated as  
 34 receipts of the group; and

35 (C) In which the overhead expenses of and the income from  
 36 the practice are distributed in accordance with methods previously determined

1 on an annual basis by members of the group;

2 (5) "Immediate family" means a physician's:

- 3 (A) Spouse;
- 4 (B) Child;
- 5 (C) Child's spouse;
- 6 (D) Parent;
- 7 (E) Spouse's parent;
- 8 (F) Sibling; or
- 9 (G) Sibling's spouse;

10 (6)(A) "In-office ancillary services" means those basic medical  
 11 imaging services and tests routinely performed in the office of one (1) or  
 12 more physicians.

13 (B) Except for a radiologist group practice or an office  
 14 consisting solely of one (1) or more radiologists, "in-office ancillary  
 15 services" does not include:

- 16 (i) Magnetic resonance imaging services;
- 17 (ii) Radiation therapy services;
- 18 (iii) Computer tomography scan services; or
- 19 (iv) Positron Emission Tomography;

20 (7) "Medical imaging" means the use of ionizing radiation,  
 21 electromagnetic radiation, or radioactivity for evaluation of body tissue in  
 22 order to diagnose injury and disease by means of image production, including  
 23 without limitation:

- 24 (A) Computed axial tomography;
- 25 (B) Computed tomography;
- 26 (C) Magnetic resonance imaging;
- 27 (D) Positron emission tomography; and
- 28 (E) Radiation therapy services;

29 (8) "Medical imaging entity" means a business entity that  
 30 provides medical imaging services for the testing, diagnosis, or treatment of  
 31 human disease or dysfunction;

32 (9) "Physician" means a person authorized or licensed to  
 33 practice medicine under the Arkansas Medical Practices Act, § 17-95-201 et  
 34 seq., § 17-95-301 et seq., and § 17-95-401 et seq., and a person authorized  
 35 to practice osteopathy under § 17-91-101 et seq.;

36 (10) "Provider-sponsored organization" means an entity that:

1 (A) Is a legal aggregation of providers operating  
 2 collectively for the purpose of providing medical imaging services to  
 3 Medicare beneficiaries under the federal Medicare+Choice Program;

4 (B) Acts through a licensed entity such as a partnership,  
 5 corporation, limited liability company, limited liability partnership, or  
 6 sole proprietorship that has authority over the entity's activities; and

7 (C) Provides a substantial proportion of the medical  
 8 imaging services required to be provided under the federal Medicare+Choice  
 9 Program directly through providers or affiliated groups of providers; and

10 (11) "Referral" means a referral of a patient for medical  
 11 imaging services, including without limitation:

12 (A) The forwarding of a patient by one (1) physician to  
 13 another physician or to a medical imaging entity outside the physician's  
 14 office or group practice; and

15 (B) The request or establishment by a physician of a plan  
 16 of care for the provision of medical imaging services outside the physician's  
 17 office or group practice.

18  
 19 17-95-802. Certain referrals and payments prohibited – Exemptions.

20 (a) Except as provided in subsection (d) of this section, a physician  
 21 shall not refer a patient to a medical imaging entity or direct an employee  
 22 of the physician or person under contract with the physician to refer a  
 23 patient to a medical imaging entity:

24 (1) In which the physician or the physician in combination with  
 25 the physician's immediate family owns a beneficial interest;

26 (2) In which the physician's immediate family owns a beneficial  
 27 interest of three percent (3%) or greater; or

28 (3) With which the physician, the physician's immediate family,  
 29 or the physician in combination with the physician's immediate family has a  
 30 compensation arrangement.

31 (b) A medical imaging entity or a referring physician shall not  
 32 present or cause to be presented to any individual, third-party payor, or  
 33 other person a claim, bill, or other demand for payment for medical imaging  
 34 services provided as a result of a referral prohibited under this subchapter.

35 (c) Subsection (a) of this section applies to any arrangement or  
 36 scheme, including a cross-referral arrangement, that the physician knows or

1 should know has a principal purpose of assuring indirect referrals that would  
2 violate subsection (a) of this section if made directly.

3 (d) This section does not apply to:

4 (1) A physician when treating a member of a health maintenance  
5 organization as defined in § 23-76-102 if the physician does not have a  
6 beneficial interest in the medical imaging entity;

7 (2) A physician who refers a patient to another physician in the  
8 same group practice as the referring physician;

9 (3) A physician who refers in-office ancillary services or tests  
10 that are:

11 (A) Personally furnished by:

12 (i) The referring physician;

13 (ii) A physician in the same group practice as the  
14 referring physician; or

15 (iii) An individual who is employed and personally  
16 supervised by the qualified referring physician or a physician in the same  
17 group practice as the referring physician;

18 (B) Provided in the same building where the referring  
19 physician or a physician in the same group practice as the referring  
20 physician furnishes services; and

21 (C) Billed by:

22 (i) The physician performing or supervising the  
23 services; or

24 (ii) A group practice of which the physician  
25 performing or supervising the services is a member;

26 (4) A physician who has a beneficial interest in a medical  
27 imaging entity if, in accordance with rules adopted by the State Board of  
28 Health:

29 (A) The Department of Health determines that the  
30 physician's beneficial interest is essential to finance and to operate the  
31 medical imaging entity; and

32 (B) The department determines that the medical imaging  
33 entity is needed to ensure appropriate access for the community to the  
34 services provided at the medical imaging entity;

35 (5) A physician who has, or whose immediate family member has, a  
36 compensation arrangement with a medical imaging entity in which a hospital or

1 related institution holds a beneficial interest if:

2 (A) The physician or immediate family member does not have  
 3 a beneficial interest in the medical imaging facility; and

4 (B) The compensation arrangement between the physician or  
 5 immediate family member and the medical imaging entity otherwise satisfies  
 6 the requirements of an exception to the prohibitions established by Section  
 7 1395nn of Title 42 of the United States Code or any regulations promulgated  
 8 under 42 U.S.C § 1395nn;

9 (6) A physician who has a beneficial interest in a medical  
 10 imaging facility in which a hospital or related institution also holds a  
 11 beneficial interest if:

12 (A) The physician provides the medical imaging services to  
 13 a patient pursuant to a referral or in accordance with a consultation  
 14 requested by another physician who does not have a beneficial interest in the  
 15 medical imaging entity;

16 (B) The physician referring a patient to the facility,  
 17 service, or entity personally performs or supervises the medical imaging  
 18 service or procedure; or

19 (C) The beneficial interest otherwise satisfies the  
 20 requirements of an exception to the prohibitions established by Section  
 21 1395nn of Title 42 of the United States Code or any regulations promulgated  
 22 under 42 U.S.C § 1395nn; or

23 (B) The physician or other member of the single specialty  
 24 group practice referring a patient to the facility, service, or entity  
 25 personally performs or supervises the medical imaging service or procedure;

26 (7) A physician with a beneficial interest in or compensation  
 27 arrangement with a hospital or related institution or a facility, service, or  
 28 other entity that is owned or controlled by a hospital or related institution  
 29 or under common ownership or control with a hospital or related institution  
 30 if:

31 (A) The beneficial interest was held or the compensation  
 32 arrangement was in existence on the effective date of this act; and

33 (B) After the effective date of this act, the beneficial  
 34 interest or compensation arrangement of the physician does not increase;

35 (8) A physician when treating an enrollee of a provider-  
 36 sponsored organization if the physician is referring enrollees to an



1 affiliated physician of the provider-sponsored organization; or

2 (9) A physician who refers a patient to a dialysis facility if  
 3 the patient has been diagnosed with end-stage renal disease.

4 (e) A physician exempted from this section under subsection (d) of  
 5 this section is subject to the disclosure provisions of § 17-95-803.

6  
 7 17-95-803. Disclosure of beneficial interest required – Form and  
 8 content of disclosure – Exemptions.

9 (a) Except as provided in subsection (c) of this section, a physician  
 10 making a referral shall disclose the existence of the beneficial interest in  
 11 accordance with this section.

12 (b) Before referring a patient to a medical imaging entity in which  
 13 the practitioner, the physician’s immediate family, or the practitioner in  
 14 combination with the physician’s immediate family owns a beneficial interest,  
 15 the physician shall:

16 (1) Unless an oral referral is made by telephone, provide the  
 17 patient with a written statement that:

18 (A) Discloses the existence of the ownership of the  
 19 beneficial interest or compensation arrangement;

20 (B) States that the patient may choose to obtain the  
 21 medical imaging service from another medical imaging entity; and

22 (C) Requires the patient to acknowledge in writing receipt  
 23 of the statement;

24 (2) Unless an oral referral is made by telephone, insert in the  
 25 medical record of the patient a copy of the written acknowledgement;

26 (3) Place on permanent display a written notice that is in a  
 27 typeface that is large enough to be easily legible to the average person from  
 28 a distance of eight feet (8’) and that is in a location that is plainly  
 29 visible to the patients of the physician disclosing all of the medical  
 30 imaging entities:

31 (A) In which the physician, the physician’s immediate  
 32 family, or the practitioner in combination with the physician’s immediate  
 33 family owns a beneficial interest; and

34 (B) To which the physician refers patients; and

35 (4) Documents in the medical record of the patient that:

36 (A) A valid medical need exists for the referral; and

1                   (B) The physician has disclosed the existence of the  
2 beneficial interest to the patient.

3                   (c) This section does not apply to:

4                   (1) A physician when treating a member of a health maintenance  
5 organization and the physician does not have a beneficial interest in the  
6 medical imaging entity; or

7                   (2) A physician who refers a patient:

8                   (A) To another physician in the same group practice as the  
9 referring physician;

10                   (B) For in-office ancillary services; or

11                   (C) For medical imaging services provided through or by a  
12 medical imaging entity owned or controlled by a hospital or related  
13 institution.

14                   (d) A physician who fails to comply with this section is guilty of an  
15 unclassified misdemeanor and on conviction is subject only to a fine not  
16 exceeding five thousand dollars (\$5,000).

17  
18                   17-95-804. Disclosure of referring physician to third-party payor.

19                   (a) A physician shall disclose the name of a referring physician on  
20 each request for payment or bill submitted to a third-party payor, including  
21 nonprofit health plans and fiscal intermediaries and carriers, that may be  
22 responsible for payment, in whole or in part, of the charges for a medical  
23 imaging service if the physician knows or has reason to believe:

24                   (1) There has been a referral by a physician; and

25                   (2) The referring physician has a beneficial interest in or  
26 compensation arrangement with the medical imaging entity that is prohibited  
27 under § 17-95-802.

28                   (b) A physician who knows or should have known of the practitioner's  
29 failure to comply with this section is subject to disciplinary action by the  
30 appropriate regulatory board.

31  
32                   17-95-805. Liability of referring physician to third-party payor and  
33 to recipient of services.

34                   (a) If a referring physician, a medical imaging entity, or other  
35 person furnishing medical imaging services collects any amount of money that  
36 was billed in violation of § 17-95-802(b) and the referring physician,

1 medical imaging entity, or other person knew or should have known of the  
2 violation, the referring physician, medical imaging entity, or other person  
3 is jointly and severally liable to the third-party payor for any amounts  
4 collected.

5 (b) If a claim, bill, or other demand or request for payment for  
6 medical imaging services is denied by a third-party payor, the referring  
7 physician, medical imaging entity, or other person furnishing the medical  
8 imaging services shall not submit a claim, bill, or other demand or request  
9 for payment to the person who received the medical imaging services.

10  
11 17-95-806. Disciplinary actions.

12 (a) A physician who fails to comply with this subchapter is subject to  
13 disciplinary action by the Arkansas State Medical Board.

14 (b) The board may investigate a claim under this subchapter.

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