

House Bill 3522

Sponsored by Representative DEMBROW; Representatives BARKER, GREENLICK, KENNEMER, Senators DINGFELDER, MORSE

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Prohibits health care practitioners from referring patients to health care entities in which practitioner has beneficial interest or with which practitioner has compensation arrangement, subject to specified exceptions.

Requires full disclosure of beneficial interests or compensation arrangements of practitioner. Prohibits billing for services improperly referred.

Authorizes health professional regulatory board to investigate and discipline violations of Act.

A BILL FOR AN ACT

1
2 Relating to health care practitioner referrals to health care entities; creating new provisions; and
3 repealing ORS 441.098.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. As used in sections 1 to 7 of this 2011 Act:**

6 (1)(a) **“Beneficial interest” means ownership, through equity, debt or other means, of any**
7 **financial interest.**

8 (b) **“Beneficial interest” does not include ownership, through equity, debt or other means,**
9 **of securities, including shares or bonds, debentures or other debt instruments:**

10 (A) **In a corporation that is traded on a national exchange or over the counter on the**
11 **national market system;**

12 (B) **That at the time of acquisition were purchased at the same price and on the same**
13 **terms generally available to the public;**

14 (C) **That are available to individuals who are not in a position to refer patients to the**
15 **health care entity on the same terms that are offered to health care practitioners who may**
16 **refer patients to the health care entity;**

17 (D) **That are unrelated to the past or expected volume of referrals from the health care**
18 **practitioner to the health care entity; and**

19 (E) **That are not marketed differently to health care practitioners that may make refer-**
20 **als than they are marketed to other individuals.**

21 (2)(a) **“Compensation arrangement” means any agreement or system involving any**
22 **remuneration between a health care practitioner or the immediate family member of the**
23 **health care practitioner and a health care entity.**

24 (b) **“Compensation arrangement” does not include:**

25 (A) **Compensation or shares under a faculty practice plan or a professional corporation**
26 **affiliated with a teaching hospital and comprised of health care practitioners who are mem-**
27 **bers of the faculty of a university;**

28 (B) **Amounts paid under a bona fide employment agreement between a health care entity**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 and a health care practitioner or an immediate family member of the health care practi-
2 tioner;

3 (C) An arrangement between a health care entity and a health care practitioner or the
4 immediate family member of a health care practitioner for the provision of any services, as
5 an independent contractor, if:

6 (i) The arrangement is for identifiable services;

7 (ii) The amount of the remuneration under the arrangement is consistent with the fair
8 market value of the services and is not determined in a manner that takes into account,
9 directly or indirectly, the volume or value of any referrals by the referring health care
10 practitioner; and

11 (iii) The compensation is provided in accordance with an agreement that would be com-
12 mercially reasonable even if no referrals were made by the health care practitioner;

13 (D) Compensation for health care services pursuant to a referral from a health care
14 practitioner and rendered by a health care entity that employs or contracts with an imme-
15 diate family member of the health care practitioner, in which the immediate family
16 member's compensation is not based on the referral;

17 (E) An arrangement for compensation that is provided by a health care entity to a health
18 care practitioner or the immediate family member of the health care practitioner to induce
19 the health care practitioner or the immediate family member of the health care practitioner
20 to relocate to the geographic area served by the health care entity in order to be a member
21 of the medical staff of a hospital, if:

22 (i) The health care practitioner or the immediate family member of the health care
23 practitioner is not required to refer patients to the health care entity;

24 (ii) The amount of the compensation under the arrangement is not determined in a
25 manner that takes into account, directly or indirectly, the volume or value of any referrals
26 by the referring health care practitioner; and

27 (iii) The health care entity needs the services of the health care practitioner to meet
28 community health care needs and has had difficulty in recruiting a practitioner;

29 (F) Payments made for the rental or lease of office space if the payments are:

30 (i) At fair market value; and

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

32 (G) Payments made for the rental or lease of equipment if the payments are:

33 (i) At fair market value; and

34 (ii) In accordance with an arm's length transaction; or

35 (H) Payments made for the sale of property or a health care practice if the payments are:

36 (i) At fair market value;

37 (ii) In accordance with an arm's length transaction; and

38 (iii) The remuneration is provided in accordance with an agreement that would be com-
39 mercially reasonable even if no referrals were made.

40 (3) "Direct supervision" means a health care practitioner is present on the premises
41 where the health care services are provided and is available for consultation within the
42 treatment area.

43 (4) "Faculty practice plan" means a tax-exempt organization established under Oregon
44 law by or at the direction of a university to accommodate the professional practice of
45 members of the faculty who are health care practitioners.

1 (5) “Group practice” means a group of two or more health care practitioners legally or-
2 ganized as a partnership, professional corporation, foundation, not-for-profit corporation,
3 faculty practice plan or similar association:

4 (a) In which each health care practitioner who is a member of the group provides sub-
5 stantially the full range of services that the practitioner routinely provides through the joint
6 use of shared office space, facilities, equipment and personnel;

7 (b) For which substantially all of the services of the health care practitioners who are
8 members of the group are provided through the group and are billed in the name of the
9 group, and amounts so received are treated as receipts of the group; and

10 (c) In which the overhead expenses of and the income from the practice are distributed
11 in accordance with methods previously determined on an annual basis by members of the
12 group.

13 (6) “Health care entity” means a business entity that provides health care services for
14 the:

15 (a) Testing, diagnosis or treatment of human disease or dysfunction; or

16 (b) Dispensing of drugs, medical devices, medical appliances or medical goods for the
17 treatment of human disease or dysfunction.

18 (7) “Health care practitioner” means a person who is licensed, certified or otherwise au-
19 thorized by a health professional regulatory board as defined in ORS 676.160 to provide health
20 care services in the ordinary course of business or practice of a profession.

21 (8) “Health care services” means medical procedures, tests and services provided to a
22 patient by or through a health care entity.

23 (9) “Immediate family member” means a health care practitioner’s:

24 (a) Spouse;

25 (b) Child;

26 (c) Child’s spouse;

27 (d) Parent;

28 (e) Spouse’s parent;

29 (f) Sibling; or

30 (g) Sibling’s spouse.

31 (10)(a) “In-office ancillary services” means those basic health care services routinely
32 performed in the office of one or more health care practitioners.

33 (b) Except for a radiologist group practice or an office consisting solely of one or more
34 radiologists, “in-office ancillary services” does not include:

35 (A) Magnetic resonance imaging services;

36 (B) Radiation therapy services; or

37 (C) Computer tomography scan services.

38 (11) “Referral” means any referral of a patient for health care services. “Referral” in-
39 cludes:

40 (a) The forwarding of a patient by one health care practitioner to another health care
41 practitioner or to a health care entity outside the health care practitioner’s office or group
42 practice; and

43 (b) The request or establishment by a health care practitioner of a plan of care for the
44 provision of health care services outside the health care practitioner’s office or group prac-
45 tice.

1 **SECTION 2.** (1) Except as provided in subsection (4) of this section, a health care prac-
 2 titioner may not refer a patient, or direct an employee of or person under contract with the
 3 health care practitioner to refer a patient, to a health care entity:

4 (a) In which the health care practitioner or the practitioner in combination with the
 5 practitioner's immediate family owns a beneficial interest;

6 (b) In which the health care practitioner's immediate family owns a beneficial interest
 7 of three percent or greater; or

8 (c) With which the health care practitioner, the practitioner's immediate family or the
 9 practitioner in combination with the practitioner's immediate family has a compensation
 10 arrangement.

11 (2) A health care entity or a referring health care practitioner may not present or cause
 12 to be presented to any individual, third party payer or other person a claim, bill or other
 13 demand for payment for health care services provided as a result of a referral prohibited by
 14 this section.

15 (3) Subsection (1) of this section applies to any arrangement or scheme, including a
 16 cross-referral arrangement, that the health care practitioner knows or should know has a
 17 principal purpose of ensuring indirect referrals that would be in violation of subsection (1)
 18 of this section if made directly.

19 (4) The provisions of this section do not apply to:

20 (a) A health care practitioner when treating a member of a health maintenance organ-
 21 ization as defined in ORS 750.005 if the health care practitioner does not have a beneficial
 22 interest in the health care entity;

23 (b) A health care practitioner who refers a patient to another health care practitioner
 24 in the same group practice as the referring health care practitioner;

25 (c) A health care practitioner with a beneficial interest in a health care entity who refers
 26 a patient to that health care entity for health care services, if the services are personally
 27 performed by or under the direct supervision of the referring health care practitioner;

28 (d) A health care practitioner who refers in-office ancillary services that are:

29 (A) Personally furnished by:

30 (i) The referring health care practitioner;

31 (ii) A health care practitioner in the same group practice as the referring health care
 32 practitioner; or

33 (iii) An individual who is employed and personally supervised by the referring health care
 34 practitioner or a health care practitioner in the same group practice as the referring health
 35 care practitioner;

36 (B) Provided in the same building where the referring health care practitioner or a health
 37 care practitioner in the same group practice as the referring health care practitioner fur-
 38 nishes services; and

39 (C) Billed by:

40 (i) The health care practitioner performing or supervising the services; or

41 (ii) A group practice of which the health care practitioner performing or supervising the
 42 services is a member;

43 (e) A health care practitioner who has a beneficial interest in a health care entity if, in
 44 accordance with rules adopted by the Oregon Health Authority:

45 (A) The authority determines that the health care practitioner's beneficial interest is

1 essential to finance the health care entity; and

2 (B) The authority approves a certificate of need for the facility under ORS 442.315 or the
 3 authority, in conjunction with the Department of Human Services, determines that the
 4 health care entity is needed to ensure appropriate access for the community to the services
 5 provided at the health care entity;

6 (f) A health care practitioner employed by or affiliated with a hospital who refers a pa-
 7 tient to a health care entity that is owned or controlled by a hospital or under common
 8 ownership or control with a hospital if the health care practitioner does not have a direct
 9 beneficial interest in the health care entity;

10 (g) A health care practitioner or member of a single specialty group practice, including
 11 any person employed by or affiliated with a hospital who has a beneficial interest in a health
 12 care entity that is owned or controlled by a hospital or under common ownership or control
 13 with a hospital if:

14 (A) The health care practitioner or other member of the single specialty group practice
 15 provides the health care services to a patient pursuant to a referral or in accordance with
 16 a consultation requested by another health care practitioner who does not have a beneficial
 17 interest in the health care entity; or

18 (B) The health care practitioner or other member of the single specialty group practice
 19 referring a patient to the facility, service or entity personally performs or supervises the
 20 health care services;

21 (h) A health care practitioner with a beneficial interest in, or compensation arrangement
 22 with, a hospital as defined in ORS 442.015 or a facility, service or other entity that is owned
 23 or controlled by a hospital or related institution or under common ownership or control with
 24 a hospital or related institution if:

25 (A) The beneficial interest was held or the compensation arrangement was in existence
 26 on January 1, 2011; and

27 (B) Thereafter the beneficial interest or compensation arrangement of the health care
 28 practitioner does not increase;

29 (i) A health care practitioner when treating an enrollee of a health care service con-
 30 tractor as defined in ORS 750.005 if the health care practitioner is referring enrollees to an
 31 affiliated health care provider of the health care service contractor;

32 (j) A health care practitioner who refers a patient to a dialysis facility, if the patient has
 33 been diagnosed with end stage renal disease as defined in the Medicare regulations pursuant
 34 to the Social Security Act; or

35 (k) A health care practitioner who refers a patient to a hospital in which the health care
 36 practitioner has a beneficial interest if:

37 (A) The health care practitioner is authorized to perform health care services at the
 38 hospital; and

39 (B) The ownership or investment interest is in the hospital itself and not solely in a
 40 subdivision of the hospital.

41 (5) A health care practitioner exempted from the provisions of this section in accordance
 42 with subsection (4) of this section shall be subject to the disclosure provisions of section 3
 43 of this 2011 Act.

44 **SECTION 3.** (1) Except as provided in subsection (3) of this section, a health care prac-
 45 titioner making a lawful referral shall disclose the existence of any beneficial interest or

1 compensation arrangement in accordance with provisions of this section.

2 (2) Prior to referring a patient to a health care entity in which the health care practi-
3 tioner, the practitioner's immediate family or the practitioner in combination with the
4 practitioner's immediate family owns a beneficial interest, or with which the health care
5 practitioner, the practitioner's immediate family or the practitioner in combination with the
6 practitioner's immediate family has a compensation agreement, the health care practitioner
7 shall:

8 (a) Except if an oral referral is made by telephone, provide the patient with a written
9 statement that:

10 (A) Discloses the existence of the ownership of the beneficial interest or compensation
11 arrangement;

12 (B) States that the patient may choose to obtain the health care services from another
13 health care entity; and

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

15 (b) Except if an oral referral is made by telephone, insert in the medical record of the
16 patient a copy of the written acknowledgement;

17 (c) Place on permanent display a written notice that is in a typeface that is large enough
18 to be easily legible to the average person from a distance of eight feet, that is in a location
19 that is plainly visible to the patients of the health care practitioner and that discloses all of
20 the health care entities:

21 (A) In which the health care practitioner, the practitioner's immediate family or the
22 practitioner in combination with the practitioner's immediate family owns a beneficial in-
23 terest, or with which the health care practitioner, the practitioner's immediate family or the
24 practitioner in combination with the practitioner's immediate family has a compensation
25 agreement; and

26 (B) To which the health care practitioner refers patients; and

27 (d) Document in the medical record of the patient that:

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

29 (B) The health care practitioner has disclosed the existence of the beneficial interest or
30 compensation agreement to the patient.

31 (3) The provisions of this section do not apply to a health care practitioner:

32 (a) When treating a member of a health maintenance organization as defined in ORS
33 750.005 and the health care practitioner does not have a beneficial interest in or compen-
34 sation agreement with the health care entity;

35 (b) Who refers a patient:

36 (A) To another health care practitioner in the same group practice as the referring
37 health care practitioner;

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

39 (C) For health care services provided through or by a health care entity owned or con-
40 trolled by a hospital; or

41 (c) Referring an enrollee of a health care service contractor as defined in ORS 750.005 to
42 an affiliated health care provider of the health care service contractor.

43 (4) A health care practitioner who fails to comply with any provision of this section is
44 guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$5,000.

45 **SECTION 4.** (1) A health care practitioner shall disclose the name of a referring health

1 care practitioner on each request for payment or bill submitted to a third party payer, in-
 2 cluding nonprofit health plans and fiscal intermediaries and carriers, that may be responsible
 3 for payment, in whole or in part, of the charges for a health care service, if the health care
 4 practitioner knows or has reason to believe:

5 (a) There has been a referral by a health care practitioner; and

6 (b) The referring health care practitioner has a beneficial interest in or compensation
 7 arrangement with the health care entity that is prohibited under section 2 of this 2011 Act.

8 (2) A health care practitioner who knows or should have known of the requirement to
 9 disclose the name of a referring health care practitioner and fails to comply with the pro-
 10 visions of this section shall be subject to disciplinary action by the health professional reg-
 11 ulatory board.

12 **SECTION 5.** (1) If a referring health care practitioner, health care entity or other person
 13 furnishing health care services collects any amount of money that was billed in violation of
 14 section 4 of this 2011 Act and the referring health care practitioner, health care entity or
 15 other person knew or should have known of the violation, the referring health care practi-
 16 tioner, health care entity or other person is jointly and severally liable to the payer for any
 17 amounts collected.

18 (2) If a claim, bill or other demand or request for payment for health care services is
 19 denied or a payment is required to be refunded under subsection (1) of this 2011 Act, the
 20 referring health care practitioner, health care entity or other person furnishing the health
 21 care services may not submit a claim, bill or other demand or request for payment to the
 22 person who received the health care services.

23 **SECTION 6.** (1) As used in this section:

24 (a) “Anatomic pathology services” means:

25 (A) Histopathology or surgical pathology;

26 (B) Cytopathology;

27 (C) Hematology;

28 (D) Subcellular pathology and molecular pathology; or

29 (E) Blood-banking services performed by pathologists.

30 (b) “Clinical laboratory” means a facility that provides anatomic pathology services.

31 (c)(A) “Cytopathology” means the microscopic examination of cells from fluids, aspirates,
 32 washings, brushings or smears.

33 (B) “Cytopathology” includes the microscopic examination of cells in a Pap smear exam-
 34 ination performed by a physician or under the direct supervision of a physician.

35 (d) “Hematology” means:

36 (A) The microscopic evaluation of bone marrow aspirates and biopsies performed by a
 37 physician or under the direct supervision of a physician; or

38 (B) Review of a peripheral blood smear if a physician or technologist requests that a
 39 pathologist review a blood smear.

40 (e) “Histopathology or surgical pathology” means gross and microscopic examination of
 41 organ tissue performed by a physician or under the direct supervision of a physician.

42 (f)(A) “Referring laboratory” means a clinical laboratory that sends a specimen to an-
 43 other clinical laboratory for histologic processing or anatomic pathology consultation.

44 (B) “Referring laboratory” does not include a laboratory of a physician’s office or a group
 45 practice that collects a specimen and orders, but does not perform, anatomic pathology ser-

1 vices for patients.

2 (2) Nothing in this section may be construed to:

3 (a) Mandate the assignment of benefits for anatomic pathology services; or

4 (b) Prohibit a health care practitioner who performs or supervises anatomic pathology
5 services and is a member of a group practice from reassigning the right to bill for anatomic
6 pathology services to the group practice if the billing complies with the requirements of
7 subsection (3) of this section.

8 (3) A clinical laboratory, a health care practitioner or a group practice located in this
9 state or in another state that provides anatomic pathology services for a patient in this state
10 shall present, or cause to be presented, a claim, bill or demand for payment for the services
11 to:

12 (a) The patient directly unless otherwise prohibited by law;

13 (b) A responsible insurer or other third party payer;

14 (c) A hospital, public health clinic or nonprofit health clinic ordering the services;

15 (d) A referring laboratory;

16 (e) On behalf of the patient, a governmental agency or its public or private agent, agency
17 or organization; or

18 (f) A health care practitioner who orders but does not supervise or perform an anatomic
19 pathology service on a Pap smear specimen, provided the health care practitioner is in
20 compliance with subsection (5)(b) of this section.

21 (4) Except as provided in subsection (5) of this section, a health care practitioner licensed
22 by a health professional regulatory board may not directly or indirectly charge, bill or oth-
23 erwise solicit payment for anatomic pathology services unless the services are performed:

24 (a) By the health care practitioner or under the direct supervision of the health care
25 practitioner; and

26 (b) In accordance with the provisions for the preparation of biological products by service
27 in the federal Public Health Service Act.

28 (5) This section does not prohibit:

29 (a) A referring laboratory from billing for anatomic pathology services or histologic pro-
30 cessing if the referring laboratory must send a specimen to another clinical laboratory for
31 histologic processing or anatomic pathology consultation; and

32 (b) A health care practitioner who takes a Pap smear specimen from a patient and who
33 orders but does not supervise or perform an anatomic pathology service on the specimen,
34 from billing a patient or third party payer for the service, provided the health care practi-
35 tioner complies with:

36 (A) The disclosure requirements of section 4 of this 2011 Act; and

37 (B) The ethics policies of the American Medical Association that relate to a referring
38 physician billing for laboratory services.

39 (6) A patient, insurer, third party payer, hospital, public health clinic or nonprofit health
40 clinic is not required to reimburse a health care practitioner who violates the provisions of
41 this section.

42 **SECTION 7.** (1) A health care practitioner who fails to comply with the provisions of
43 sections 1 to 6 of this 2011 Act shall be subject to disciplinary action by the appropriate
44 health professional regulatory board as defined in ORS 676.160.

45 (2) The appropriate health professional regulatory board may investigate a claim under

1 sections 1 to 6 of this 2011 Act in accordance with the investigative authority granted under
2 ORS 676.165.

3 SECTION 8. ORS 441.098 is repealed January 2, 2015.

4 SECTION 9. Sections 1 to 7 of this 2011 Act and the repeal of ORS 441.098 by section 8
5 of this 2011 Act apply to referrals to health care entities by health care practitioners that
6 occur on or after the effective date of this 2011 Act.

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