

D R A F T

SUMMARY

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. Makes failure to disclose interest or arrangement in conjunction with lawful referral misdemeanor, punishable by fine not to exceed \$5,000. Prohibits billing for services improperly referred.

Authorizes Oregon Health Licensing Agency or 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
3 new provisions; and 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 6 of this 2013 Act:**

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

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

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

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

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

1 offered to health care practitioners who may refer patients to the
2 health care entity;

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

5 (E) That are not marketed differently to health care practitioners
6 that may make referrals than they are marketed to other individuals.

7 (2)(a) "Compensation arrangement" means any agreement or prac-
8 tice involving any remuneration between a health care practitioner or
9 the immediate family member of the health care practitioner and a
10 health care entity.

11 (b) "Compensation arrangement" does not include:

12 (A) Compensation or shares under a faculty practice plan or a pro-
13 fessional corporation affiliated with a teaching hospital and comprised
14 of health care practitioners who are members of the faculty of a uni-
15 versity;

16 (B) Amounts paid under a bona fide employment agreement be-
17 tween a health care entity and a health care practitioner or an im-
18 mediate family member of the health care practitioner;

19 (C) An arrangement between a health care entity and a health care
20 practitioner or the immediate family member of a health care practi-
21 tioner for the provision of any services, as an independent contractor,
22 if:

23 (i) The arrangement is for identifiable services;

24 (ii) The amount of the remuneration under the arrangement is
25 consistent with the fair market value of the services and is not de-
26 termined in a manner that takes into account, directly or indirectly,
27 the volume or value of any referrals by the referring health care
28 practitioner; and

29 (iii) The compensation is provided in accordance with an agreement
30 that would be commercially reasonable even if no referrals were made
31 by the health care practitioner;

1 (D) Compensation for health care services pursuant to a referral
2 from a health care practitioner and rendered by a health care entity
3 that employs or contracts with an immediate family member of the
4 health care practitioner, in which the immediate family member's
5 compensation is not based on the referral;

6 (E) An arrangement for compensation that is provided by a health
7 care entity to a health care practitioner or the immediate family
8 member of the health care practitioner to induce the health care
9 practitioner or the immediate family member of the health care prac-
10 titioner to relocate to the geographic area served by the health care
11 entity in order to be a member of the medical staff of a hospital, if:

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

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

19 (iii) The health care entity needs the services of the health care
20 practitioner to meet community health care needs and has had diffi-
21 culty in recruiting a practitioner;

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

24 (i) At fair market value; and

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

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

28 (i) At fair market value; and

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

30 (H) Payments made for the sale of property or a health care prac-
31 tice if the payments are:

1 (i) At fair market value;

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

3 (iii) The remuneration is provided in accordance with an agreement
4 that would be commercially reasonable even if no referrals were made.

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

8 (4) "Faculty practice plan" means a tax-exempt organization estab-
9 lished under Oregon law by or at the direction of a university to ac-
10 commodate the professional practice of members of the faculty who
11 are health care practitioners.

12 (5) "Group practice" means a group of two or more health care
13 practitioners legally organized as a partnership, professional corpo-
14 ration, foundation, not-for-profit corporation, faculty practice plan or
15 similar association:

16 (a) In which each health care practitioner who is a member of the
17 group provides substantially the full range of services that the practi-
18 tioner routinely provides through the joint use of shared office space,
19 facilities, equipment and personnel;

20 (b) For which substantially all of the services of the health care
21 practitioners who are members of the group are provided through the
22 group and are billed in the name of the group, and the amounts re-
23 ceived are treated as receipts of the group; and

24 (c) In which the overhead expenses of and the income from the
25 practice are distributed on an annual basis by members of the group
26 in accordance with methods previously agreed upon.

27 (6) "Health care entity" means a business entity that provides
28 health care services for the:

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

31 (b) Dispensing of drugs, medical devices, medical appliances or

1 **medical goods for the treatment of human disease or dysfunction.**

2 **(7) “Health care practitioner” means a person who is licensed, cer-**
3 **tified or otherwise authorized by a health professional regulatory**
4 **board as defined in ORS 676.160 to provide health care services in the**
5 **ordinary course of business or practice of a profession.**

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

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

9 **(a) Spouse;**

10 **(b) Child;**

11 **(c) Child’s spouse;**

12 **(d) Parent;**

13 **(e) Spouse’s parent;**

14 **(f) Sibling; or**

15 **(g) Sibling’s spouse.**

16 **(10)(a) “In-office ancillary services” means health care services**
17 **routinely performed by health care practitioners in their offices.**

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

21 **(A) Magnetic resonance imaging services;**

22 **(B) Radiation therapy services; or**

23 **(C) Computer tomography scan services.**

24 **(11) “Refer” means to make a referral.**

25 **(12) “Referral” means a suggestion or recommendation by a health**
26 **care practitioner, either directly or as part of a treatment plan, that**
27 **a patient obtain health care services from another health care practi-**
28 **tioner or health care entity that is outside the referring health care**
29 **practitioner’s office or group practice.**

30 **SECTION 2. (1) Except as provided in subsection (4) of this section,**
31 **a health care practitioner may not refer a patient, or direct an em-**

1 **ployee of or person under contract with the health care practitioner,**
2 **to refer a patient to a health care entity:**

3 **(a) In which the health care practitioner or the practitioner in**
4 **combination with the practitioner's immediate family owns a benefi-**
5 **cial interest;**

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

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

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

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

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

22 **(a) A health care practitioner when treating a member of a health**
23 **maintenance organization as defined in ORS 750.005 if the health care**
24 **practitioner does not have a beneficial interest in the health care en-**
25 **tity;**

26 **(b) A health care practitioner who refers a patient to another**
27 **health care practitioner in the same group practice as the referring**
28 **health care practitioner;**

29 **(c) A health care practitioner with a beneficial interest in a health**
30 **care entity who refers a patient to that health care entity for health**
31 **care services, if the services are personally performed by or under the**

1 **direct supervision of the referring health care practitioner;**

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

4 **(A) Personally furnished by:**

5 **(i) The referring health care practitioner;**

6 **(ii) A health care practitioner in the same group practice as the**
7 **referring health care practitioner; or**

8 **(iii) An individual who is employed and personally supervised by the**
9 **referring health care practitioner or a health care practitioner in the**
10 **same group practice as the referring health care practitioner;**

11 **(B) Provided in the same building where the referring health care**
12 **practitioner or a health care practitioner in the same group practice**
13 **as the referring health care practitioner furnishes services; and**

14 **(C) Billed by:**

15 **(i) The health care practitioner performing or supervising the ser-**
16 **vices; or**

17 **(ii) A group practice of which the health care practitioner per-**
18 **forming or supervising the services is a member;**

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

22 **(A) The authority determines that the health care practitioner's**
23 **beneficial interest is essential to finance the health care entity; and**

24 **(B) The authority approves a certificate of need for the facility un-**
25 **der ORS 442.315 or the authority, in conjunction with the Department**
26 **of Human Services, determines that the health care entity is needed**
27 **to ensure appropriate access for the community to the services pro-**
28 **vided at the health care entity;**

29 **(f) A health care practitioner employed by or affiliated with a hos-**
30 **pital who refers a patient to a health care entity that is owned or**
31 **controlled by a hospital or under common ownership or control with**

1 a hospital if the health care practitioner does not have a direct bene-
2 ficial interest in the health care entity;

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

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

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

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

21 (A) The beneficial interest was held or the compensation arrange-
22 ment was in existence on January 1, 2013; and

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

25 (i) A health care practitioner when treating an enrollee of a health
26 care service contractor as defined in ORS 750.005 if the health care
27 practitioner is referring enrollees to an affiliated health care provider
28 of the health care service contractor;

29 (j) A health care practitioner who refers a patient to a dialysis fa-
30 cility if the patient has been diagnosed with end stage renal disease,
31 as defined by the Centers for Medicare and Medicaid Services for pur-

1 poses of the Medicare program; or

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

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

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

8 (5) A health care practitioner exempted from the provisions of this
9 section in accordance with subsection (4) of this section shall be sub-
10 ject to the disclosure provisions of section 3 of this 2013 Act.

11 **SECTION 3.** (1) Except as provided in subsection (3) of this section,
12 a health care practitioner making a lawful referral shall disclose the
13 existence of any beneficial interest or compensation arrangement in
14 accordance with provisions of this section.

15 (2) Prior to referring a patient to a health care entity in which the
16 health care practitioner, the practitioner's immediate family or the
17 practitioner in combination with the practitioner's immediate family
18 owns a beneficial interest, or with which the health care practitioner,
19 the practitioner's immediate family or the practitioner in combination
20 with the practitioner's immediate family has a compensation agree-
21 ment, the health care practitioner shall:

22 (a) Except if an oral referral is made by telephone, provide the pa-
23 tient with a written statement that:

24 (A) Discloses the existence of the ownership of the beneficial in-
25 terest or compensation arrangement;

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

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

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

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

6 (A) In which the health care practitioner, the practitioner's imme-
7 diate family or the practitioner in combination with the practitioner's
8 immediate family owns a beneficial interest, or with which the health
9 care practitioner, the practitioner's immediate family or the practi-
10 tioner in combination with the practitioner's immediate family has a
11 compensation agreement; and

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

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

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

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

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

19 (a) When treating a member of a health maintenance organization
20 as defined in ORS 750.005 and the health care practitioner does not
21 have a beneficial interest in or compensation agreement with the
22 health care entity;

23 (b) Who refers a patient:

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

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

27 (C) For health care services provided through or by a health care
28 entity owned or controlled by a hospital; or

29 (c) Referring an enrollee of a health care service contractor as de-
30 fined in ORS 750.005 to an affiliated health care provider of the health
31 care service contractor.

1 **SECTION 4.** (1) A health care practitioner shall disclose the name
2 of a referring health care practitioner on each request for payment
3 or bill submitted to a third party payer, including nonprofit health
4 plans and fiscal intermediaries and carriers, that may be responsible
5 for payment, in whole or in part, of the charges for a health care
6 service, if the health care practitioner knows or has reason to believe:

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

8 (b) The referring health care practitioner has a beneficial interest
9 in or compensation arrangement with the health care entity that is
10 prohibited under section 2 of this 2013 Act.

11 (2) A health care practitioner who knows or should have known of
12 the requirement to disclose the name of a referring health care prac-
13 titioner and fails to comply with the provisions of this section shall
14 be subject to disciplinary action by the Oregon Health Licensing
15 Agency or the appropriate health professional regulatory board in ac-
16 cordance with section 7 of this 2013 Act.

17 **SECTION 5.** (1) If a referring health care practitioner, health care
18 entity or other person furnishing health care services collects any
19 amount of money that was billed in violation of section 4 of this 2013
20 Act and the referring health care practitioner, health care entity or
21 other person knew or should have known of the violation, the refer-
22 ring health care practitioner, health care entity or other person is
23 jointly and severally liable to the payer for any amounts collected.

24 (2) If a claim, bill or other demand or request for payment for
25 health care services is denied or a payment is required to be refunded
26 under subsection (1) of this section, the referring health care practi-
27 tioner, health care entity or other person furnishing the health care
28 services may not submit a claim, bill or other demand or request for
29 payment to the person who received the health care services.

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

31 (a) “Anatomic pathology services” means:

1 (A) **Histopathology or surgical pathology;**

2 (B) **Cytopathology;**

3 (C) **Hematology;**

4 (D) **Subcellular pathology and molecular pathology; or**

5 (E) **Blood-banking services performed by pathologists.**

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

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

10 (B) **“Cytopathology” includes the microscopic examination of cells**
11 **in a Pap smear examination performed by a physician or under the**
12 **direct supervision of a physician.**

13 (d) **“Hematology” means:**

14 (A) **The microscopic evaluation of bone marrow aspirates and**
15 **biopsies performed by a physician or under the direct supervision of a**
16 **physician; or**

17 (B) **Review of a peripheral blood smear if a physician or**
18 **technologist requests that a pathologist review a blood smear.**

19 (e) **“Histopathology or surgical pathology” means gross and micro-**
20 **scopic examination of organ tissue performed by a physician or under**
21 **the direct supervision of a physician.**

22 (f)(A) **“Referring laboratory” means a clinical laboratory that sends**
23 **a specimen to another clinical laboratory for histologic processing or**
24 **anatomic pathology consultation.**

25 (B) **“Referring laboratory” does not include a laboratory of a**
26 **physician’s office or a group practice that collects a specimen and or-**
27 **ders, but does not perform, anatomic pathology services for patients.**

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

29 (a) **Mandate the assignment of benefits for anatomic pathology**
30 **services; or**

31 (b) **Prohibit a health care practitioner who performs or supervises**

1 **anatomic pathology services and is a member of a group practice from**
2 **reassigning the right to bill for anatomic pathology services to the**
3 **group practice if the billing complies with the requirements of sub-**
4 **section (3) of this section.**

5 **(3) A clinical laboratory, a health care practitioner or a group**
6 **practice located in this state or in another state that provides ana-**
7 **tomic pathology services for a patient in this state shall present, or**
8 **cause to be presented, a claim, bill or demand for payment for the**
9 **services to:**

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

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

12 **(c) A hospital, public health clinic or nonprofit health clinic order-**
13 **ing the services;**

14 **(d) A referring laboratory;**

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

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

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

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

27 **(b) In accordance with the provisions of the federal Public Health**
28 **Service Act for the preparation of biological products by a provider of**
29 **anatomic pathology services.**

30 **(5) This section does not prohibit:**

31 **(a) A referring laboratory from billing for anatomic pathology ser-**

1 vices or histologic processing if the referring laboratory must send a
2 specimen to another clinical laboratory for histologic processing or
3 anatomic pathology consultation; and

4 (b) A health care practitioner who takes a Pap smear specimen
5 from a patient and who orders but does not supervise or perform an
6 anatomic pathology service on the specimen, from billing a patient or
7 third party payer for the service, provided the health care practitioner
8 complies with:

9 (A) The disclosure requirements of section 4 of this 2013 Act; and

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

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

15 **SECTION 7.** (1) A health care practitioner who fails to comply with
16 the provisions of sections 1 to 6 of this 2013 Act shall be subject to
17 disciplinary action by the Oregon Health Licensing Agency or by the
18 appropriate health professional regulatory board as defined in ORS
19 676.160.

20 (2) The Oregon Health Licensing Agency or the appropriate health
21 professional regulatory board may investigate a claim under sections
22 1 to 6 of this 2013 Act in accordance with the investigative authority
23 granted under ORS 676.165.

24 **SECTION 8.** Violation of section 3 of this 2013 Act is a misdemeanor
25 punishable, upon conviction, by a fine not exceeding \$5,000.

26 **SECTION 9.** ORS 441.098 is repealed January 2, 2017.

27 **SECTION 10.** Sections 1 to 8 of this 2013 Act and the repeal of ORS
28 441.098 by section 9 of this 2013 Act apply to referrals by health care
29 practitioners to health care entities or clinical laboratories on or after
30 the effective date of this 2013 Act.