Senate Bill 683

Sponsored by COMMITTEE ON GENERAL GOVERNMENT, CONSUMER AND SMALL BUSINESS PROTECTION

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. 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.

Requires health care practitioner who refers patient for physical therapy to provide unrestricted referral to physical therapist of patient's choice.

Authorizes Oregon Health Licensing Agency or health professional regulatory board to investigate and discipline violations of Act.

A BILL FOR AN ACT

Relating to health care practitioner referrals to health care entities; creating new provisions; amending ORS 688.125; and repealing ORS 441.098.

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

SECTION 1. As used in sections 1 to 6 of this 2013 Act:

(1)(a) "Beneficial interest" means ownership, through equity, debt or other means, of any financial interest in a health care entity.

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

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

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

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

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

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

(2)(a) "Compensation arrangement" means any agreement or practice involving any remuneration between a health care practitioner or the immediate family member of the health care practitioner and a health care entity.

(b) "Compensation arrangement" does not include:

(A) Compensation or shares under a faculty practice plan or a professional corporation affiliated with a teaching hospital and composed of health care practitioners who are members of the faculty of a university;

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.

(B) Amounts paid under a bona fide employment agreement between a health care entity and a health care practitioner or an immediate family member of the health care practitioner;

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

(i) The arrangement is for identifiable services;

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

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

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

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

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

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

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

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

(i) At fair market value; and

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

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

(i) At fair market value; and

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

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

(i) At fair market value;

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

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

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

(4) "Faculty practice plan" means a tax-exempt organization established under Oregon law by or at the direction of a university to accommodate the professional practice of

members of the faculty who are health care practitioners.

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

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

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

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

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

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

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

(7) "Health care practitioner" means a person who is licensed, certified or otherwise authorized by a health professional regulatory board as defined in ORS 676.160 to provide health care services in the ordinary course of business or practice of a profession.

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

(9) "Immediate family member" means a health care practitioner's:

(a) Spouse;

(b) Child;

(c) Child's spouse;

(d) Parent;

(e) Spouse's parent;

(f) Sibling; or

(g) Sibling's spouse.

(10)(a) "In-office ancillary services" means health care services routinely performed by health care practitioners in their offices.

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

(A) Magnetic resonance imaging services;

(B) Radiation therapy services; or

(C) Computer tomography scan services.

(11) "Refer" means to make a referral.

(12) "Referral" means a suggestion or recommendation made by a health care practitioner, either directly or as part of a treatment plan, that a patient obtain health care services from another health care practitioner or health care entity that is outside the referring health care practitioner's office or group practice.

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

health care practitioner to refer a patient, to a health care entity:

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

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

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

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

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

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

(a) A health care practitioner when treating a member of a health maintenance organization as defined in ORS 750.005 if the health care practitioner does not have a beneficial interest in the health care entity;

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

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

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

(A) Personally furnished by:

(i) The referring health care practitioner;

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

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

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

(C) Billed by:

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

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

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

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

(B) The authority approves a certificate of need for the facility under ORS 442.315 or the

authority, in conjunction with the Department of Human Services, determines that the health care entity is needed to ensure appropriate access for the community to the services provided at the health care entity;

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

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

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

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

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

(A) The beneficial interest was held or the compensation arrangement was in existence on January 1, 2013; and

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

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

(j) A health care practitioner who refers a patient to a dialysis facility if the patient has been diagnosed with end stage renal disease, as defined by the Centers for Medicare and Medicaid Services for purposes of the Medicare program; or

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

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

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

(5) A health care practitioner exempted from the provisions of this section in accordance with subsection (4) of this section shall be subject to the disclosure provisions of section 3 of this 2013 Act.

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

(2) Prior to referring a patient to a health care entity in which the health care practi-

tioner, the practitioner's immediate family or the practitioner in combination with the practitioner's immediate family owns a beneficial interest, or with which the health care practitioner, the practitioner's immediate family or the practitioner in combination with the practitioner's immediate family has a compensation agreement, the health care practitioner shall:

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

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

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

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

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

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

(A) In which the health care practitioner, the practitioner's immediate family or the practitioner in combination with the practitioner's immediate family owns a beneficial interest, or with which the health care practitioner, the practitioner's immediate family or the practitioner in combination with the practitioner's immediate family has a compensation agreement; and

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

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

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

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

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

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

(b) Who refers a patient:

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

(B) For in-office ancillary services; or

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

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

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

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

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

(2) A health care practitioner who knows or should have known of the requirement to disclose the name of a referring health care practitioner and fails to comply with the provisions of this section shall be subject to disciplinary action by the Oregon Health Licensing Agency or the appropriate health professional regulatory board in accordance with section 7 of this 2013 Act.

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

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

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

(a) "Anatomic pathology services" means:

(A) Histopathology or surgical pathology;

(B) Cytopathology;

(C) Hematology;

(D) Subcellular pathology and molecular pathology; or

(E) Blood-banking services performed by pathologists.

(b) "Clinical laboratory" means a facility that provides anatomic pathology services.

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

(B) "Cytopathology" includes the microscopic examination of cells in a Pap smear examination performed by a physician or under the direct supervision of a physician.

(d) "Hematology" means:

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

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

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

(f)(A) "Referring laboratory" means a clinical laboratory that sends a specimen to another clinical laboratory for histologic processing or anatomic pathology consultation.

(B) "Referring laboratory" does not include a laboratory of a physician's office or a group practice that collects a specimen and orders, but does not perform, anatomic pathology services for patients.

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

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

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

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

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

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

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

(d) A referring laboratory;

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

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

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

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

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

(5) This section does not prohibit:

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

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

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

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

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

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

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

SECTION 8. ORS 688.125 is amended to read:

688.125. In order to ensure that physical therapy treatment of a patient is based solely on the needs **and personal health choices** of a patient, any health care practitioner licensed by a health professional regulatory board as defined in ORS 676.160 who owns, in part or in whole, [*a physical therapy practice, or who*] **an outpatient physical therapy practice, either individually or as a shareholder, member or partner of a legal entity that is separate from the health care practitioner's practice, who** employs a physical therapist[,] **or who is an employee of or contracts with an entity that owns or operates an outpatient physical therapy practice,** shall communicate the facts of that ownership or employment relationship to patients for whom physical therapy is prescribed and inform the patient that alternative sources of physical therapy treatment are available.

SECTION 9. Violation of section 3 of this 2013 Act is a misdemeanor punishable, upon conviction, by a fine not exceeding $5,000.

SECTION 10. ORS 441.098 is repealed January 2, 2017.

SECTION 11. Sections 1 to 7 and 9 of this 2013 Act, the amendments to ORS 688.125 by section 8 of this 2013 Act and the repeal of ORS 441.098 by section 10 of this 2013 Act apply to referrals made by health care practitioners to health care entities, clinical laboratories or outpatient physical therapists on or after the effective date of this 2013 Act.