

106TH CONGRESS  
1ST SESSION

# H. R. 2650

To amend title XVIII of the Social Security Act to improve and streamline the physician self-referral law.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 29, 1999

Mr. STARK introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend title XVIII of the Social Security Act to improve and streamline the physician self-referral law.

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

3 **SECTION 1. SHORT TITLE; REFERENCES TO SOCIAL SECU-**  
4 **RITY ACT; TABLE OF CONTENTS.**

5 (a) SHORT TITLE.—This Act may be cited as the  
6 “Medicare Physician Self-Referral Improvement Act of  
7 1999”;

8 (b) REFERENCES TO SOCIAL SECURITY ACT.—Ex-  
9 cept as otherwise expressly provided, whenever in this Act

1 an amendment or repeal is expressed in terms of an  
 2 amendment to, or repeal of, a section or other provision,  
 3 the reference shall be considered to be made to a section  
 4 or other provision of Social Security Act.

5 (c) TABLE OF CONTENTS.—The table of contents of  
 6 this Act is as follows:

- Sec. 1. Short title; references to Social Security Act; table of contents.
- Sec. 2. Changes in exceptions for both ownership and compensation arrangements.
- Sec. 3. Revision of exceptions for certain compensation arrangements.
- Sec. 4. Revision of definitions.
- Sec. 5. Change in reporting requirements.
- Sec. 6. Advisory opinions.
- Sec. 7. Effective date.

7 **SEC. 2. CHANGES IN EXCEPTIONS FOR BOTH OWNERSHIP**  
 8 **AND COMPENSATION ARRANGEMENTS.**

9 (a) INCLUSION OF DURABLE MEDICAL EQUIPMENT  
 10 AND PARENTERAL AND ENTERAL NUTRIENTS, EQUIP-  
 11 MENT, AND SUPPLIES IN EXCEPTION FOR IN-OFFICE AN-  
 12 CILLARY SERVICES.—Section 1877(b)(2) (42 U.S.C.  
 13 1395nn(b)(2)) is amended by striking “In the case of”  
 14 and all that follows through “supplies)” and inserting  
 15 “Subsection (a)(1) shall not apply in the case of des-  
 16 ignated health services”.

17 (b) MODIFICATION OF THE DIRECT SUPERVISION  
 18 REQUIREMENT FOR IN-OFFICE ANCILLARY SERVICES.—  
 19 Section 1877(b)(2)(A)(i) (42 U.S.C. 1395nn(b)(2)(A)(i))  
 20 is amended by striking “who are directly supervised by  
 21 the physician or by another physician in the group prac-

1 tice” and inserting “who assume full and direct legal, fi-  
 2 nancial, and professional responsibility for the services or  
 3 items, or both, that are provided and who provide those  
 4 services”.

5 (c) EXPANSION OF PREPAID PLAN EXCEPTION.—  
 6 Section 1877(b)(3) (42 U.S.C. 1395nn(b)(3)) is  
 7 amended—

8 (1) in subparagraph (A), by inserting “part C  
 9 or” before “section 1876”; and

10 (2) by striking “or” at the end of subparagraph  
 11 (C);

12 (3) by striking the period at the end of sub-  
 13 paragraph (D) and inserting “; and”; and

14 (4) by adding at the end the following new sub-  
 15 paragraph:

16 “(E) that is a medicaid managed care or-  
 17 ganization (as defined in section  
 18 1903(m)(1)(A)) to an individual enrolled with  
 19 the organization.”.

20 (d) NEW EXCEPTION FOR CAPITATED PAYMENTS.—  
 21 Section 1877(b) (42 U.S.C. 1395nn(b)) is amended—

22 (1) by redesignating paragraph (4) as para-  
 23 graph (5); and

24 (2) by inserting after paragraph (3) the fol-  
 25 lowing new paragraph:

1           “(4) OTHER CAPITATED PAYMENTS.—Sub-  
 2       section (a)(1) shall not apply in the case of a des-  
 3       ignated health service, if the designated health serv-  
 4       ice is included in the services for which a physician  
 5       or physician group is paid only on a capitated basis  
 6       by a health plan or insurer pursuant to a written ar-  
 7       rangement between the plan or insurer and the phy-  
 8       sician or physician group in which the physician or  
 9       physician group.”.

10       (e) NEW EXCEPTION FOR SERVICES FURNISHED IN  
 11       COMMUNITIES WITH NO ALTERNATIVE PROVIDERS.—  
 12       Section 1877(b) (42 U.S.C. 1395nn(b)), as amended by  
 13       subsection (d), is further amended—

14           (1) by redesignating paragraph (5) as para-  
 15       graph (6); and

16           (2) inserting after paragraph (4) the following  
 17       new paragraph:

18           “(5) NO ALTERNATIVE PROVIDERS IN AREA.—  
 19       In the case of a designated health service furnished  
 20       in any area with respect to which the Secretary de-  
 21       termines that individuals residing in the area do not  
 22       have reasonable access to such a designated health  
 23       service.”.

24       (f) NEW EXCEPTION FOR SERVICES FURNISHED IN  
 25       AMBULATORY SURGICAL CENTERS.—Section 1877(b) (42

1 U.S.C. 1395nn(b)), as amended by subsections (d) and  
2 (e), is further amended—

3 (1) by redesignating paragraph (6) as para-  
4 graph (7); and

5 (2) inserting after paragraph (5) the following  
6 new paragraph:

7 “(6) SERVICES FURNISHED IN AMBULATORY  
8 SURGICAL CENTERS.—In the case of a designated  
9 health service furnished in an ambulatory surgical  
10 center described in section 1832(a)(2)(F)(i).”.

11 (g) NEW EXCEPTION FOR SERVICES FURNISHED IN  
12 A HOSPICE.—Section 1877(b) (42 U.S.C. 1395nn(b)), as  
13 amended by subsections (d) through (g), is further  
14 amended—

15 (1) by redesignating paragraph (8) as para-  
16 graph (9); and

17 (2) inserting after paragraph (7) the following  
18 new paragraph:

19 “(8) SERVICES FURNISHED BY A HOSPICE PRO-  
20 GRAM.—In the case of a designated health service  
21 furnished by a hospice program under section  
22 1861(dd)(2).”.

23 (h) CONFORMING AMENDMENTS.—Paragraphs (3)  
24 and (9) of section 1877(b) (42 U.S.C. 1395nn(b)), as pre-  
25 viously redesignated by this section, are each amended by

1 striking “In the case of” and inserting “Subsection (a)(1)  
 2 shall not apply in the case of”.

3 **SEC. 3. REVISION OF EXCEPTIONS FOR CERTAIN COM-**  
 4 **PENSATION ARRANGEMENTS.**

5 Section 1877 (42 U.S.C. 1395nn) is amended—

6 (1) in subsection (a)(2)(B)—

7 (A) by striking “except as provided in sub-  
 8 section (e)(2),”; and

9 (B) by striking “entity.” and inserting  
 10 “entity which does not meet the requirements  
 11 of subsection (e)(1).”; and

12 (2) by amending subsection (e) to read as fol-  
 13 lows:

14 “(e) REQUIREMENTS AND EXCEPTIONS FOR PERMIS-  
 15 SIBLE COMPENSATION ARRANGEMENTS.—

16 “(1) IN GENERAL.—The requirements under  
 17 this paragraph with respect to a compensation ar-  
 18 rangement are as follows:

19 “(A) The arrangement is in writing and is  
 20 signed by all parties to the arrangement.

21 “(B) The arrangement is for a specified  
 22 period of time, which may be less than a year  
 23 and may be renewed any number of times if the  
 24 terms of the arrangement and the compensation  
 25 for the same items or services do not change.

1           “(C) The arrangement must cover all of  
2           the items and services to be provided by the  
3           physician or immediate family member to the  
4           entity or, alternatively, cross refer to any other  
5           agreements for items or services between any of  
6           the parties.

7           “(D) The arrangement is consistent with  
8           fair market value.

9           “(E) The arrangement must specify the  
10          compensation that will be provided under the  
11          arrangement, which must be set in advance,  
12          consistent with fair market value and not deter-  
13          mined in a manner that takes into account the  
14          volume or value of any referrals, payments for  
15          referrals for medical services that are not cov-  
16          ered under this title or title XIX, or other busi-  
17          ness generated between the parties.

18          “(F) The arrangement is commercially rea-  
19          sonable and further the legitimate business pur-  
20          poses of the parties.

21          “(G) The arrangement meets such other  
22          requirements as the Secretary may impose as  
23          needed to protect against program or patient  
24          abuse.

1           “(2) EXCEPTIONS.—The following shall not be  
2       considered to be a compensation arrangement de-  
3       scribed in subsection (a)(2)(B):

4           “(A) PHYSICIAN RECRUITMENT.—In the  
5       case of remuneration which is provided by a  
6       hospital to a physician to induce the physician  
7       to relocate to the geographic area served by the  
8       hospital in order to be a member of the medical  
9       staff of the hospital, if—

10           “(i) the physician is not required to  
11       refer patients to the hospital,

12           “(ii) the amount of the remuneration  
13       under the arrangement is not determined  
14       in a manner that takes into account (di-  
15       rectly or indirectly) the volume or value of  
16       any referrals by the referring physician,  
17       and

18           “(iii) the arrangement meets such  
19       other requirements as the Secretary may  
20       impose by regulation as needed to protect  
21       against program or patient abuse.

22           “(B) DE MINIMIS EXCEPTION.—In the  
23       case of remuneration in the form of items or  
24       services, not including cash or cash equivalents,  
25       if—



1 “(i) the remuneration does not exceed  
 2 \$50 per gift and an aggregate of \$300 per  
 3 year, and

4 “(ii) the remuneration is not deter-  
 5 mined in any way that takes into account  
 6 the volume or value of the physician’s re-  
 7 ferrals to the entity.”.

8 **SEC. 4. REVISION OF DEFINITIONS.**

9 (a) EXCLUSION OF INTRAOCULAR LENS, EYE-  
 10 GLASSES, AND CONTACT LENSES FROM DESIGNATED  
 11 HEALTH SERVICES SUBJECT TO PROHIBITIONS.—Section  
 12 1877(h)(6)(H) (42 U.S.C. 1395nn(h)(6)(H)) is amended  
 13 by striking the period at the end and inserting the fol-  
 14 lowing: “, other than an intraocular lens inserted during  
 15 or subsequent to cataract surgery, eyeglasses, or contact  
 16 lenses.”.

17 (b) CHANGE IN DEFINITION OF GROUP PRACTICE.—  
 18 Section 1877(h)(4)(A) (42 U.S.C. 1395nn(h)(4)(A)) is  
 19 amended by amending clause (vi) to read as follows:

20 “(vi) in which the overhead expenses  
 21 of and the income from the practice are  
 22 distributed according to methods that indi-  
 23 cate that the practice is a unified busi-  
 24 ness.”.

1 **SEC. 5. CHANGE IN REPORTING REQUIREMENTS.**

2 (a) REQUIREMENT.—Section 1877(f) (42 U.S.C.  
3 1395nn(f)) is amended—

4 (1) by striking “shall provide the Secretary  
5 with” and inserting “shall provide to the Secretary  
6 upon request for purposes of an audit”; and

7 (2) by striking the second sentence.

8 (b) SANCTIONS.—Section 1877(g)(5) (42 U.S.C.  
9 1395nn(g)(5)) is amended by striking all that follows  
10 “Any person who is required, but fails,” and inserting the  
11 following: “to provide the Secretary upon request for pur-  
12 poses of an audit with information concerning the entity’s  
13 ownership, investment, and compensation arrangements,  
14 including—

15 “(A) the covered items and services pro-  
16 vided by the entity; and

17 “(B) the names and unique physician iden-  
18 tification numbers of all physicians with an  
19 ownership or investment interest (as described  
20 in subsection (a)(2)(B)) in the entity, or who  
21 have such a compensation relationship with the  
22 entity, or whose immediate relatives have such  
23 an ownership or investment interest or who  
24 have such a compensation relationship with the  
25 entity,

1 is subject to a civil money penalty at the Secretary's  
2 discretion of not more than \$10,000 for each day of  
3 non-compliance following a request by the Secretary  
4 for information concerning such arrangements.”.

5 **SEC. 6. ADVISORY OPINIONS.**

6 Section 1877(g)(6)(A) (42 U.S.C. 1395nn(g)(6)(A))  
7 is amended by inserting before the period at the end of  
8 the first sentence the following: “within 60 days after the  
9 date the Secretary receives a written request for such an  
10 advisory opinion”.

11 **SEC. 7. EFFECTIVE DATE.**

12 The amendments made by this Act shall apply to re-  
13 ferrals made on or after January 1, 2000.

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