

AMENDED IN SENATE APRIL 10, 2014
AMENDED IN SENATE MARCH 24, 2014

SENATE BILL

No. 1215

Introduced by Senator Hernandez

February 20, 2014

An act to amend Section 650.02 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1215, as amended, Hernandez. Healing arts licensees: referrals.

Existing law provides for the licensure and regulation of healing arts professionals by boards within the Department of Consumer Affairs. Existing law makes it a crime for licensed healing arts professionals to receive money or other consideration for, or to engage in various related activities with respect to, the referral of patients, clients, or customers to any person, with specified exceptions.

Existing law also makes it a crime for a licensed healing arts professional to refer patients for specified services if the licensee or his or her immediate family has a financial interest, as defined, with the person or entity. Existing law provides that, among other exceptions, this prohibition does not apply to services for a specific patient that are performed within, or goods that are supplied by, a licensee's office or the office of a group practice.

This bill would provide that this exception does not apply to advanced imaging, anatomic pathology, radiation therapy, or physical therapy for a specific patient that is performed within a licensee's office or the office of a group ~~practice~~. *practice and that is compensated on a fee-for-service basis. The bill would also define advanced imaging for*

this purpose. By expanding the scope of a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Recent studies by the Government Accountability Office
4 (GAO) examining self-referral practices in advanced diagnostic
5 imaging and anatomic pathology determined that financial
6 incentives were the most likely cause of increases in self-referrals.

7 (b) For advanced diagnostic imaging, the GAO stated that
8 “providers who self-referred made 400,000 more referrals for
9 advanced imaging services than they would have if they were not
10 self-referring,” at a cost of “more than \$100 million” in 2010.

11 (c) For anatomic pathology, the GAO found that “self-referring
12 providers likely referred over 918,000 more anatomic pathology
13 services” than they would have if they were not self-referring,
14 costing Medicare approximately \$69 million more in 2010 than if
15 self-referral was not permitted.

16 (d) In November 2012, Bloomberg News released an
17 investigative report that scrutinized ordeals faced by California
18 prostate cancer patients treated by a urology clinic that owns
19 radiation therapy equipment. The report found that physician
20 self-referral resulted in a detrimental impact on patient care and
21 drove up health care costs in the Medicare Program. The Wall
22 Street Journal, the Washington Post, and the Baltimore Sun have
23 also published investigations showing that urology groups owning
24 radiation therapy machines have utilization rates that rise quickly
25 and are well above national norms for radiation therapy treatment
26 of prostate cancer.

27 SEC. 2. Section 650.02 of the Business and Professions Code
28 is amended to read:

1 650.02. The prohibition of Section 650.01 shall not apply to
2 or restrict any of the following:

3 (a) A licensee may refer a patient for a good or service otherwise
4 prohibited by subdivision (a) of Section 650.01 if the licensee's
5 regular practice is located where there is no alternative provider
6 of the service within either 25 miles or 40 minutes traveling time,
7 via the shortest route on a paved road. If an alternative provider
8 commences furnishing the good or service for which a patient was
9 referred pursuant to this subdivision, the licensee shall cease
10 referrals under this subdivision within six months of the time at
11 which the licensee knew or should have known that the alternative
12 provider is furnishing the good or service. A licensee who refers
13 to or seeks consultation from an organization in which the licensee
14 has a financial interest under this subdivision shall disclose this
15 interest to the patient or the patient's parents or legal guardian in
16 writing at the time of referral.

17 (b) A licensee, when the licensee or his or her immediate family
18 has one or more of the following arrangements with another
19 licensee, a person, or an entity, is not prohibited from referring a
20 patient to the licensee, person, or entity because of the arrangement:

21 (1) A loan between a licensee and the recipient of the referral,
22 if the loan has commercially reasonable terms, bears interest at
23 the prime rate or a higher rate that does not constitute usury, is
24 adequately secured, and the loan terms are not affected by either
25 party's referral of any person or the volume of services provided
26 by either party.

27 (2) A lease of space or equipment between a licensee and the
28 recipient of the referral, if the lease is written, has commercially
29 reasonable terms, has a fixed periodic rent payment, has a term of
30 one year or more, and the lease payments are not affected by either
31 party's referral of any person or the volume of services provided
32 by either party.

33 (3) Ownership of corporate investment securities, including
34 shares, bonds, or other debt instruments that may be purchased on
35 terms generally available to the public and that are traded on a
36 licensed securities exchange or NASDAQ, do not base profit
37 distributions or other transfers of value on the licensee's referral
38 of persons to the corporation, do not have a separate class or
39 accounting for any persons or for any licensees who may refer
40 persons to the corporation, and are in a corporation that had, at the

1 end of the corporation's most recent fiscal year, or on average
2 during the previous three fiscal years, stockholder equity exceeding
3 seventy-five million dollars (\$75,000,000).

4 (4) Ownership of shares in a regulated investment company as
5 defined in Section 851(a) of the federal Internal Revenue Code, if
6 the company had, at the end of the company's most recent fiscal
7 year, or on average during the previous three fiscal years, total
8 assets exceeding seventy-five million dollars (\$75,000,000).

9 (5) A one-time sale or transfer of a practice or property or other
10 financial interest between a licensee and the recipient of the referral
11 if the sale or transfer is for commercially reasonable terms and the
12 consideration is not affected by either party's referral of any person
13 or the volume of services provided by either party.

14 (6) A personal services arrangement between a licensee or an
15 immediate family member of the licensee and the recipient of the
16 referral if the arrangement meets all of the following requirements:

17 (A) It is set out in writing and is signed by the parties.

18 (B) It specifies all of the services to be provided by the licensee
19 or an immediate family member of the licensee.

20 (C) The aggregate services contracted for do not exceed those
21 that are reasonable and necessary for the legitimate business
22 purposes of the arrangement.

23 (D) A person who is referred by a licensee or an immediate
24 family member of the licensee is informed in writing of the
25 personal services arrangement that includes information on where
26 a person may go to file a complaint against the licensee or the
27 immediate family member of the licensee.

28 (E) The term of the arrangement is for at least one year.

29 (F) The compensation to be paid over the term of the
30 arrangement is set in advance, does not exceed fair market value,
31 and is not determined in a manner that takes into account the
32 volume or value of any referrals or other business generated
33 between the parties.

34 (G) The services to be performed under the arrangement do not
35 involve the counseling or promotion of a business arrangement or
36 other activity that violates any state or federal law.

37 (c) (1) A licensee may refer a person to a health facility, as
38 defined in Section 1250 of the Health and Safety Code, or to any
39 facility owned or leased by a health facility, if the recipient of the
40 referral does not compensate the licensee for the patient referral,

1 and any equipment lease arrangement between the licensee and
2 the referral recipient complies with the requirements of paragraph
3 (2) of subdivision (b).

4 (2) Nothing shall preclude this subdivision from applying to a
5 licensee solely because the licensee has an ownership or leasehold
6 interest in an entire health facility or an entity that owns or leases
7 an entire health facility.

8 (3) A licensee may refer a person to a health facility for any
9 service classified as an emergency under subdivision (a) or (b) of
10 Section 1317.1 of the Health and Safety Code.

11 (4) A licensee may refer a person to any organization that owns
12 or leases a health facility licensed pursuant to subdivision (a), (b),
13 or (f) of Section 1250 of the Health and Safety Code if the licensee
14 is not compensated for the patient referral, the licensee does not
15 receive any payment from the recipient of the referral that is based
16 or determined on the number or value of any patient referrals, and
17 any equipment lease arrangement between the licensee and the
18 referral recipient complies with the requirements of paragraph (2)
19 of subdivision (b). For purposes of this paragraph, the ownership
20 may be through stock or membership, and may be represented by
21 a parent holding company that solely owns or controls both the
22 health facility organization and the affiliated organization.

23 (d) A licensee may refer a person to a nonprofit corporation that
24 provides physician services pursuant to subdivision (l) of Section
25 1206 of the Health and Safety Code if the nonprofit corporation
26 is controlled through membership by one or more health facilities
27 or health facility systems and the amount of compensation or other
28 transfer of funds from the health facility or nonprofit corporation
29 to the licensee is fixed annually, except for adjustments caused by
30 physicians joining or leaving the groups during the year, and is
31 not based on the number of persons utilizing goods or services
32 specified in Section 650.01.

33 (e) A licensee compensated or employed by a university may
34 refer a person for a physician service, to any facility owned or
35 operated by the university, or to another licensee employed by the
36 university, provided that the facility or university does not
37 compensate the referring licensee for the patient referral. In the
38 case of a facility that is totally or partially owned by an entity other
39 than the university, but that is staffed by university physicians,

1 those physicians may not refer patients to the facility if the facility
2 compensates the referring physicians for those referrals.

3 (f) (1) Except as specified in paragraph (2), the prohibition of
4 Section 650.01 shall not apply to any service for a specific patient
5 that is performed within, or goods that are supplied by, a licensee's
6 office, or the office of a group practice. Further, the provisions of
7 Section 650.01 shall not alter, limit, or expand a licensee's ability
8 to deliver, or to direct or supervise the delivery of, in-office goods
9 or services according to the laws, rules, and regulations governing
10 his or her scope of practice.

11 (2) (A) The prohibition of Section 650.01 shall apply to
12 advanced imaging, anatomic pathology, radiation therapy, or
13 physical therapy for a specific patient that is performed within a
14 licensee's office or the office of a group ~~practice~~. *practice and that*
15 *is compensated on a fee-for-service basis.*

16 (B) *For purposes of this subdivision, "advanced imaging"*
17 *means magnetic resonance imaging, computed tomography, and*
18 *positron emission tomography. "Advanced imaging" does not*
19 *include X-ray, ultrasound, and fluoroscopy and does not include*
20 *imaging services performed for purposes of radiation therapy*
21 *treatment planning or in conjunction with an interventional*
22 *radiological procedure or nuclear medicine other than positron*
23 *emission tomography.*

24 (g) The prohibition of Section 650.01 shall not apply to cardiac
25 rehabilitation services provided by a licensee or by a suitably
26 trained individual under the direct or general supervision of a
27 licensee, if the services are provided to patients meeting the criteria
28 for Medicare reimbursement for the services.

29 (h) The prohibition of Section 650.01 shall not apply if a licensee
30 is in the office of a group practice and refers a person for services
31 or goods specified in Section 650.01 to a multispecialty clinic, as
32 defined in subdivision (l) of Section 1206 of the Health and Safety
33 Code.

34 (i) The prohibition of Section 650.01 shall not apply to health
35 care services provided to an enrollee of a health care service plan
36 licensed pursuant to the Knox-Keene Health Care Service Plan
37 Act of 1975 (Chapter 2.2 (commencing with Section 1340) of
38 Division 2 of the Health and Safety Code).

39 (j) The prohibition of Section 650.01 shall not apply to a request
40 by a pathologist for clinical diagnostic laboratory tests and

1 pathological examination services, a request by a radiologist for
2 diagnostic radiology services, or a request by a radiation oncologist
3 for radiation therapy if those services are furnished by, or under
4 the supervision of, the pathologist, radiologist, or radiation
5 oncologist pursuant to a consultation requested by another
6 physician.

7 (k) This section shall not apply to referrals for services that are
8 described in and covered by Sections 139.3 and 139.31 of the
9 Labor Code.

10 SEC. 3. No reimbursement is required by this act pursuant to
11 Section 6 of Article XIII B of the California Constitution because
12 the only costs that may be incurred by a local agency or school
13 district will be incurred because this act creates a new crime or
14 infraction, eliminates a crime or infraction, or changes the penalty
15 for a crime or infraction, within the meaning of Section 17556 of
16 the Government Code, or changes the definition of a crime within
17 the meaning of Section 6 of Article XIII B of the California
18 Constitution.

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