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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2005

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A N A C T

RELATING TO BUSINESSES AND PROFESSIONS – BOARD OF MEDICAL LICENSURE
AND DISCIPLINE -- SELF REFERRAL

Introduced By: Senators Badeau, Lanzi, Ciccone, Connors, and DaPonte

Date Introduced: February 17, 2005

Referred To: Senate Health & Human Services

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 5-37 of the General Laws entitled "Board of Medical Licensure
2 and Discipline" is hereby amended by adding thereto the following section:

3 **5-37-33. Patient referral.** -- (a) Definitions – As used in this section:

4 (1) "Beneficial interest" means ownership, through equity, debt or other financial interest.
5 "Beneficial interest" does not include ownership through equity, debt or other means of securities,
6 including shares or bonds, debentures or other debt instruments:

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

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

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

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

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

18 (2) "Compensation arrangement" means any agreement or system involving any

1 remuneration between a health care practitioner or the immediate family member of the health
2 care practitioner and a health care entity. "Compensation arrangement" does not include:

3 (i) Compensation or shares under a faculty practice plan or a professional corporation
4 affiliated with a teaching hospital and comprised of health care practitioners who are members of
5 the faculty of a university;

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

8 (iii) An arrangement between a health care entity and a health care practitioner or the
9 immediate family member of a health care practitioner for the provision of any services, as an
10 independent contractor, if the arrangement is for identifiable services; the amount of the
11 remuneration under the arrangement is consistent with the fair market value of the service and is
12 not determined in a manner that takes into account, directly or indirectly, the volume or value of
13 any referrals by the referring health care practitioner; and the compensation is provided in
14 accordance with an agreement that would be commercially reasonable even if no referrals were
15 made to the health care provider;

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

20 (v) An arrangement for compensation which is provided by a health care entity to a
21 health care practitioner or the immediate family member of the health care practitioner to induce
22 the health care practitioner or the immediate family member of the health care practitioner to
23 relocate to the geographic area served by the health care entity in order to be a member of the
24 medical staff of a hospital, if the health care practitioner or the immediate family member of the
25 health care practitioner is not required to refer patients to the health care entity; the amount of the
26 compensation under the arrangement is not determined in a manner that takes into account,
27 directly or indirectly, the volume or value of any referrals by the referring health care practitioner;
28 and the health care entity needs the services of the practitioner to meet community health care
29 needs and has had difficulty in recruiting a practitioner;

30 (vi) Payments made for the rental or lease of office space if the payments are at fair
31 market value and in accordance with an arm's length transaction;

32 (vii) Payments made for the rental or lease of equipment if the payments are at fair
33 market value and in accordance with an arm's length transaction;

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

1 at fair market value, in accordance with an arm's length transaction, and the remuneration is
2 provided in accordance with an agreement that would be commercially reasonable even if no
3 referrals were made.

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

7 (4) "Faculty practice plan" means a tax exempt organization established under Rhode
8 Island law or by the direction of a university to accommodate the professional practice of
9 members of the faculty who are health care practitioners.

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

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

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

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

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

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

23 (ii) Dispensing of drugs, medical devices, medical appliances or medical goods
24 for the treatment of human disease and dysfunction.

25 (7) "Health care practitioner" means a person who is licensed, certified or otherwise
26 authorized under this article to provide health care services in the ordinary course of business or
27 practice of a profession.

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

30 (9) "Immediate family member" means a health care practitioner's spouse, child, child's
31 spouse, parent, spouse's parent, sibling or sibling's spouse.

32 (10) "In-office ancillary services" means those basic health care services and tests
33 routinely performed in the office of one or more health care practitioners. Except for a radiologist
34 group practice, an office consisting solely of one or more radiologists, "in-office ancillary

1 services" does not include:

2 (i) Magnetic resonance imaging services;

3 (ii) Radiation therapy services; or

4 (iii) Computer tomography services

5 (11) "Referral" means any referral of a patient for health care services and includes:

6 (i) The forwarding of a patient by one health care practitioner to another health
7 care practitioner or to a health care entity outside the health care practitioner's office or group
8 practice; or

9 (ii) The request or establishment by a health care practitioner of a plan of care for
10 the provision of health care services outside the health care practitioner's office or group practice.

11 (b) Certain referrals prohibited – (1) Except as provided in subsection (b)(4) hereof, a
12 health care practitioner may not refer a patient, or direct an employee of or person under contract
13 with the health care practitioner to refer a patient to a health care entity:

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

16 (ii) In which the practitioner's immediate family owns a beneficial interest of
17 three percent (3%) or greater; or

18 (iii) With which the health care practitioner, the practitioner's immediate family,
19 or the practitioner in combination with the practitioner's immediate family has a
20 compensation agreement.

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

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

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

29 (i) A health care practitioner when treating a member of a health maintenance
30 organization if the health care practitioner does not have a beneficial interest in the health care
31 entity;

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

34 (iii) A health care practitioner with a beneficial interest in a health care entity

1 who refers a patient to that health care entity for health care services or tests, if the services or test
2 are personally performed by or under the direct supervision of the referring health care
3 practitioner;

4 (iv) A health care practitioner who refers in-office ancillary services or tests that
5 are:

6 (I) Personally furnished by:

7 (A) The referring health care practitioner;

8 (B) A health care practitioner in the same group practice as the referring health
9 care practitioner; or

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

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

16 (III) Billed by:

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

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

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

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

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

32 (II) The health care practitioner or other member of that single specialty group practice
33 referring a patient to the facility, service or entity personally performs or supervises the health
34 care service or procedure;

1 (5) A health care facility employing or owned by a practitioner exempted from the
2 provisions of this section in accordance with subsection (4) shall remain subject to the disclosure
3 provisions of section 23-17-46 of the general laws.

4 (c) Disclosure of practitioners' interest in referral facility – (1) Except as provided in
5 subsection (c)(3) hereof, a health care practitioner making a lawful referral shall disclose the
6 existence of the beneficial interest in accordance with provisions of this section.

7 (2) Prior to referring a patient to a health care entity in which the practitioner, the
8 practitioner's immediate family owns a beneficial interest, the health care practitioner shall;

9 (i) Except if an oral referral is made by telephone, in which case the statement and patient
10 acknowledgement shall be made orally, provide the patient with a written statement that:

11 (I) Discloses the existence of the ownership of the beneficial interest or
12 compensation arrangement;

13 (II) States that the patient may choose to obtain the health care service from
14 another health care entity; and

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

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

18 (iii) Place on permanent display a written notice that is in a typeface that is large enough
19 to be easily legible to the average person from a distance of eight (8) feet and that is in a location
20 that is plainly visible to the patients of the health care practitioner disclosing all of the health care
21 entities:

22 (I) In which the practitioner, the practitioner's immediate family or the
23 practitioner in combination with the practitioner's immediate family owns a beneficial interest;
24 and

25 (II) To which the practitioner refers patients; and

26 (III) Documents in the medical record of the patient that:

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

28 (II) The practitioner has disclosed the existence of the beneficial interest to the
29 patient.

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

31 (i) A health care practitioner when treating a member of a health maintenance
32 organization and the health care practitioner does not have a beneficial interest in the health care
33 entity; or

34 (ii) A health care practitioner who refers a patient to another health care practitioner in

1 the same group practice as the referring health care practitioner for in-office ancillary services or
2 for health care services provided through or by a health care entity owned or controlled by a
3 hospital.

4 (d) Disclosure of referring practitioner – A health care practitioner shall disclose the
5 name of a referring health care practitioner on each request for payment or bill submitted to a
6 third-party payor, including nonprofit health plans and fiscal intermediaries and carriers, that may
7 be responsible for payment, in whole or in part, of the charges for a health care service, if the
8 health care practitioner knows or has reason to believe:

- 9 (1) There has been a referral by a health care practitioner; and
- 10 (2) The referring health care practitioner has a beneficial interest in or compensation
11 arrangement with the health care entity that is prohibited under this section.

12 (e) Liability for improper payment – If a referring health care practitioner, a health care
13 entity or other person furnishing health care services collects any amount of money that was
14 billed in violation of this section 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 practitioner,
16 health care entity or other person is jointly and severally liable to the payor for any amounts
17 collected.

18 (f) Discipline of health care practitioners – A health care practitioner who fails to comply
19 with the provisions of section 5-37-33 shall be subject to disciplinary action by the board of
20 medical licensure and discipline. A health care practitioner who knowingly and repeatedly fails to
21 comply with any provision of this section is guilty of a misdemeanor and on conviction is subject
22 to a fine not exceeding five thousand dollars (\$5,000).

23 SECTION 2. Section 23-15-2 of the General Laws in Chapter 23-15 entitled
24 "Determination of Need for New Health Care Equipment and New Institutional Health Services"
25 is hereby amended to read as follows:

26 **23-15-2. Definitions.** – As used in this chapter:

27 (1) "Affected person" means and includes the person whose proposal is being reviewed,
28 or the applicant, health care facilities located within the state which provide institutional health
29 services, the state medical society, the state osteopathic society, those voluntary nonprofit area-
30 wide planning agencies that may be established in the state, the state budget office, any hospital
31 or medical service corporation organized under the laws of the state, the statewide health
32 coordinating council, contiguous health systems agencies, and those members of the public who
33 are to be served by the proposed new institutional health services or new health care equipment.

34 (2) "Cost impact analysis" means a written analysis of the effect that a proposal to offer

1 or develop new institutional health services or new health care equipment, if approved, will have
2 on health care costs and shall include any detail that may be prescribed by the state agency in
3 rules and regulations.

4 (3) "Director" means the director of the Rhode Island state department of health.

5 (4) (i) "Health care facility" means any institutional health service provider, facility or
6 institution, place, building, agency, or portion of them, whether a partnership or corporation,
7 whether public or private, whether organized for profit or not, used, operated, or engaged in
8 providing health care services, which are limited to hospitals, nursing facilities, inpatient
9 rehabilitation centers (including drug and/or alcohol abuse treatment centers), and facilities
10 providing surgical treatment to patients not requiring hospitalization (surgi-centers) and inpatient
11 hospice care. The term "health care facility" does not include Christian Science institutions (also
12 known as Christian Science nursing facilities) listed and certified by the Commission for
13 Accreditation of Christian Science Nursing Organizations/Facilities, Inc.

14 (ii) Any provider of hospice care who provides hospice care without charge shall be
15 exempt from the provisions of this chapter.

16 (5) "Health care provider" means a person who is a direct provider of health care
17 services (including but not limited to physicians, dentists, nurses, podiatrists, physician assistants,
18 or nurse practitioners) in that the person's primary current activity is the provision of health care
19 services for persons.

20 (6) "Health services" means organized program components for preventive, assessment,
21 maintenance, diagnostic, treatment, and rehabilitative services provided in a health care facility.

22 (7) "Health services council" means the advisory body to the Rhode Island state
23 department of health established in accordance with chapter 17 of this title, appointed and
24 empowered as provided to serve as the advisory body to the state agency in its review functions
25 under this chapter.

26 (8) "Institutional health services" means health services provided in or through health
27 care facilities and includes the entities in or through which the services are provided.

28 (9) "New health care equipment" means any single piece of medical equipment (and any
29 components which constitute operational components of the piece of medical equipment)
30 proposed to be utilized by a health care provider (whether practicing alone or as a member of a
31 partnership, corporation, organization, or association) in conjunction with the provision of
32 services to patients or the public, the capital costs of which would exceed one million dollars
33 (\$1,000,000); provided, however, that the state agency shall exempt from review any application
34 which proposes one for one equipment replacement as defined in regulation-; [and further](#)

1 provided that, except in the case of application for license by a radiologist group practice or an
2 office consisting solely of one or more radiologists, "new health care equipment" shall mean
3 equipment for the provision of: (i) magnetic resonance imaging services; (ii) radiation therapy
4 services; and (iii) computer tomography scan services, each without regard to capital cost.

5 (10) "New institutional health services" means and includes:

6 (i) Construction, development, or other establishment of a new health care facility.

7 (ii) Any expenditure except acquisitions of an existing health care facility which will not
8 result in a change in the services or bed capacity of the health care facility by or on behalf of an
9 existing health care facility in excess of two million dollars (\$2,000,000) which is a capital
10 expenditure including expenditures for predevelopment activities.

11 (iii) Where a person makes an acquisition by or on behalf of a health care facility or
12 health maintenance organization under lease or comparable arrangement or through donation,
13 which would have required review if the acquisition had been by purchase, the acquisition shall
14 be deemed a capital expenditure subject to review.

15 (iv) Any capital expenditure which results in the addition of a health service or which
16 changes the bed capacity of a health care facility with respect to which the expenditure is made,
17 except that the state agency may exempt from review by rules and regulations promulgated for
18 this chapter any bed reclassifications made to licensed nursing facilities and annual increases in
19 licensed bed capacities of nursing facilities that do not exceed the greater of ten (10) beds or ten
20 percent (10%) of facility licensed bed capacity and for which the related capital expenditure does
21 not exceed two million dollars (\$2,000,000).

22 (v) Any health service proposed to be offered to patients or the public by a health care
23 facility which was not offered on a regular basis in or through the facility within the twelve (12)
24 month period prior to the time the service would be offered, and which increases operating
25 expenses by more than seven hundred and fifty thousand dollars (\$750,000), except that the state
26 agency may exempt from review by rules and regulations promulgated for this chapter any health
27 service involving reclassification of bed capacity made to licensed nursing facilities.

28 (vi) Any new or expanded tertiary or specialty care service, regardless of capital expense
29 or operating expense, as defined by and listed in regulation, the list not to exceed a total of twelve
30 (12) categories of services at any one time.

31 (11) "Person" means any individual, trust or estate, partnership, corporation (including
32 associations, joint stock companies, and insurance companies), state or political subdivision, or
33 instrumentality of a state.

34 (12) "Predevelopment activities" means expenditures for architectural designs, plans,

1 working drawings and specifications, site acquisition, professional consultations, preliminary
2 plans, studies, and surveys made in preparation for the offering of a new institutional health
3 service.

4 (13) "State agency" means the Rhode Island state department of health.

5 (14) "To develop" means to undertake those activities which, on their completion, will
6 result in the offering of a new institutional health service or new health care equipment or the
7 incurring of a financial obligation, in relation to the offering of that service.

8 (15) "To offer" means to hold oneself out as capable of providing, or as having the
9 means for the provision of, specified health services or health care equipment.

10 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO BUSINESSES AND PROFESSIONS -- BOARD OF MEDICAL LICENSURE
AND DISCIPLINE -- SELF REFERRAL

1 This act would provide for the regulation of patient self-referral by medical practitioners
2 in order to better manage medical service utilization and improve quality of care. This act would
3 also remove the capital cost test for application of the certificate of need process for installation
4 of certain radiologic equipment.

5 This act would take effect upon passage.

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