S T A T E O F N E W Y O R K

3551--A

Cal. No. 138

2011-2012 Regular Sessions

I N A S S E M B L Y

January 25, 2011

Introduced by M. of A. GOTTFRIED, WEISENBERG, GALEF, PAULIN, CYMBROWITZ, LAVINE, JAFFEE, MONTESANO, MAGNARELLI -- Multi-Sponsored by -- M. of A. BRENNAN, BURLING, CORWIN, CROUCH, MAGEE, McENENY, P. RIVERA, SAYWARD -- read once and referred to the Committee on Health -- ordered to a third reading -- passed by Assembly and delivered to the Senate, recalled from the Senate, vote reconsidered, bill amended, ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the public health law, in relation to referrals of patients for health or health related items or services

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Paragraph (g) of subdivision 2 of section 238-a of the public health law, as added by chapter 803 of the laws of 1992, is amended to read as follows:

(g) [in the case of any other financial relationship which the public health council determines and specifies in regulations, subject to approval by the commissioner, does not pose a substantial risk of payor or patient abuse in relation to patient benefits consistent, to the extent practicable, with financial relationships specified in regulations adopted pursuant to federal law applicable to reimbursement pursuant to title XVIII of the federal social security act (medicare) for clinical laboratory services provided to beneficiaries of title XVIII of the federal social security act (medicare)] ANY ARRANGEMENT THAT, UNDER THE FEDERAL STATUTORY PROHIBITION ON CERTAIN REFERRALS CODIFIED AT 42 U.S.C. 1395NN AND REGULATIONS PROMULGATED THEREUNDER, WOULD BE AN ARRANGEMENT BETWEEN A PRACTITIONER (OR IMMEDIATE FAMILY MEMBER) AND A HEALTH CARE PROVIDER THAT:

(I) WOULD NOT BE A FINANCIAL RELATIONSHIP IF EXISTING BETWEEN A PHYSICIAN AND AN ENTITY, AS SUCH TERMS ARE DEFINED UNDER SUCH FEDERAL LAW OR REGULATIONS; OR

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD02276-03-2

(II) WOULD SATISFY THE REQUIREMENTS OF AN EXCEPTION RELATING TO FINANCIAL RELATIONSHIPS PROVIDED UNDER SUCH FEDERAL LAW OR REGULATIONS IF EXISTING BETWEEN A PHYSICIAN AND AN ENTITY, AS SUCH TERMS ARE DEFINED UNDER SUCH FEDERAL LAW OR REGULATIONS.

AN ARRANGEMENT SHALL NOT BE EXCEPTED UNDER THIS PARAGRAPH IF IT IS A PARTICULAR TYPE OF FINANCIAL RELATIONSHIP THAT WOULD POSE A SUBSTANTIAL RISK OF PAYOR OR PATIENT ABUSE, AS DETERMINED AND SPECIFIED BY THE PUBLIC HEALTH AND HEALTH PLANNING COUNCIL IN REGULATIONS, SUBJECT TO APPROVAL BY THE COMMISSIONER.

S 2. Paragraph (c) of subdivision 6 of section 238-a of the public health law, as added by chapter 803 of the laws of 1992, is amended to read as follows:

(c) provided further, however, that the following shall not constitute a referral by a referring practitioner:

(i) a request by a practitioner for practitioners' services consisting solely of professional services to be furnished personally by that practitioner, or under that practitioner's supervision;

(ii) a request by a pathologist for clinical diagnostic laboratory tests and pathological examination services, if such services are furnished by or under the supervision of such pathologist pursuant to a consultation requested by another practitioner; [and]

(iii) a request by a radiologist for diagnostic x-ray or imaging services, if such services are furnished by or under the supervision of such radiologist pursuant to a consultation requested by another practitioner[.]; AND

(IV) A REFERRAL FOR ANY SERVICES EXCEPTED UNDER 42 U.S.C. S 1395NN AND REGULATIONS PROMULGATED THEREUNDER, UNLESS THE PUBLIC HEALTH AND HEALTH PLANNING COUNCIL DETERMINES AND SPECIFIES IN REGULATIONS, SUBJECT TO APPROVAL BY THE COMMISSIONER, THAT A PARTICULAR TYPE OF REFERRAL WOULD POSE A SUBSTANTIAL RISK OF PAYOR OR PATIENT ABUSE IN RELATION TO PATIENT BENEFITS.

S 3. This act shall take effect immediately.