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I N S E N A T E

March 1, 2010

Introduced by Sen. DUANE -- read twice and ordered printed, and when printed to be committed to the Committee on Health

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:

1 Section 1. Paragraph (g) of subdivision 2 of section 238-a of the
2 public health law, as added by chapter 803 of the laws of 1992, is
3 amended to read as follows:
4 (g) [in the case of any other financial relationship which the public
5 health council determines and specifies in regulations, subject to
6 approval by the commissioner, does not pose a substantial risk of payor
7 or patient abuse in relation to patient benefits consistent, to the
8 extent practicable, with financial relationships specified in regu-
9 lations adopted pursuant to federal law applicable to reimbursement
10 pursuant to title XVIII of the federal social security act (medicare)
11 for clinical laboratory services provided to beneficiaries of title
12 XVIII of the federal social security act (medicare)] ANY ARRANGEMENT
13 THAT, UNDER THE FEDERAL STATUTORY PROHIBITION ON CERTAIN REFERRALS CODI-
14 FIED AT 42 U.S.C. 1395NN AND REGULATIONS PROMULGATED THEREUNDER, WOULD
15 BE AN ARRANGEMENT BETWEEN A PRACTITIONER (OR IMMEDIATE FAMILY MEMBER)
16 AND A HEALTH CARE PROVIDER THAT:
17 (I) WOULD NOT BE A FINANCIAL RELATIONSHIP IF EXISTING BETWEEN A PHYSI-
18 CIAN AND AN ENTITY, AS SUCH TERMS ARE DEFINED UNDER SUCH FEDERAL LAW OR
19 REGULATIONS; OR
20 (II) WOULD SATISFY THE REQUIREMENTS OF AN EXCEPTION RELATING TO FINAN-
21 CIAL RELATIONSHIPS PROVIDED UNDER SUCH FEDERAL LAW OR REGULATIONS IF
22 EXISTING BETWEEN A PHYSICIAN AND AN ENTITY, AS SUCH TERMS ARE DEFINED
23 UNDER SUCH FEDERAL LAW OR REGULATIONS.
24 AN ARRANGEMENT SHALL NOT BE EXCEPTED UNDER THIS PARAGRAPH IF IT IS A
25 PARTICULAR TYPE OF FINANCIAL RELATIONSHIP THAT WOULD POSE A SUBSTANTIAL
26 RISK OF PAYOR OR PATIENT ABUSE, AS DETERMINED AND SPECIFIED BY THE
27 PUBLIC HEALTH COUNCIL IN REGULATIONS, SUBJECT TO APPROVAL BY THE COMMIS-
28 SIONER.

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

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

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

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

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

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

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

22 S 3. This act shall take effect immediately.