

# STATE OF NEW YORK

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2640

2021-2022 Regular Sessions

## IN SENATE

January 22, 2021

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

AN ACT to amend the public health and education law, in relation to the provision of practice management, billing and health information technology services for healthcare facilities and professionals

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 2811 of the public health law, as added by chapter  
2 776 of the laws of 1971 and as renumbered by chapter 649 of the laws of  
3 1975, is amended to read as follows:

4 § 2811. Discounts and splitting fees with medical referral services;  
5 prohibited. No hospital or facility delivering health care shall grant  
6 or receive a discount to or from any medical referral service or in any  
7 manner split fees with a medical referral service; provided, however,  
8 that nothing contained in this chapter shall prohibit such facilities or  
9 licensed professionals from paying a fair market value fee to any person  
10 or entity whose purpose is to perform practice management, billing or  
11 health information technology services based upon a percentage of fees  
12 billed or collected, a flat fee, or any other arrangement that directly  
13 or indirectly divides fees, for such purposes, provided that:

14 1. the person or entity providing practice management, billing or  
15 health information technology services is not responsible for the amount  
16 of fees charged and collected for the services rendered by such facility  
17 or licensed professional;

18 2. all charges collected are paid directly to the facility or to the  
19 licensed professional or are deposited directly into an account in the  
20 name of and under the sole control of the facility or licensed profes-  
21 sional; and

22 3. the person or entity providing practice management, billing or  
23 health information technology services does not refer patients to the  
24 facility or licensed professional and that payments made are not related

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

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1 to or compensating for the referral of patients to the facility or  
2 licensed professional.

3 § 2. Section 6509-a of the education law, as amended by chapter 555 of  
4 the laws of 1993, is amended to read as follows:

5 § 6509-a. Additional definition of professional misconduct; limited  
6 application. Notwithstanding any inconsistent provision of this article  
7 or of any other provision of law to the contrary, the license or regis-  
8 tration of a person subject to the provisions of articles one hundred  
9 thirty-two, one hundred thirty-three, one hundred thirty-six, one  
10 hundred thirty-seven, one hundred thirty-nine, one hundred forty-one,  
11 one hundred forty-three, one hundred forty-four, one hundred fifty-six,  
12 one hundred fifty-nine and one hundred sixty-four of this chapter may be  
13 revoked, suspended or annulled or such person may be subject to any  
14 other penalty provided in section sixty-five hundred eleven of this  
15 article in accordance with the provisions and procedure of this article  
16 for the following:

17 That any person subject to the above enumerated articles, has directly  
18 or indirectly requested, received or participated in the division,  
19 transference, assignment, rebate, splitting or refunding of a fee for,  
20 or has directly requested, received or profited by means of a credit or  
21 other valuable consideration as a commission, discount or gratuity in  
22 connection with the furnishing of professional care, or service, includ-  
23 ing x-ray examination and treatment, or for or in connection with the  
24 sale, rental, supplying or furnishing of clinical laboratory services or  
25 supplies, x-ray laboratory services or supplies, inhalation therapy  
26 service or equipment, ambulance service, hospital or medical supplies,  
27 physiotherapy or other therapeutic service or equipment, artificial  
28 limbs, teeth or eyes, orthopedic or surgical appliances or supplies,  
29 optical appliances, supplies or equipment, devices for aid of hearing,  
30 drugs, medication or medical supplies or any other goods, services or  
31 supplies prescribed for medical diagnosis, care or treatment under this  
32 chapter, except payment, not to exceed thirty-three and one-third per  
33 centum of any fee received for x-ray examination, diagnosis or treat-  
34 ment, to any hospital furnishing facilities for such examination, diag-  
35 nosis or treatment. Nothing contained in this section shall prohibit  
36 such persons from practicing as partners, in groups or as a professional  
37 corporation or as a university faculty practice corporation nor from  
38 pooling fees and moneys received, either by the partnerships, profes-  
39 sional corporations, university faculty practice corporations or groups  
40 by the individual members thereof, for professional services furnished  
41 by any individual professional member, or employee of such partnership,  
42 corporation or group, nor shall the professionals constituting the part-  
43 nerships, corporations or groups be prohibited from sharing, dividing or  
44 apportioning the fees and moneys received by them or by the partnership,  
45 corporation or group in accordance with a partnership or other agree-  
46 ment; provided that no such practice as partners, corporations or in  
47 groups or pooling of fees or moneys received or shared, division or  
48 apportionment of fees shall be permitted with respect to care and treat-  
49 ment under the workers' compensation law except as expressly authorized  
50 by the workers' compensation law. Nothing contained in this chapter  
51 shall prohibit a medical or dental expense indemnity corporation pursu-  
52 ant to its contract with the subscriber from prorationing a medical or  
53 dental expense indemnity allowance among two or more professionals in  
54 proportion to the services rendered by each such professional at the  
55 request of the subscriber, provided that prior to payment thereof such  
56 professionals shall submit both to the medical or dental expense indem-

nity corporation and to the subscriber statements itemizing the services rendered by each such professional and the charges therefor. Nothing contained in this chapter shall prohibit such professionals from paying a fair market value fee to any person or entity whose purpose is to perform practice management, billing or health information technology services based upon a percentage of fees billed or collected, a flat fee, or any other arrangement that directly or indirectly divides fees, for such purposes, provided that:

(1) the person or entity providing practice management, billing or health information technology services is not responsible for the amount of fees charged and collected for the services rendered by such professional;

(2) all charges collected are paid directly to the professional or are deposited directly into an account in the name of and under the sole control of the professional; and

(3) the person or entity providing practice management, billing or health information technology services does not refer patients to the professional and that payments made are not related to or compensating for the referral of patients to the professional.

§ 3. Subdivision 19 of section 6530 of the education law, as added by chapter 606 of the laws of 1991, is amended to read as follows:

19. Permitting any person to share in the fees for professional services, other than: a partner, employee, associate in a professional firm or corporation, professional subcontractor or consultant authorized to practice medicine, or a legally authorized trainee practicing under the supervision of a licensee. This prohibition shall include any arrangement or agreement whereby the amount received in payment for furnishing space, facilities, equipment or personnel services used by a licensee constitutes a percentage of, or is otherwise dependent upon, the income or receipts of the licensee from such practice, except as otherwise provided by law with respect to a facility licensed pursuant to article twenty-eight of the public health law or article thirteen of the mental hygiene law. Nothing contained in this chapter shall prohibit such professionals from paying a fair market value fee to any person or entity whose purpose is to perform practice management, billing or health information technology services based upon a percentage of fees billed or collected, a flat fee, or any other arrangement that directly or indirectly divides fees, for such purposes, provided that:

(a) the person or entity providing practice management, billing or health information technology services is not responsible for the amount of fees charged and collected for the services rendered by such professional;

(b) all charges collected are paid directly to the professional or are deposited directly into an account in the name of and under the sole control of the professional; and

(c) the person or entity providing practice management, billing or health information technology services does not refer patients to the professional and that payments made are not related to or compensating for the referral of patients to the professional.

§ 4. This act shall take effect immediately.