

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

INTERIM STUDY PROPOSAL 2009-050

State of Arkansas  
87th General Assembly  
Regular Session, 2009

# A Bill

HOUSE BILL 1108

By: Representative L. Smith

Filed with: House Interim Committee on Public Health, Welfare and Labor  
pursuant to A.C.A. §10-3-217.

## For An Act To Be Entitled

AN ACT TO PREVENT PHYSICIANS FROM REFERRING  
PATIENTS TO MEDICAL IMAGING ENTITIES IN WHICH THE  
PHYSICIANS HAVE A FINANCIAL INTEREST; AND FOR  
OTHER PURPOSES.

### Subtitle

AN ACT TO PREVENT PHYSICIANS FROM  
REFERRING PATIENTS TO MEDICAL IMAGING  
ENTITIES IN WHICH THE PHYSICIANS HAVE A  
FINANCIAL INTEREST.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 17, Chapter 95 is amended to add an  
additional subchapter to read as follows:

Subchapter 8. Physician Referrals to Medical Imaging Entities.

17-95-801. Definitions.

As used in this subchapter:

(1)(A) "Beneficial interest" means ownership through equity,  
debt, or other means of any financial interest in a medical imaging entity.

(B) "Beneficial interest" does not include ownership,  
through equity, debt, or other means of securities, including shares or



1 bonds, debentures, or other debt instruments:

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

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

6 (iii) That are available to individuals who are not  
7 in a position to refer patients to the medical imaging entity on the same  
8 terms that are offered to physicians who may refer patients to the medical  
9 imaging entity;

10 (iv) That are unrelated to the past or expected  
11 volume of referrals from the physician to the medical imaging entity; and

12 (v) That are not marketed differently to physicians  
13 who may make referrals than they are marketed to other individuals;

14 (2)(A) "Compensation arrangement" means any agreement or system  
15 involving any remuneration between a physician or the immediate family of the  
16 physician and a medical imaging entity.

17 (B) "Compensation arrangement" does not include:

18 (i) Compensation or shares under a faculty practice  
19 plan or a professional corporation affiliated with a teaching hospital and  
20 composed of physicians who are members of the faculty of a university;

21 (ii) Amounts paid under a bona fide employment  
22 agreement or independent contractor agreement having a term of at least one  
23 (1) year between a medical imaging entity and a physician or an immediate  
24 family member of the physician, if:

25 (a) The arrangement is for identifiable  
26 services;

27 (b) The amount of the remuneration under the  
28 arrangement is consistent with the fair market value of the service and is  
29 not determined in a manner that takes into account, directly or indirectly,  
30 the volume or value of any referrals by the referring physician; and

31 (c) The compensation is provided in accordance  
32 with an agreement that would be commercially reasonable even if no referrals  
33 were made to the physician;

34 (iii) Compensation for medical imaging services  
35 pursuant to a referral from a physician and rendered by a medical imaging  
36 entity that employs or contracts with an immediate family member of the

1 physician if the immediate family member's compensation is not based on the  
2 referral;

3 (iv) An arrangement for compensation that is  
4 provided by a medical imaging entity to a physician or an immediate family  
5 member of the physician to induce the physician or the immediate family  
6 member of the physician to relocate to the geographic area served by the  
7 medical imaging entity in order to be a member of the medical staff of a  
8 hospital or related institution if:

9 (a) The physician or the immediate family  
10 member of the physician is not required to refer patients to the medical  
11 imaging entity;

12 (b) The amount of the compensation under the  
13 arrangement is not determined in a manner that takes into account, directly  
14 or indirectly, the volume or value of any referrals by the referring  
15 physician; and

16 (c) The medical imaging entity needs the  
17 services of the physician to meet community health care needs and has had  
18 difficulty in recruiting physicians;

19 (v) Payments made for the rental or lease of office  
20 space if the payments are:

21 (a) At fair market value;

22 (b) In accordance with an arm's length  
23 transaction;

24 (c) Is not determined in a manner that takes  
25 into account, directly or indirectly, the volume or value of any referrals by  
26 the referring physician; and

27 (d) Provided in accordance with an agreement  
28 that would be commercially reasonable even if no referrals were made by the  
29 referring physician;

30 (vi) Payments made for the rental or lease of  
31 equipment if the payments are:

32 (a) At fair market value;

33 (b) In accordance with an arm's length  
34 transaction;

35 (c) Is not determined in a manner that takes  
36 into account, directly or indirectly, the volume or value of any referrals by

1 the referring physician; and

2 (d) Provided in accordance with an agreement  
3 that would be commercially reasonable even if no referrals were made by the  
4 referring physician;

5 (vii) Payments made for the sale of property or a  
6 physician's practice if the payments are:

7 (a) At fair market value;

8 (b) In accordance with an arm's length  
9 transaction;

10 (c) Is not determined in a manner that takes  
11 into account, directly or indirectly, the volume or value of any referrals by  
12 the referring physician; or

13 (d) Provided in accordance with an agreement  
14 that would be commercially reasonable even if no referrals were made; and

15 (viii) Any other compensation arrangement between a  
16 physician or a physician's immediate family member and a hospital or related  
17 institution that satisfies the requirements of an exception to the  
18 prohibitions established by Section 1395nn of Title 42 of the United States  
19 Code or a regulation promulgated under 42 U.S.C § 1395nn;

20 (3) "Direct supervision" means a physician is present on the  
21 premises where the medical imaging services or tests are provided and is  
22 available for consultation within the treatment area;

23 (4) "Faculty practice plan" means a tax-exempt organization  
24 established under Arkansas law by or at the direction of a university to  
25 accommodate the professional practice of members of the faculty who are  
26 physicians;

27 (5) "Group practice" means a group of two (2) or more physicians  
28 legally organized as a partnership, professional corporation, foundation,  
29 not-for-profit corporation, faculty practice plan, or similar association:

30 (A) In which each physician who is a member of the group  
31 provides substantially the full range of services that the physician  
32 routinely provides through the joint use of shared office space, facilities,  
33 equipment, and personnel;

34 (B) For which substantially all of the services of the  
35 physicians who are members of the group are provided through the group and  
36 are billed in the name of the group and amounts so received are treated as

1 receipts of the group; and

2 (C) In which the overhead expenses of and the income from  
3 the practice are distributed in accordance with methods previously determined  
4 on an annual basis by members of the group;

5 (5) "Immediate family" means a physician's:

6 (A) Spouse;

7 (B) Child;

8 (C) Child's spouse;

9 (D) Parent;

10 (E) Spouse's parent;

11 (F) Sibling; or

12 (G) Sibling's spouse;

13 (6)(A) "In-office ancillary services" means those basic medical  
14 imaging services and tests routinely performed in the office of one (1) or  
15 more physicians.

16 (B) Except for a radiologist group practice or an office  
17 consisting solely of one (1) or more radiologists, "in-office ancillary  
18 services" does not include:

19 (i) Magnetic resonance imaging services;

20 (ii) Radiation therapy services;

21 (iii) Computer tomography scan services; or

22 (iv) Positron Emission Tomography;

23 (7) "Medical imaging" means the use of ionizing radiation,  
24 electromagnetic radiation, or radioactivity for evaluation of body tissue in  
25 order to diagnose injury and disease by means of image production, including  
26 without limitation:

27 (A) Computed axial tomography;

28 (B) Computed tomography;

29 (C) Magnetic resonance imaging;

30 (D) Positron emission tomography; and

31 (E) Radiation therapy services;

32 (8) "Medical imaging entity" means a business entity that  
33 provides medical imaging services for the testing, diagnosis, or treatment of  
34 human disease or dysfunction;

35 (9) "Physician" means a person authorized or licensed to  
36 practice medicine under the Arkansas Medical Practices Act, § 17-95-201 et

1 seq., § 17-95-301 et seq., and § 17-95-401 et seq., and a person authorized  
2 to practice osteopathy under § 17-91-101 et seq.;

3 (10) "Provider-sponsored organization" means an entity that:

4 (A) Is a legal aggregation of providers operating  
5 collectively for the purpose of providing medical imaging services to  
6 Medicare beneficiaries under the federal Medicare+Choice Program;

7 (B) Acts through a licensed entity such as a partnership,  
8 corporation, limited liability company, limited liability partnership, or  
9 sole proprietorship that has authority over the entity's activities; and

10 (C) Provides a substantial proportion of the medical  
11 imaging services required to be provided under the federal Medicare+Choice  
12 Program directly through providers or affiliated groups of providers; and

13 (11) "Referral" means a referral of a patient for medical  
14 imaging services, including without limitation:

15 (A) The forwarding of a patient by one (1) physician to  
16 another physician or to a medical imaging entity outside the physician's  
17 office or group practice; and

18 (B) The request or establishment by a physician of a plan  
19 of care for the provision of medical imaging services outside the physician's  
20 office or group practice.

21  
22 17-95-802. Certain referrals and payments prohibited – Exemptions.

23 (a) Except as provided in subsection (d) of this section, a physician  
24 shall not refer a patient to a medical imaging entity or direct an employee  
25 of the physician or person under contract with the physician to refer a  
26 patient to a medical imaging entity:

27 (1) In which the physician or the physician in combination with  
28 the physician's immediate family owns a beneficial interest;

29 (2) In which the physician's immediate family owns a beneficial  
30 interest of three percent (3%) or greater; or

31 (3) With which the physician, the physician's immediate family,  
32 or the physician in combination with the physician's immediate family has a  
33 compensation arrangement.

34 (b) A medical imaging entity or a referring physician shall not  
35 present or cause to be presented to any individual, third-party payor, or  
36 other person a claim, bill, or other demand for payment for medical imaging

1 services provided as a result of a referral prohibited under this subchapter.

2 (c) Subsection (a) of this section applies to any arrangement or  
3 scheme, including a cross-referral arrangement, that the physician knows or  
4 should know has a principal purpose of assuring indirect referrals that would  
5 violate subsection (a) of this section if made directly.

6 (d) This section does not apply to:

7 (1) A physician when treating a member of a health maintenance  
8 organization as defined in § 23-76-102 if the physician does not have a  
9 beneficial interest in the medical imaging entity;

10 (2) A physician who refers a patient to another physician in the  
11 same group practice as the referring physician;

12 (3) A physician who refers in-office ancillary services or tests  
13 that are:

14 (A) Personally furnished by:

15 (i) The referring physician;

16 (ii) A physician in the same group practice as the  
17 referring physician; or

18 (iii) An individual who is employed and personally  
19 supervised by the qualified referring physician or a physician in the same  
20 group practice as the referring physician;

21 (B) Provided in the same building where the referring  
22 physician or a physician in the same group practice as the referring  
23 physician furnishes services; and

24 (C) Billed by:

25 (i) The physician performing or supervising the  
26 services; or

27 (ii) A group practice of which the physician  
28 performing or supervising the services is a member;

29 (4) A physician who has a beneficial interest in a medical  
30 imaging entity if, in accordance with rules adopted by the State Board of  
31 Health:

32 (A) The Department of Health determines that the  
33 physician's beneficial interest is essential to finance and to operate the  
34 medical imaging entity; and

35 (B) The department determines that the medical imaging  
36 entity is needed to ensure appropriate access for the community to the

1 services provided at the medical imaging entity;

2 (5) A physician who has, or whose immediate family member has, a  
3 compensation arrangement with a medical imaging entity in which a hospital or  
4 related institution holds a beneficial interest if:

5 (A) The physician or immediate family member does not have  
6 a beneficial interest in the medical imaging facility; and

7 (B) The compensation arrangement between the physician or  
8 immediate family member and the medical imaging entity otherwise satisfies  
9 the requirements of an exception to the prohibitions established by Section  
10 1395nn of Title 42 of the United States Code or any regulations promulgated  
11 under 42 U.S.C § 1395nn;

12 (6) A physician who has a beneficial interest in a medical  
13 imaging facility in which a hospital or related institution also holds a  
14 beneficial interest if:

15 (A) The physician provides the medical imaging services to  
16 a patient pursuant to a referral or in accordance with a consultation  
17 requested by another physician who does not have a beneficial interest in the  
18 medical imaging entity;

19 (B) The physician referring a patient to the facility,  
20 service, or entity personally performs or supervises the medical imaging  
21 service or procedure; or

22 (C) The beneficial interest otherwise satisfies the  
23 requirements of an exception to the prohibitions established by Section  
24 1395nn of Title 42 of the United States Code or any regulations promulgated  
25 under 42 U.S.C § 1395nn; or

26 (B) The physician or other member of the single specialty  
27 group practice referring a patient to the facility, service, or entity  
28 personally performs or supervises the medical imaging service or procedure;

29 (7) A physician with a beneficial interest in or compensation  
30 arrangement with a hospital or related institution or a facility, service, or  
31 other entity that is owned or controlled by a hospital or related institution  
32 or under common ownership or control with a hospital or related institution  
33 if:

34 (A) The beneficial interest was held or the compensation  
35 arrangement was in existence on the effective date of this act; and

36 (B) After the effective date of this act, the beneficial



1 interest or compensation arrangement of the physician does not increase;

2 (8) A physician when treating an enrollee of a provider-  
3 sponsored organization if the physician is referring enrollees to an  
4 affiliated physician of the provider-sponsored organization; or

5 (9) A physician who refers a patient to a dialysis facility if  
6 the patient has been diagnosed with end-stage renal disease.

7 (e) A physician exempted from this section under subsection (d) of  
8 this section is subject to the disclosure provisions of § 17-95-803.

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10 17-95-803. Disclosure of beneficial interest required – Form and  
11 content of disclosure – Exemptions.

12 (a) Except as provided in subsection (c) of this section, a physician  
13 making a referral shall disclose the existence of the beneficial interest in  
14 accordance with this section.

15 (b) Before referring a patient to a medical imaging entity in which  
16 the practitioner, the physician's immediate family, or the practitioner in  
17 combination with the physician's immediate family owns a beneficial interest,  
18 the physician shall:

19 (1) Unless an oral referral is made by telephone, provide the  
20 patient with a written statement that:

21 (A) Discloses the existence of the ownership of the  
22 beneficial interest or compensation arrangement;

23 (B) States that the patient may choose to obtain the  
24 medical imaging service from another medical imaging entity; and

25 (C) Requires the patient to acknowledge in writing receipt  
26 of the statement;

27 (2) Unless an oral referral is made by telephone, insert in the  
28 medical record of the patient a copy of the written acknowledgement;

29 (3) Place on permanent display a written notice that is in a  
30 typeface that is large enough to be easily legible to the average person from  
31 a distance of eight feet (8') and that is in a location that is plainly  
32 visible to the patients of the physician disclosing all of the medical  
33 imaging entities:

34 (A) In which the physician, the physician's immediate  
35 family, or the practitioner in combination with the physician's immediate  
36 family owns a beneficial interest; and

1                   (B) To which the physician refers patients; and  
2                   (4) Documents in the medical record of the patient that:  
3                   (A) A valid medical need exists for the referral; and  
4                   (B) The physician has disclosed the existence of the  
5 beneficial interest to the patient.

6                   (c) This section does not apply to:

7                   (1) A physician when treating a member of a health maintenance  
8 organization and the physician does not have a beneficial interest in the  
9 medical imaging entity; or

10                   (2) A physician who refers a patient:

11                   (A) To another physician in the same group practice as the  
12 referring physician;

13                   (B) For in-office ancillary services; or

14                   (C) For medical imaging services provided through or by a  
15 medical imaging entity owned or controlled by a hospital or related  
16 institution.

17                   (d) A physician who fails to comply with this section is guilty of an  
18 unclassified misdemeanor and on conviction is subject only to a fine not  
19 exceeding five thousand dollars (\$5,000).

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21                   17-95-804. Disclosure of referring physician to third-party payor.

22                   (a) A physician shall disclose the name of a referring physician on  
23 each request for payment or bill submitted to a third-party payor, including  
24 nonprofit health plans and fiscal intermediaries and carriers, that may be  
25 responsible for payment, in whole or in part, of the charges for a medical  
26 imaging service if the physician knows or has reason to believe:

27                   (1) There has been a referral by a physician; and

28                   (2) The referring physician has a beneficial interest in or  
29 compensation arrangement with the medical imaging entity that is prohibited  
30 under § 17-95-802.

31                   (b) A physician who knows or should have known of the practitioner's  
32 failure to comply with this section is subject to disciplinary action by the  
33 appropriate regulatory board.

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35                   17-95-805. Liability of referring physician to third-party payor and  
36 to recipient of services.

1       (a) If a referring physician, a medical imaging entity, or other  
2 person furnishing medical imaging services collects any amount of money that  
3 was billed in violation of § 17-95-802(b) and the referring physician,  
4 medical imaging entity, or other person knew or should have known of the  
5 violation, the referring physician, medical imaging entity, or other person  
6 is jointly and severally liable to the third-party payor for any amounts  
7 collected.

8       (b) If a claim, bill, or other demand or request for payment for  
9 medical imaging services is denied by a third-party payor, the referring  
10 physician, medical imaging entity, or other person furnishing the medical  
11 imaging services shall not submit a claim, bill, or other demand or request  
12 for payment to the person who received the medical imaging services.

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14       17-95-806. Disciplinary actions.

15       (a) A physician who fails to comply with this subchapter is subject to  
16 disciplinary action by the Arkansas State Medical Board.

17       (b) The board may investigate a claim under this subchapter.  
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