

## **BILL ANALYSIS**

Senate Research Center  
80R5363 YDB-F

S.B. 1101  
By: Duncan  
State Affairs  
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As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

In 1989, as part of its Budget Reconciliation Act, the United States Congress enacted legislation commonly known as the "Stark Act" to restrict physician owners of clinical laboratories from referring their Medicare patients to those laboratories. Subsequently, over 20 states, including Florida, California, New York, Michigan, and Pennsylvania, have adopted identical or similar statutes prohibiting or substantially restricting physician "self-referral," citing numerous studies confirming that physician self-referral results in the over-utilization of medical imaging and related procedures and substantially higher health care costs. Seven other states require self-referring physicians to disclose this information to their patients.

Presently in Texas, all health care "cost drivers" are being closely monitored as the cost of health care continues to increase. The 77th Texas Legislature mandated that workers' compensation providers disclose, as of September 1, 2003, all providers in which the doctor has a financial interest "to reduce the likelihood of medically unnecessary referrals and to allow determination of whether certain kinds of financial arrangements are connected with higher claims costs in Texas."

As proposed, S.B. 1101 requires a health care provider who refers patients for diagnostic imaging services provided by a diagnostic imaging provider in which the health care provider is an investor or has an investment interest to adhere to certain reporting and disclosure requirements. The bill also requires the diagnostic imaging provider, before the diagnostic imaging services are provided and after the disclosure of the health care provider's financial interest and the patient's right to choose to have another diagnostic imaging provider provide the diagnostic imaging services, to obtain and record the patient's written consent. The bill also requires the health care provider or diagnostic imaging provider to pay an annual fee at the time of disclosure.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 (Section 113.002, Occupations Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subtitle A, Title 3, Occupations Code, by adding Chapter 113, as follows:

#### **CHAPTER 113. REPORTING AND DISCLOSURE OF HEALTH CARE PROVIDER REFERRALS**

Sec. 113.001. DEFINITIONS. Defines "center," "diagnostic imaging provider," "diagnostic imaging service," "health care provider," "immediate family member," "investment interest," "investor," "licensing authority," "patient," and "referral."

Sec. 113.002. RULES. Requires the executive commissioner of the Health and Human Services Commission (commissioner), on behalf of the center, to adopt rules specifying the procedures and forms required to be used by health care providers to comply with this chapter.

[Reserves Sections 113.003-113.050 for expansion.]

## SUBCHAPTER B. REFERRALS

Sec. 113.051. REPORTING AND DISCLOSURE OF REFERRALS. (a) Requires a health care provider who refers a patient for a diagnostic imaging service provided by a diagnostic imaging provider in which the provider is an investor or has an investment interest, to provide the licensing authority with a quarterly report containing the total number of referrals to any diagnostic imaging provider; and all claims data related to those referrals that are required by the center.

(b) Requires a diagnostic imaging provider that performs services for a referring health care provider to report to the center the identity of the referring health care provider, the exact nature of any investment interest the health care provider has in the diagnostic imaging provider, the total number of patients receiving diagnostic imaging services who were referred by the health care provider, and the additional claims data required by the center.

(c) Authorizes the report required under Subsection (b) to be in the form of a bill for services provided by the diagnostic imaging provider in accordance with rules for filing a clean claim adopted by the Texas Department of Insurance (28 TAC 21.2803), as those rules existed on September 1, 2007.

(d) Requires a health care provider making a referral for diagnostic imaging services as described by this section to disclose in writing to the provider's patients the provider's investment interest in the diagnostic imaging provider, advise the provider's patients that the patient may choose to have another diagnostic imaging provider provide the diagnostic imaging services, and obtain and record the patient's written consent after the disclosure and before the diagnostic imaging services are provided.

(e) Requires a report required by this section to be made to the appropriate licensing agency and the center on a form provided to each health care provider by the center.

Sec. 113.052. PUBLIC INFORMATION. Requires information collected under Section 113.051 to be made available to the public.

Sec. 113.053. FEES FOR DISCLOSURE. (a) Requires a health care provider or diagnostic imaging provider to pay to the center a fee in the amount of \$500 at the time of submitting an initial disclosure to the center under Section 113.051, and once each calendar year in which the health care provider or diagnostic imaging provider provides a report to the center.

(b) Requires fees collected under this section to be maintained in a separate account outside the state treasury by the center to be used in the collection and analysis of data collected under this chapter.

[Reserves Sections 113.054-113.100 for expansion.]

## SUBCHAPTER C. DISCIPLINARY ACTION; PENALTIES

Sec. 113.101. DISCIPLINARY ACTION. Provides that a health care provider's or diagnostic imaging provider's failure to report or disclose information required by this chapter certain is grounds for disciplinary action, including the imposition of an administrative penalty, by the licensing authority that regulates the health care provider or diagnostic imaging provider.

Sec. 113.102. CIVIL PENALTY. (a) Provides that a health care provider or diagnostic imaging provider that violates rules adopted under this chapter is subject to a civil penalty of not more than \$1,000 for each violation.

(b) Requires the attorney general at the request of the center to bring an action to collect penalties under this section. Authorizes the center and the attorney general, in the suit, to each recover reasonable expenses incurred in obtaining the penalty, including investigation and court costs and reasonable attorney's fees.

(c) Requires expenses recovered by the center under this section to be deposited in a separate account outside the state treasury to be used by the center in the enforcement of this chapter.

SECTION 2. (a) Requires the Department of State Health Services (DSHS) to conduct a study of the financial impact of the use of diagnostic imaging services required to be reported under Section 113.051, Occupations Code, as added by this Act.

(b) Requires DSHS to compare specific rates.

(c) Requires DSHS, not later than December 1, 2008, to submit a report regarding the study to the lieutenant governor and the speaker of the house of representatives.

SECTION 3. Makes application of Section 113.051, Occupations Code, as added by this Act, prospective.

SECTION 4. Effective date: September 1, 2007.