

## House Bill 71 - Physician Self-Referrals

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House Bill 71, sponsored by State Representative Jon Peterson ( R – Delaware ), prohibits a physician or podiatrist from making certain referrals for inpatient hospital services and makes other revisions to the law prohibiting certain referrals for designated health services. House Bill 71 has been referred to the House Health and Family Services Committee.

*According to State Rep. Jon Peterson, the bill has the support of the Governor, and the Director of Health. The Director of Health, J. Nick Baird, appeared at a press conference on the bill with State Representative Peterson. Director Baird said that "...the physician conflict-of-interest provisions currently in state law need to be extended to in-patient hospital services. I understand why doctors are opening and investing in for-profit hospitals. Faced with the harsh realities of a changing health care industry, doctors are trying to gain clinical and financial control over their own work. I understand that, but I believe that this is the wrong answer..."*

*Jim Castle, the President and CEO of the Ohio Hospital Association, representing the non-profit community hospitals whose revenue is most threatened by the proliferation of for-profit specialty hospitals, said at the press conference that it is "not about opposing competition by limiting newcomers to the health care marketplace, it is not about restricting medical practice opportunities of physicians, and, it's not about opposing specialty hospitals." Castle and Baird agreed that this bill is just the beginning of a much larger issue. Said Castle, "When we get to outpatient ... and I think we will get to that ... then we will look at the possibility of additional legislation."*

### Section 4731.65 – Definitions

Currently, section 4731.65 ( B ) establishes that “designated health services” means any of the following: clinical laboratory services; home health care services; and outpatient prescription drugs. As amended “inpatient hospital services” are also included under the definition of “designated health services.”

New Division ( H ) defines “inpatient hospital services” as the use of facilities, personnel, and supplies in the admission, diagnosis, prevention, or treatment of an individual’s medical condition, disease or impairment, or for the assessment of health of an individual during a hospital inpatient admission, including services a hospital provides for its patients that are furnished either by the hospital or by others under arrangements with the hospital. “Inpatient hospital services” do not include professional services performed by a health care practitioner if a third party or governmental health care program reimburses the services independently and not as part of the inpatient hospital services.

Current division ( H ) has been re-lettered to become division ( I ). Under current law, this language establishes that a “referral” includes both of the following: 1.) A request by a holder of a certificate under this chapter for *an item or service*, including a request for a consultation with another physician and any test or procedure ordered by or to be performed by or under the supervision of the other physician; and 2.) A request for or establishment of a plan of care by a certificate holder that includes the provision of designated health services. Division ( I ) (1) has been amended to establish that a request by a holder of a certificate under this chapter for *a designated health service*, including a request for a consultation with another physician and any test or procedure ordered by or to be performed by or under the supervision of the other physician. As amended “designated health service” replaces “an item or service.”

### Section 4731.67 – Exceptions on Prohibitions on Referrals

Section 4731.67 establishes exceptions on prohibitions on referrals and sets forth that section 4731.66, prohibiting referrals for designated health services, does not apply to certain referrals by the holder of a certificate.

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Division ( C ) has been amended to exclude “inpatient hospital services”. Division ( C ) establishes that section 4731.66<sup>1</sup>, prohibiting referrals for designated health services, does not apply to referrals for in-office ancillary services, *excluding inpatient hospital services*, to which all of the following apply:

1. The services are furnished by the referring physician, a physician in the same group practice as the referring physician, or individuals who are employed and supervised by the referring physician or the group practice, and are furnished either: a.) In a building in which the referring physician, or another physician in the group, furnishes physicians’ services unrelated to the furnishing of designated health services; or b.) In another building used by the referring physician’s group practice for the centralized provision of the group’s designated health services.
2. The services are billed by the physician performing or supervising the services, the physician’s group practice, or an entity wholly owned by the group practice.
3. The physician’s ownership or investment interest in the services described in this division meet any other requirements that the State Medical Board applies in rules adopted under section 4731.70 of this legislation.

Division ( D ) has been amended to exclude “inpatient hospital services”. Division ( D ) establishes that section 4731.66, prohibiting referrals for designated health services, does not apply to referrals for in-office ancillary services, *excluding inpatient hospital services*, if the third-party payer is aware of and has agreed in writing to reimburse the services notwithstanding the financial arrangement between the physician and the provider of such ancillary services.

Current division ( F ) has been entirely *deleted*. Current division ( F ) establishes that section 4731.66, prohibiting referrals for designated health services, does not apply to referrals to a hospital for designated health services if all of the following apply:

1. The financial arrangement between the referring physician or immediate family member and the hospital consists of an ownership or investment interest and not a compensation arrangement as described in section 4731.66 of the Ohio Revised Code;
2. The referring physician is authorized to perform services at the hospital;

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### <sup>1</sup> Section 4731.66 – Prohibited Referrals and Cross-Referrals for Designated Health Service

Section 4731.66 concerns prohibited referrals and cross-referrals for designated health services. Division (A) establishes that except as provided in sections 4731.67 and 4731.68 of the Revised Code, no holder of a certificate under this chapter to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery is to refer a patient to a person for a designated health service if the certificate holder, or a member of the certificate holder's immediate family, has either of the following financial relationships with the person:

1. An ownership or investment interest in the person whether through debt, equity, or other means;
2. Any compensation arrangement involving any remuneration, directly or indirectly, overtly or covertly, in cash or in kind.

Division ( B ) sets forth that no person to which a certificate holder has referred a patient in violation of division ( A ) of this section is to bill the patient, any third-party payer, any governmental health care program, or any other person or governmental entity for the designated health service rendered pursuant to the referral.

Division ( C ) establishes that no person is to knowingly enter into an arrangement or scheme, including a cross-referral arrangement, that has a principal purpose of assuring referrals by a certificate holder to a particular person that, if the certificate holder directly made referrals to such person, would violate division ( A ) of this section.

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3. The ownership or investment interest is in the hospital itself and not merely in a subdivision of the hospital;

Current division ( G ) has also been *deleted*. Current division ( G ) establishes that section 4731.66, prohibiting referrals for designated health services, does not apply to referrals to a hospital with which the certificate holder's or immediate family member's financial relationship does not relate to the provision of designated health services.

### **Section 4731.68 – Compensation Arrangements**

Section 4731.68 concerns compensation arrangements and ownership of investment securities. New division (H) establishes that remuneration by hospital to a certificate holder or certificate holder's immediate family member is not to be considered a compensation arrangement as described in section 4731.66 of the Ohio Revised Code if the remuneration does not relate to the provision of designated health services.

### **Section 4731.70 – Rules**

Section 4731.70 establishes that the State Medical Board is to adopt rules to implement sections 4731.65 through 4731.69 of the Ohio Revised Code. This section has been amended to incorporate a technical change to a reference to a section of the Ohio Revised Code.