

103<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 345

To amend title XVIII of the Social Security Act to extend and improve the ban on physician referrals to health care providers with which the physician has a financial relationship.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 5, 1993

Mr. STARK introduced the following bill; which was referred jointly to the Committees on Ways and Means and Energy and Commerce

APRIL 1, 1993

Additional sponsor: Mr. LEVIN

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## A BILL

To amend title XVIII of the Social Security Act to extend and improve the ban on physician referrals to health care providers with which the physician has a financial relationship.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Comprehensive Physi-  
5 cian Ownership and Referral Act of 1993”.

1 **SEC. 2. APPLICATION OF MEDICARE BAN ON SELF-REFER-**  
2 **ALS TO ALL PAYORS.**

3 Section 1877 of the Social Security Act (42 U.S.C.  
4 1395nn) is amended—

5 (1) in subsection (a)—

6 (A) in paragraph (1)(A), by striking “for  
7 which payment otherwise may be made under  
8 this title” and inserting “for which a charge is  
9 imposed”, and

10 (B) in paragraph (1)(B), by striking  
11 “under this title”;

12 (2) by amending paragraph (1) of subsection  
13 (g) to read as follows:

14 “(1) DENIAL OF PAYMENT.—No payment may  
15 be made under this title, under another Federal  
16 health care program, or under a State health care  
17 program (as defined in section 1128(h)) for a des-  
18 ignated health service for which a claim is presented  
19 in violation of subsection (a)(1)(B). No individual,  
20 third party payor, or other entity is liable for pay-  
21 ment for designated health services for which a  
22 claim is presented in violation of such subsection.”;  
23 and

24 (3) in subsection (g)(3), by striking “for which  
25 payment may not be made under paragraph (1)”

1 and inserting “for which such a claim may not be  
2 presented under subsection (a)(1)”.

3 **SEC. 3. EXTENSION OF SELF-REFERRAL BAN TO ADDI-**  
4 **TIONAL SPECIFIED SERVICES.**

5 (a) IN GENERAL.—Section 1877 of the Social Secu-  
6 rity Act is further amended—

7 (1) by striking “clinical laboratory services”  
8 and “CLINICAL LABORATORY SERVICES” and insert-  
9 ing “designated health services” and “DESIGNATED  
10 HEALTH SERVICES”, respectively, each place either  
11 appears in subsections (a)(1), (b)(2)(A)(ii)(I),  
12 (b)(4), (d)(1), (d)(2), and (d)(3), and

13 (2) by adding at the end the following new sub-  
14 section:

15 “(i) DESIGNATED HEALTH SERVICES DEFINED.—In  
16 this section, the term ‘designated health services’ means—

17 “(1) clinical laboratory services;

18 “(2) physical therapy services;

19 “(3) radiology services, including magnetic reso-  
20 nance imaging, computerized axial tomography  
21 scans, and ultrasound services;

22 “(4) radiation therapy services;

23 “(5) the furnishing of durable medical equip-  
24 ment;

1           “(6) the furnishing of parenteral and enteral  
2 nutrition equipment and supplies;

3           “(7) the furnishing of outpatient prescription  
4 drugs;

5           “(8) ambulance services;

6           “(9) home infusion therapy services;

7           “(10) occupational therapy services; and

8           “(11) inpatient and outpatient hospital services  
9 (including services furnished at a psychiatric or re-  
10 habilitation hospital).”.

11       (b) CONFORMING AMENDMENTS.—Section 1877 of  
12 such Act is further amended—

13           (1) in subsection (d)(2), by striking “labora-  
14 tory” and inserting “entity”,

15           (2) in subsection (g)(1), by striking “clinical  
16 laboratory service” and inserting “designated health  
17 service”, and

18           (3) in subsection (h)(7)(B), by striking “clinical  
19 laboratory service” and inserting “designated health  
20 service”.

21 **SEC. 4. CHANGES IN EXCEPTIONS AND OTHER PROVISIONS**  
22 **RELATING TO COMPENSATION ARRANGE-**  
23 **MENTS.**

24       (a) MULTIPLE LOCATIONS FOR GROUP PRAC-  
25 TICES.—Section 1877(b)(2)(A)(ii)(II) of the Social Secu-

1 rity Act is amended by striking “centralized provision”  
2 and inserting “provision of some or all”.

3 (b) TREATMENT OF COMPENSATION ARRANGE-  
4 MENTS.—

5 (1) RENTAL OF OFFICE SPACE AND EQUIP-  
6 MENT.—Paragraph (1) of section 1877(e) of such  
7 Act is amended to read as follows:

8 “(1) RENTAL OF OFFICE SPACE; RENTAL OF  
9 EQUIPMENT.—

10 “(A) OFFICE SPACE.—Payments made by  
11 a lessee to a lessor for the use of premises if—

12 “(i) the lease is set out in writing,  
13 signed by the parties, and specifies the  
14 premises covered by the lease,

15 “(ii) the aggregate space rented or  
16 leased is reasonable and necessary for the  
17 legitimate business purposes of the lease or  
18 rental,

19 “(iii) the lease provides for a term of  
20 rental or lease for at least one year,

21 “(iv) in the case of a lease that is in-  
22 tended to provide the lessee with access to  
23 the premises for periodic intervals of time,  
24 rather than on a full-time basis, the lease  
25 specifies exactly the schedule of such inter-

1 vals, their length, and the rent for such  
2 intervals,

3 “(v) the rental charges over the term  
4 of the lease are set in advance, are consist-  
5 ent with fair market value, and are not de-  
6 termined in a manner that takes into ac-  
7 count the volume or value of any referrals  
8 or other business generated between the  
9 parties,

10 “(vi) the lease would be commercially  
11 reasonable even if no referrals were made  
12 between the parties, and

13 “(vii) the compensation arrangement  
14 meets such other requirements as the Sec-  
15 retary may impose by regulation as needed  
16 to protect against program or patient  
17 abuse.

18 “(B) EQUIPMENT.—Payments made by a  
19 lessee of equipment to the lessor of the equip-  
20 ment for the use of the equipment if—

21 “(i) the lease is set out in writing,  
22 signed by the parties, and specifies the  
23 equipment covered by the lease,

1           “(ii) the equipment rented or leased is  
2 reasonable and necessary for the legitimate  
3 business purposes of the lease or rental,

4           “(iii) the lease provides for a term of  
5 rental or lease of at least one year,

6           “(iv) in the case of a lease that is in-  
7 tended to provide the lessee with use of the  
8 equipment for periodic intervals of time,  
9 rather than on a full-time basis, the lease  
10 specifies exactly the schedule of such inter-  
11 vals, their length, and the rent for such in-  
12 tervals,

13           “(v) the rental charges over the term  
14 of the lease are set in advance, are consist-  
15 ent with fair market value, and are not de-  
16 termined in a manner that takes into ac-  
17 count the volume or value of any referrals  
18 or other business generated between the  
19 parties,

20           “(vi) the lease would be commercially  
21 reasonable even if no referrals were made  
22 between the parties, and

23           “(vii) the compensation arrangement  
24 meets such other requirements as the Sec-  
25 retary may impose by regulation as needed

1 to protect against program or patient  
2 abuse.”.

3 (2) BONA FIDE EMPLOYMENT RELATION-  
4 SHIPS.—Paragraph (2) of such section is amended—

5 (A) by striking “WITH HOSPITALS”,

6 (B) by striking “An arrangement” and all  
7 that follows through “if” and inserting “Any  
8 amount paid by an employer to an employee  
9 who has a bona fide employment relationship  
10 with the employer for employment, or paid by  
11 a hospital pursuant to an arrangement with a  
12 physician (or immediate family member) for the  
13 provision of administrative services, if”,

14 (C) in subparagraphs (A), (B), and (D), by  
15 striking “arrangement” and inserting “employ-  
16 ment relationship or arrangement”, and

17 (D) in subparagraph (C), by striking “to  
18 the hospital”.

19 (3) ADDITIONAL EXCEPTIONS.—Such sub-  
20 section is further amended by adding at the end the  
21 following new paragraphs:

22 “(7) PAYMENTS TO A PHYSICIAN FOR OTHER  
23 ITEMS OR SERVICES.—

24 “(A) IN GENERAL.—Payments made by an  
25 entity to a physician (or family member) who is

1 not employed by the entity as compensation for  
2 services specified in subparagraph (B), if—

3 “(i) the compensation agreement is  
4 set out in writing and specifies the services  
5 to be provided by the parties, the com-  
6 pensation for each unit of service provided  
7 under the agreement, and the schedule for  
8 the provision of such services,

9 “(ii) the compensation paid over the  
10 term of the agreement is consistent with  
11 fair market value and is not determined in  
12 a manner that takes into account the vol-  
13 ume or value of any referrals or other busi-  
14 ness generated between the parties,

15 “(iii) the compensation is provided  
16 pursuant to an agreement which would be  
17 commercially reasonable even if no refer-  
18 rals were made to the entity, and

19 “(iv) the compensation arrangement  
20 meets such other requirements as the Sec-  
21 retary may impose by regulation as needed  
22 to protect against program or patient  
23 abuse.

1           “(B) SPECIFIED SERVICES.—For purposes  
2 of subparagraph (A), the services specified in  
3 this subparagraph are any of the following:

4           “(i) Consultative services that—

5           “(I) relate to results that have  
6 been obtained that are outside estab-  
7 lished parameters, or are specifically  
8 requested by the referring physician  
9 on a specified patient,

10           “(II) are furnished by a physi-  
11 cian other than the referring physi-  
12 cian (or by another physician who is  
13 a member of the same group prac-  
14 tice), and

15           “(III) for which the physician  
16 furnishes a written report for that  
17 patient.

18           “(ii) Interpretation of tissue pathology  
19 or Pap smear slides or the provision of  
20 other cytology services.

21           “(iii) Phlebotomy services for pater-  
22 nity or toxicology testing where the serv-  
23 ices are furnished by a physician other  
24 than the physician referring the individual  
25 for such testing (or by another physician

1           who is a member of the same group prac-  
2           tice).

3           “(iv) Employment-related health care  
4           services, including a payment by a self-in-  
5           sured employer for services rendered to  
6           employee applicants, employees, or their  
7           families under the terms of a health bene-  
8           fit plan.

9           “(v) Services as a clinical consultant  
10          to the entity as required for certification of  
11          the provider under section 353 of the Pub-  
12          lic Health Service Act.

13          “(vi) Services required by local, State,  
14          or Federal licensure, accreditation, or  
15          other health and safety provisions.

16          “(vii) Services billed in the name of a  
17          group practice provided by a physician  
18          under contract to the group practice for  
19          services not otherwise available directly  
20          through a physician who is a member of  
21          the group.

22          “(8) PAYMENTS BY A PHYSICIAN FOR ITEMS  
23          AND SERVICES.—Payments made by a physician—

24                  “(A) to a laboratory in exchange for the  
25                  provision of clinical laboratory services, or

1           “(B) to an entity as compensation for  
2 other items or services if the items or services  
3 are furnished at a price that is consistent with  
4 fair market value and are generally available to  
5 referrers and non-referrers alike on similar  
6 terms and conditions.

7           “(9) PAYMENTS FOR PATHOLOGY SERVICES OF  
8 A GROUP PRACTICE.—Payments made to a group  
9 practice for pathology services under an agreement  
10 if—

11           “(A) the agreement is set out in writing  
12 and specifies the services to be provided by the  
13 parties and the compensation for services pro-  
14 vided under the agreement,

15           “(B) the compensation paid over the term  
16 of the agreement is consistent with fair market  
17 value and is not determined in a manner that  
18 takes into account the volume or value of any  
19 referrals or other business generated between  
20 the parties,

21           “(C) the compensation is provided pursu-  
22 ant to an agreement which would be commer-  
23 cially reasonable even if no referrals were made  
24 to the entity; and

1           “(D) the compensation arrangement be-  
2           tween the parties meets such other require-  
3           ments as the Secretary may impose by regula-  
4           tion as needed to protect against program or  
5           patient abuse.”.

6           (c) TREATMENT OF GROUP PRACTICES.—

7           (1) USE OF BILLING NUMBERS, ETC.—Section  
8           1877 of the Social Security Act is amended—

9           (A) in subsection (b)(2)(B), by inserting  
10           “under a billing number assigned to the group  
11           practice” after “member”,

12           (B) in subsection (h)(4)(B), by inserting  
13           “and under a billing number assigned to the  
14           group” after “in the name of the group”, and

15           (C) in subsection (h)(4)(C), by striking  
16           “by members of the group”.

17           (2) TREATMENT OF CLINICAL LABORATORY  
18           SERVICES FURNISHED UNDER ARRANGEMENTS BE-  
19           TWEEN HOSPITALS AND GROUP PRACTICES.—

20           (A) IN GENERAL.—Section 1877(h)(4) of  
21           such Act is amended—

22           (i) in subparagraph (B) (as amended  
23           by paragraph (1)(B)), by inserting “(or  
24           are billed in the name of a hospital for  
25           which the group provides clinical labora-

1 tory services pursuant to an arrangement  
2 that meets the requirements of subpara-  
3 graph (B))” after “assigned to the group”;

4 (ii) by redesignating subparagraphs  
5 (A) through (D) as clauses (i) through  
6 (iv), respectively;

7 (iii) by inserting “(A)” after “.—”;

8 and

9 (iv) by adding at the end the following  
10 new subparagraph:

11 “(B) The requirements of this subparagraph,  
12 with respect to an arrangement for clinical labora-  
13 tory services provided by the laboratory of a group  
14 and billed in the name of a hospital, are that—

15 “(i) with respect to services provided to an  
16 inpatient of the hospital, the arrangement is  
17 pursuant to the provision of inpatient hospital  
18 services under section 1861(b)(3);

19 “(ii) the arrangement began before Decem-  
20 ber 19, 1989, and has continued in effect with-  
21 out interruption since such date;

22 “(iii) the laboratory provides substantially  
23 all of the clinical laboratory services to the hos-  
24 pital’s patients;

1           “(iv) the arrangement is pursuant to an  
2 agreement that is set out in writing and that  
3 specifies the services to be provided by the par-  
4 ties and the compensation for services provided  
5 under the agreement;

6           “(v) the compensation paid over the term  
7 of the agreement is consistent with fair market  
8 value and the compensation per unit of services  
9 is fixed in advance and is not determined in a  
10 manner that takes into account the volume or  
11 value of any referrals or other business gen-  
12 erated between the parties;

13           “(vi) the compensation is provided pursu-  
14 ant to an agreement which would be commer-  
15 cially reasonable even if no referrals were made  
16 to the entity; and

17           “(vii) the arrangement between the parties  
18 meets such other requirements as the Secretary  
19 may impose by regulation as needed to protect  
20 against program or patient abuse.”.

21           (B) CONFORMING AMENDMENT.—Section  
22 1877(b)(2)(B) of such Act is amended by in-  
23 sserting “(or by a hospital for which such a  
24 group practice provides clinical laboratory serv-  
25 ices pursuant to an arrangement that meets the

1 requirements of subsection (h)(4)(B))” after  
2 “by a group practice of which such physician is  
3 a member”.

4 (3) TREATMENT OF CERTAIN FACULTY PRAC-  
5 TICE PLANS.—The last sentence of section  
6 1877(h)(4)(A) of such Act, as redesignated by para-  
7 graph (1)(A), is amended by inserting “, institution  
8 of higher education, or medical school” after “hos-  
9 pital”.

10 (d) EXPANDING RURAL PROVIDER EXCEPTION TO  
11 COVER COMPENSATION ARRANGEMENTS.—

12 (1) IN GENERAL.—Section 1877(b) of such Act  
13 is further amended—

14 (A) by redesignating paragraph (5) as  
15 paragraph (7), and

16 (B) by inserting after paragraph (4) the  
17 following new paragraph:

18 “(5) RURAL PROVIDERS.—In the case of des-  
19 ignated services if—

20 “(A) the entity furnishing the services is in  
21 a rural area (as defined in section  
22 1886(d)(2)(D)), and

23 “(B) substantially all of the services fur-  
24 nished by the entity to individuals entitled to

1 benefits under this title are furnished to such  
2 individuals who reside in such a rural area.”.

3 (2) CONFORMING AMENDMENTS.—Section  
4 1877(d) of such Act is amended—

5 (A) by striking paragraph (2), and

6 (B) by redesignating paragraph (3) as  
7 paragraph (2).

8 (e) EXEMPTION OF COMPENSATION ARRANGEMENTS  
9 INVOLVING CERTAIN TYPES OF REMUNERATION.—Sec-  
10 tion 1877(h)(1) of such Act is amended—

11 (1) by striking subparagraph (B);

12 (2) in subparagraph (A), by inserting before the  
13 period the following: “(other than an arrangement  
14 involving only remuneration described in subpara-  
15 graph (B))”; and

16 (3) by adding at the end the following new sub-  
17 paragraph:

18 “(B) Remuneration described in this subpara-  
19 graph is any remuneration consisting of any of the  
20 following:

21 “(i) The forgiveness of amounts owed for  
22 inaccurate tests or procedures, mistakenly per-  
23 formed tests or procedures, or the correction of  
24 minor billing errors.

1           “(ii) The provision of items, devices, or  
2 supplies of minor value that are used to—

3                   “(I) collect, transport, process, or  
4 store specimens for the entity providing  
5 the item, device, or supply, or

6                   “(II) communicate the results of tests  
7 or procedures for such entity.

8           “(iii) The furnishing by an entity of lab-  
9 oratory services to a group practice affiliated  
10 with the entity, if the entity provides all or sub-  
11 stantially all of the clinical laboratory services  
12 of the group practice.”.

13           (f) MISCELLANEOUS AND TECHNICAL CORREC-  
14 TIONS.—Section 1877 of such Act is amended—

15                   (1) in the fourth sentence of subsection (f)—

16                           (A) by striking “provided” and inserting  
17 “furnished”, and

18                           (B) by striking “provides” and inserting  
19 “furnish”;

20                   (2) in the fifth sentence of subsection (f)—

21                           (A) by striking “providing” each place it  
22 appears and inserting “furnishing”,

23                           (B) by striking “with respect to the provid-  
24 ers” and inserting “with respect to the enti-  
25 ties”, and

1           (C) by striking “diagnostic imaging serv-  
2           ices of any type” and inserting “magnetic reso-  
3           nance imaging, computerized axial tomography  
4           scans, and ultrasound services”; and

5           (3) in subsection (a)(2)(B), by striking “sub-  
6           section (h)(1)(A)” and inserting “subsection (h)(1)”.

7   **SEC. 5. EFFECTIVE DATES.**

8           (a) **EXPANSION OF COVERAGE AND PAYORS.**—The  
9           amendments made by sections 2 and 3 shall apply with  
10          respect to a referral by a physician for designated health  
11          services (as described in section 1877(i) of the Social Se-  
12          curity Act) made on or after the first day of the first  
13          month beginning 2 years after the date of the enactment  
14          of this Act.

15          (b) **CHANGES IN EXCEPTIONS, ETC.**—The amend-  
16          ments made by section 4 shall apply to referrals made on  
17          or after January 1, 1992.

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