

104<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 2173

To amend title XVIII of the Social Security Act to modify the types of ownership and compensation arrangements which are not considered arrangements between a physician and an entity furnishing a designated health service under the Medicare Program for purposes of the provisions of such title which deny payment for designated health services for which a referral is made by a physician with an ownership or compensation arrangement with the entity furnishing the service.

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## IN THE HOUSE OF REPRESENTATIVES

AUGUST 2, 1995

Mr. STARK introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend title XVIII of the Social Security Act to modify the types of ownership and compensation arrangements which are not considered arrangements between a physician and an entity furnishing a designated health service under the Medicare Program for purposes of the provisions of such title which deny payment for designated health services for which a referral is made by a physician with an ownership or compensation arrangement with the entity furnishing the service.

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 “Medicare Physician  
5 Ownership and Referral Amendments of 1995”.

6 **SEC. 2. MODIFICATIONS TO EXCEPTIONS FOR CERTAIN**  
7 **ARRANGEMENTS.**

8 (a) EXCEPTIONS FOR BOTH OWNERSHIP AND COM-  
9 PENSATION ARRANGEMENTS.—

10 (1) REPEAL OF EXCEPTION FOR PHYSICIANS’  
11 SERVICES.—Section 1877(b) of the Social Security  
12 Act (42 U.S.C. 1395nn(b)) is amended by striking  
13 “Subsection (a)(1) shall not apply in the following  
14 cases” and all that follows through paragraph (1).

15 (2) NEW EXCEPTION FOR SHARED FACILITY  
16 SERVICES.—Section 1877(b) of such Act (42 U.S.C.  
17 1395nn(b)), as amended by paragraph (1), is  
18 amended by inserting before paragraph (2) the fol-  
19 lowing new paragraph:

20 “(1) SHARED FACILITY SERVICES.—

21 “(A) IN GENERAL.—Subsection (a)(1)  
22 shall not apply in the case of a designated  
23 health service consisting of a shared facility  
24 service of a shared facility—

25 “(i) that is furnished—

1           “(I) personally by the referring  
2           physician who is a shared facility phy-  
3           sician or personally by an individual  
4           directly employed by such a physician,

5           “(II) by a shared facility in a  
6           building in which the referring physi-  
7           cian furnishes substantially all of the  
8           services of the physician that are un-  
9           related to the furnishing of shared fa-  
10          cility services, and

11          “(III) to a patient of a shared fa-  
12          cility physician; and

13          “(ii) that is billed by the referring  
14          physician.

15          “(B) SHARED FACILITY RELATED DEFINI-  
16          TIONS.—

17                 “(i) SHARED FACILITY SERVICE.—  
18                 The term ‘shared facility service’ means,  
19                 with respect to a shared facility, a des-  
20                 ignated health service furnished by the fa-  
21                 cility to patients of shared facility physi-  
22                 cians.

23                 “(ii) SHARED FACILITY.—The term  
24                 ‘shared facility’ means an entity that fur-

1 nishes shared facility services under a  
2 shared facility arrangement.

3 “(iii) SHARED FACILITY PHYSICIAN.—  
4 The term ‘shared facility physician’ means,  
5 with respect to a shared facility, a physi-  
6 cian who has a financial relationship under  
7 a shared facility arrangement with the fa-  
8 cility.

9 “(iv) SHARED FACILITY ARRANGE-  
10 MENT.—The term ‘shared facility arrange-  
11 ment’ means, with respect to the provision  
12 of shared facility services in a building, a  
13 financial arrangement—

14 “(I) which is only between physi-  
15 cians who are providing services (un-  
16 related to shared facility services) in  
17 the same building,

18 “(II) in which the overhead ex-  
19 penses of the facility are shared, in  
20 accordance with methods previously  
21 determined by the physicians in the  
22 arrangement, among the physicians in  
23 the arrangement, and

1                   “(III) which, in the case of a cor-  
2                   poration, is wholly owned and con-  
3                   trolled by shared facility physicians.”.

4                   (3) INCLUSION OF DURABLE MEDICAL EQUIP-  
5                   MENT AND PARENTERAL AND ENTERAL NUTRIENTS,  
6                   EQUIPMENT, AND SUPPLIES IN EXCEPTION FOR IN-  
7                   OFFICE ANCILLARY SERVICES.—Section 1877(b)(2)  
8                   of such Act (42 U.S.C. 1395nn(b)(2)) is amended by  
9                   striking “In the case of” and all that follows  
10                  through “supplies)” and inserting “Subsection  
11                  (a)(1) shall not apply in the case of designated  
12                  health services”.

13                  (4) NEW EXCEPTION FOR CAPITATED PAY-  
14                  MENTS.—Section 1877(b) of such Act (42 U.S.C.  
15                  1395nn(b)) is amended—

16                         (A) by redesignating paragraph (4) as  
17                         paragraph (5); and

18                         (B) by inserting after paragraph (3) the  
19                         following new paragraph:

20                         “(4) OTHER CAPITATED PAYMENTS.—Sub-  
21                         section (a)(1) shall not apply in the case of a des-  
22                         ignated health service, if the designated health serv-  
23                         ice is included in the services for which a physician  
24                         or physician group is paid only on a capitated basis  
25                         by a health plan or insurer pursuant to a written ar-

1       rangement between the plan or insurer and the phy-  
2       sician or physician group in which the physician or  
3       physician group assumes financial risk for the fur-  
4       nishing of the service.”.

5           (5) CONFORMING AMENDMENTS.—Paragraphs  
6       (3) and (5) of section 1877(b) of such Act (42  
7       U.S.C. 1395nn(b)), as redesignated by paragraph  
8       (4), are each amended by striking “In the case of”  
9       and inserting “Subsection (a)(1) shall not apply in  
10      the case of”.

11      (b) REVISION OF EXCEPTIONS FOR CERTAIN COM-  
12      PENSATION ARRANGEMENTS.—

13           (1) EXCEPTION FOR ALL ARRANGEMENTS  
14      MEETING REQUIREMENTS.—Section 1877(a)(2)(B)  
15      of such Act (42 U.S.C. 1395nn(a)(2)(B)) is amend-  
16      ed—

17           (A) by striking “except as provided in sub-  
18      section (e),”; and

19           (B) by striking “entity.” and inserting  
20      “entity which does not meet the requirements  
21      of subsection (e).”.

22           (2) REQUIREMENTS DESCRIBED.—Section  
23      1877(e) of such Act (42 U.S.C. 1395nn(e)) is  
24      amended to read to follows:

1       “(e) REQUIREMENTS FOR PERMISSIBLE COMPENSA-  
2 TION ARRANGEMENTS.—The requirements under this  
3 subsection with respect to a compensation arrangement  
4 are as follows:

5           “(1) The arrangement is in writing and is  
6 signed by all parties to the arrangement.

7           “(2) The arrangement is consistent with fair  
8 market value.

9           “(3) The amount of compensation under the ar-  
10 rangement is not determined in a manner that takes  
11 into account the volume or value of any referrals or  
12 other business generated between the parties.

13           “(4) The arrangement would be commercially  
14 reasonable even if no referrals were made between  
15 the parties.

16           “(5) The services compensated or contracted  
17 for do not exceed those that are reasonable and nec-  
18 essary for the legitimate business purposes of the ar-  
19 rangement.

20           “(6) The arrangement meets such other re-  
21 quirements as the Secretary may impose as needed  
22 to protect against program or patient abuse.”.

1 **SEC. 3. EXCLUSION OF INTRAOCULAR LENS, EYEGLASSES,**  
2 **AND CONTACT LENSES FROM DESIGNATED**  
3 **HEALTH SERVICES SUBJECT TO PROHIBI-**  
4 **TIONS.**

5 Section 1877(h)(6)(H) of the Social Security Act (42  
6 U.S.C. 1395nn(h)(6)(H)) is amended by striking the pe-  
7 riod at the end and inserting the following: “, other than  
8 an intraocular lens inserted during or subsequent to cata-  
9 ract surgery, eyeglasses, or contact lenses.”.

10 **SEC. 4. EFFECTIVE DATE.**

11 The amendments made by this Act shall apply to re-  
12 ferrals made on or after January 1, 1996.

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