

AMENDED IN ASSEMBLY MAY 11, 2006  
AMENDED IN ASSEMBLY MARCH 27, 2006  
CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2805**

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**Introduced by Assembly Member Blakeslee**

February 24, 2006

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An act to ~~amend Section 650.02 of~~ *add Section 655.7 to the Business and Professions Code, relating to health care.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2805, as amended, Blakeslee. ~~Health care referrals—CT, PET, and MRI diagnostic imaging services.~~

*Existing law prohibits licensed persons of various health care professions from charging fees to patients for clinical laboratory services not directly performed by the licensed persons. Existing law requires a clinical laboratory performing cytological examinations of gynecologic slides to directly bill either the patient or the responsible third-party payer for the services, and prohibits the clinical laboratory from billing the physician and surgeon who requests the tests, with specified exceptions. A violation of these provisions, and specified provisions regarding referrals is a crime.*

*This bill would prohibit licensees of health care professions from charging, billing, or soliciting payment from any patient, client, or third-party payer, as defined, for performance of the technical component of CT, PET, or MRI diagnostic imaging services not rendered by the licensees or persons under their direct supervision. The bill would also require a radiological facility or imaging center performing the technical component of CT, PET, or MRI diagnostic*

*imaging services to directly bill either the patient or the responsible third-party payer for the services, and would prohibit the radiological facility or imaging center from billing the physician and surgeon who requested the services. Because a violation of these provisions would be a crime, this bill would impose a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

~~Existing law, the Physician Ownership and Referral Act of 1993, prohibits a licensee, which is defined to include, among other things, physician and surgeons, psychologists, acupuncturists, optometrists, dentists, podiatrists, and chiropractic practitioners, from referring a person for certain health care services if the licensee has a financial interest, as defined, with the person or entity that receives the referral. Existing law exempts from this prohibition a service for a specific patient that is performed within, or goods that are supplied by, a licensee's office, or the office of a group practice. A violation of the prohibition is a misdemeanor.~~

~~This bill would provide that a licensee's office or the office of a group practice does not include an office arrangement where the licensee or group practice contracts with a person or entity for the provision of CT, PET, and MRI diagnostic imaging services and does not own the equipment or lease the equipment on a full-time basis. Because the bill would expand the persons that are subject to the prohibition on referrals, the violation of which is a crime, it would create a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     *SECTION 1. Section 655.7 is added to the Business and*  
2 *Professions Code, to read:*

3     655.7. (a) *It is unlawful for any person licensed under this*  
4 *division or under any initiative act referred to in the division to*  
5 *charge, bill, or otherwise solicit payment from any patient, client,*  
6 *customer, or third-party payer for performance of the technical*  
7 *component of Computerized Tomography (CT), Positron*  
8 *Emission Tomography (PET), or Magnetic Resonance Imaging*  
9 *(MRI) diagnostic imaging services if those services were not*  
10 *actually rendered by the licensee or a person under his or her*  
11 *direct supervision.*

12     (b) *Radiological facilities or imaging centers performing the*  
13 *technical component of CT, PET, or MRI diagnostic imaging*  
14 *services shall directly bill either the patient or the responsible*  
15 *third-party payer for such services rendered by those facilities.*  
16 *Radiological facilities or imaging centers shall not bill the*  
17 *physician and surgeon who requests the services.*

18     (c) *For the purposes of this section, any person or entity who*  
19 *is responsible to pay for CT, PET, or MRI services provided to*  
20 *that patient shall be considered a responsible third-party payer.*

21     SEC. 2. *No reimbursement is required by this act pursuant to*  
22 *Section 6 of Article XIII B of the California Constitution because*  
23 *the only costs that may be incurred by a local agency or school*  
24 *district will be incurred because this act creates a new crime or*  
25 *infraction, eliminates a crime or infraction, or changes the*  
26 *penalty for a crime or infraction, within the meaning of Section*  
27 *17556 of the Government Code, or changes the definition of a*  
28 *crime within the meaning of Section 6 of Article XIII B of the*  
29 *California Constitution.*

30     ~~SECTION 1. Section 650.02 of the Business and Professions~~  
31 ~~Code is amended to read:~~

32     ~~650.02. The prohibition of Section 650.01 shall not apply to~~  
33 ~~or restrict any of the following:~~

34     ~~(a) A licensee may refer a patient for a good or service~~  
35 ~~otherwise prohibited by subdivision (a) of Section 650.01 if the~~  
36 ~~licensee's regular practice is located where there is no alternative~~  
37 ~~provider of the service within either 25 miles or 40 minutes~~  
38 ~~traveling time, via the shortest route on a paved road. If an~~

1 ~~alternative provider commences furnishing the good or service~~  
2 ~~for which a patient was referred pursuant to this subdivision, the~~  
3 ~~licensee shall cease referrals under this subdivision within six~~  
4 ~~months of the time at which the licensee knew or should have~~  
5 ~~known that the alternative provider is furnishing the good or~~  
6 ~~service. A licensee who refers to or seeks consultation from an~~  
7 ~~organization in which the licensee has a financial interest under~~  
8 ~~this subdivision shall disclose this interest to the patient or the~~  
9 ~~patient's parents or legal guardian in writing at the time of~~  
10 ~~referral.~~

11 ~~(b) A licensee, when the licensee or his or her immediate~~  
12 ~~family has one or more of the following arrangements with~~  
13 ~~another licensee, a person, or an entity, is not prohibited from~~  
14 ~~referring a patient to the licensee, person, or entity because of the~~  
15 ~~arrangement:~~

16 ~~(1) A loan between a licensee and the recipient of the referral,~~  
17 ~~if the loan has commercially reasonable terms, bears interest at~~  
18 ~~the prime rate or a higher rate that does not constitute usury, is~~  
19 ~~adequately secured, and the loan terms are not affected by either~~  
20 ~~party's referral of any person or the volume of services provided~~  
21 ~~by either party.~~

22 ~~(2) A lease of space or equipment between a licensee and the~~  
23 ~~recipient of the referral, if the lease is written, has commercially~~  
24 ~~reasonable terms, has a fixed periodic rent payment, has a term of~~  
25 ~~one year or more, and the lease payments are not affected by~~  
26 ~~either party's referral of any person or the volume of services~~  
27 ~~provided by either party.~~

28 ~~(3) Ownership of corporate investment securities, including~~  
29 ~~shares, bonds, or other debt instruments that may be purchased~~  
30 ~~on terms generally available to the public and that are traded on a~~  
31 ~~licensed securities exchange or NASDAQ, do not base profit~~  
32 ~~distributions or other transfers of value on the licensee's referral~~  
33 ~~of persons to the corporation, do not have a separate class or~~  
34 ~~accounting for any persons or for any licensees who may refer~~  
35 ~~persons to the corporation, and are in a corporation that had, at~~  
36 ~~the end of the corporation's most recent fiscal year, or on average~~  
37 ~~during the previous three fiscal years, stockholder equity~~  
38 ~~exceeding seventy-five million dollars (\$75,000,000).~~

39 ~~(4) Ownership of shares in a regulated investment company as~~  
40 ~~defined in Section 851(a) of the federal Internal Revenue Code, if~~

1 the company had, at the end of the company's most recent fiscal  
2 year, or on average during the previous three fiscal years, total  
3 assets exceeding seventy-five million dollars (\$75,000,000).

4 ~~(5) A one-time sale or transfer of a practice or property or  
5 other financial interest between a licensee and the recipient of the  
6 referral if the sale or transfer is for commercially reasonable  
7 terms and the consideration is not affected by either party's  
8 referral of any person or the volume of services provided by  
9 either party.~~

10 ~~(6) A personal services arrangement between a licensee or an  
11 immediate family member of the licensee and the recipient of the  
12 referral if the arrangement meets all of the following  
13 requirements:~~

14 ~~(A) It is set out in writing and is signed by the parties.~~

15 ~~(B) It specifies all of the services to be provided by the  
16 licensee or an immediate family member of the licensee.~~

17 ~~(C) The aggregate services contracted for do not exceed those  
18 that are reasonable and necessary for the legitimate business  
19 purposes of the arrangement.~~

20 ~~(D) A person who is referred by a licensee or an immediate  
21 family member of the licensee is informed in writing of the  
22 personal services arrangement that includes information on  
23 where a person may go to file a complaint against the licensee or  
24 the immediate family member of the licensee.~~

25 ~~(E) The term of the arrangement is for at least one year.~~

26 ~~(F) The compensation to be paid over the term of the  
27 arrangement is set in advance, does not exceed fair market value,  
28 and is not determined in a manner that takes into account the  
29 volume or value of any referrals or other business generated  
30 between the parties.~~

31 ~~(G) The services to be performed under the arrangement do  
32 not involve the counseling or promotion of a business  
33 arrangement or other activity that violates any state or federal  
34 law.~~

35 ~~(e) (1) A licensee may refer a person to a health facility, as  
36 defined in Section 1250 of the Health and Safety Code, or to any  
37 facility owned or leased by a health facility, if the recipient of the  
38 referral does not compensate the licensee for the patient referral,  
39 and any equipment lease arrangement between the licensee and~~

1 the referral recipient complies with the requirements of  
2 paragraph (2) of subdivision (b).

3 (2) Nothing shall preclude this subdivision from applying to a  
4 licensee solely because the licensee has an ownership or  
5 leasehold interest in an entire health facility or an entity that  
6 owns or leases an entire health facility.

7 (3) A licensee may refer a person to a health facility for any  
8 service classified as an emergency under subdivision (a) or (b) of  
9 Section 1317.1 of the Health and Safety Code.

10 (4) A licensee may refer a person to any organization that  
11 owns or leases a health facility licensed pursuant to subdivision  
12 (a), (b), or (f) of Section 1250 of the Health and Safety Code if  
13 the licensee is not compensated for the patient referral, the  
14 licensee does not receive any payment from the recipient of the  
15 referral that is based or determined on the number or value of any  
16 patient referrals, and any equipment lease arrangement between  
17 the licensee and the referral recipient complies with the  
18 requirements of paragraph (2) of subdivision (b). For purposes of  
19 this paragraph, the ownership may be through stock or  
20 membership, and may be represented by a parent holding  
21 company that solely owns or controls both the health facility  
22 organization and the affiliated organization.

23 (d) A licensee may refer a person to a nonprofit corporation  
24 that provides physician services pursuant to subdivision (l) of  
25 Section 1206 of the Health and Safety Code if the nonprofit  
26 corporation is controlled through membership by one or more  
27 health facilities or health facility systems and the amount of  
28 compensation or other transfer of funds from the health facility  
29 or nonprofit corporation to the licensee is fixed annually, except  
30 for adjustments caused by physicians joining or leaving the  
31 groups during the year, and is not based on the number of  
32 persons utilizing goods or services specified in Section 650.01.

33 (e) A licensee compensated or employed by a university may  
34 refer a person for a physician service, to any facility owned or  
35 operated by the university, or to another licensee employed by  
36 the university, provided that the facility or university does not  
37 compensate the referring licensee for the patient referral. In the  
38 case of a facility that is totally or partially owned by an entity  
39 other than the university, but that is staffed by university  
40 physicians, those physicians may not refer patients to the facility

1 if the facility compensates the referring physicians for those  
2 referrals.

3 (f) (1) The prohibition of Section 650.01 shall not apply to  
4 any service for a specific patient that is performed within, or  
5 goods that are supplied by, a licensee's office, or the office of a  
6 group practice.

7 For the purposes of this subdivision, a licensee's office or the  
8 office of a group practice shall not include an office arrangement  
9 that meets both of the following requirements:

10 (A) The licensee or group practice contracts with a person or  
11 entity for the provision of Computerized Tomography (CT),  
12 Positron Emission Tomography (PET), and Magnetic Resonance  
13 Imaging (MRI) diagnostic imaging services.

14 (B) The licensee or group practice does not own the equipment  
15 or lease the equipment on a full time basis.

16 (2) Further, the provisions of Section 650.01 shall not alter,  
17 limit, or expand a licensee's ability to deliver, or to direct or  
18 supervise the delivery of, in-office goods or services according to  
19 the laws, rules, and regulations governing his or her scope of  
20 practice.

21 (g) The prohibition of Section 650.01 shall not apply to  
22 cardiac rehabilitation services provided by a licensee or by a  
23 suitably trained individual under the direct or general supervision  
24 of a licensee, if the services are provided to patients meeting the  
25 criteria for Medicare reimbursement for the services.

26 (h) The prohibition of Section 650.01 shall not apply if a  
27 licensee is in the office of a group practice and refers a person for  
28 services or goods specified in Section 650.01 to a multispecialty  
29 clinic, as defined in subdivision (l) of Section 1206 of the Health  
30 and Safety Code.

31 (i) The prohibition of Section 650.01 shall not apply to health  
32 care services provided to an enrollee of a health care service plan  
33 licensed pursuant to the Knox-Keene Health Care Service Plan  
34 Act of 1975 (Chapter 2.2 (commencing with Section 1340) of  
35 Division 2 of the Health and Safety Code).

36 (j) The prohibition of Section 650.01 shall not apply to a  
37 request by a pathologist for clinical diagnostic laboratory tests  
38 and pathological examination services, a request by a radiologist  
39 for diagnostic radiology services, or a request by a radiation  
40 oncologist for radiation therapy if those services are furnished

1 by, or under the supervision of, the pathologist, radiologist, or  
2 radiation oncologist pursuant to a consultation requested by  
3 another physician.

4 (k) This section shall not apply to referrals for services that are  
5 described in and covered by Sections 139.3 and 139.31 of the  
6 Labor Code.

7 (l) This section shall become operative on January 1, 1995.

8 SEC. 2. No reimbursement is required by this act pursuant to  
9 Section 6 of Article XIII B of the California Constitution because  
10 the only costs that may be incurred by a local agency or school  
11 district will be incurred because this act creates a new crime or  
12 infraction, eliminates a crime or infraction, or changes the  
13 penalty for a crime or infraction, within the meaning of Section  
14 17556 of the Government Code, or changes the definition of a  
15 crime within the meaning of Section 6 of Article XIII B of the  
16 California Constitution.