



STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower

The Governor Nelson A. Rockefeller Empire State Plaza

Albany, New York 12237

Barbara A. DeBuono, M.D., M.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

December 18, 1997

Dear

I am responding to your May 30, 1997 and June 18, 1997 letters. My response is limited to whether the arrangement you describe is a violation of Public Health Law (PHL) § 238-a(1)(a) which prohibits referrals by a practitioner to a provider of x-ray services if the practitioner has a financial relationship with the provider.

Facts

An orthopedic surgeon wishes to make referrals for x-ray services to your client, a radiologist. The orthopedist would read the x-rays, which will be performed by a technician employed by the radiologist, and will bill the patient or third party payor for the service. Since you state that the radiologist "will not bill anyone for this service," we conclude that the orthopedist bills for both the technical and professional component of the x-ray service. You also state that "the orthopedic surgeon would pay our client a 'click' fee for the use of the x-ray machine", and that the radiologist "and the orthopedic surgeon have no other relationship."

Question

Does the arrangement between the orthopedist and the radiologist as described above violate PHL § 238-a(1)(a)?

Answer

Yes.

Discussion

PHL § 238-a(1)(a) prohibits referrals by a practitioner to a provider of x-rays services if there is a financial

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relationship between the practitioner and provider. Financial relationship is broadly defined to include "an ownership interest, investment interest or compensation arrangement." See PHL § 238(3). Compensation arrangement is defined as "any arrangement involving any remuneration between a practitioner, or immediate family member, and a health care provider. The term remuneration includes any remuneration, directly or indirectly, overtly or covertly, in cash or in kind." See PHL § 238-a(5). We find that the "click" fee paid by the orthopedist to the radiologist for use of the radiologist's x-ray equipment constitutes a compensation arrangement between the two physicians under the broad statutory definition of that term. We further find that the referring orthopedist is a practitioner within the meaning of the statute [see PHL § 238(11)] and that a referral is being made for x-ray services [see PHL 238-a(6)(a)].

Since there is a financial relationship between the radiologist and the orthopedist, the orthopedist may not refer patients to the radiologist for x-ray services.

I suggest you consult the federal law (42 USC § 1395nn) which is similar but not identical to the New York State statute. You may also want to consult the New York State Insurance Department and any appropriate federal agency with regard to whether it is permissible for a physician who does not perform the technical component of a service to bill a third party payor for that service. You should also review Education Law §§ 6530(18) and (19) and 6531 for possible applicability.

Sincerely,

Harriet S. Bougen
Senior Attorney