

103^D CONGRESS
1ST SESSION

H. R. 3046

To amend the Public Health Service Act to limit the referral by a physician to certain services in which the physician has a financial relationship.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 9, 1993

Mr. WAXMAN (for himself and Mr. STARK) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend the Public Health Service Act to limit the referral by a physician to certain services in 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 “Physician Ownership
5 and Referral Act of 1993”.

6 **SEC. 2. PUBLIC HEALTH SERVICE ACT AMENDMENT.**

7 (a) IN GENERAL.—The Public Health Service Act is
8 amended by adding at the end the following new title:

1 **“TITLE XXVII—LIMITATION ON**
2 **CERTAIN PHYSICIAN REFER-**
3 **RALS**

4 **“SEC. 2701. LIMITATION ON CERTAIN PHYSICIAN REFER-**
5 **RALS.**

6 “(a) PROHIBITION OF CERTAIN REFERRALS.—

7 “(1) IN GENERAL.—Except as provided in sub-
8 section (b), if a physician (or an immediate family
9 member of such physician) has a financial relation-
10 ship with an entity specified in paragraph (2),
11 then—

12 “(A) the physician may not make a refer-
13 ral to the entity for the furnishing of designated
14 health services for which a charge is imposed,
15 and

16 “(B) the entity may not present or cause
17 to be presented a claim or bill to any individual,
18 third party payor, or other entity for designated
19 health services furnished pursuant to a referral
20 prohibited under subparagraph (A).

21 “(2) FINANCIAL RELATIONSHIP SPECIFIED.—

22 For purposes of this section, a financial relationship
23 of a physician (or an immediate family member of
24 such physician) with an entity specified in this para-
25 graph is—

1 “(A) except as provided in subsections (c)
2 and (d), an ownership or investment interest in
3 the entity, or

4 “(B) except as provided in subsection (e),
5 a compensation arrangement (as defined in sub-
6 section (h)(1)) between the physician (or an im-
7 mediate family member of such physician) and
8 the entity.

9 An ownership or investment interest described in
10 subparagraph (A) may be through equity, debt, or
11 other means and includes an interest in an entity
12 that holds an ownership or investment interest in
13 any entity providing the designated health service.

14 “(b) GENERAL EXCEPTIONS TO BOTH OWNERSHIP
15 AND COMPENSATION ARRANGEMENT PROHIBITIONS.—
16 Subsection (a)(1) shall not apply in the following cases:

17 “(1) PHYSICIANS’ SERVICES.—In the case of
18 physicians’ services (as defined in section 1861(q) of
19 the Social Security Act) provided personally by (or
20 under the personal supervision of) another physician
21 in the same group practice (as defined in subsection
22 (h)(4)) as the referring physician.

23 “(2) IN-OFFICE ANCILLARY SERVICES.—In the
24 case of services (other than durable medical equip-

1 ment (excluding infusion pumps) and parenteral and
2 enteral nutrients, equipment, and supplies)—

3 “(A) that are furnished—

4 “(i) personally by the referring physi-
5 cian, personally by a physician who is a
6 member of the same group practice as the
7 referring physician, or personally by indi-
8 viduals who are directly supervised by the
9 physician or by another physician in the
10 group practice, and

11 “(ii)(I) in a building in which the re-
12 ferring physician (or another physician
13 who is a member of the same group prac-
14 tice) furnishes physicians’ services unre-
15 lated to the furnishing of designated health
16 services, or

17 “(II) in the case of a referring physi-
18 cian who is a member of a group practice,
19 in another building which is used by the
20 group practice—

21 “(aa) for the provision of some or
22 all of the group’s clinical laboratory
23 services, or

24 “(bb) for the centralized provi-
25 sion of the group’s designated health

1 services (other than clinical laboratory
2 services),

3 unless the Secretary determines other
4 terms and conditions under which the pro-
5 vision of such services does not present a
6 risk of program or patient abuse, and

7 “(B) that are billed by the physician per-
8 forming or supervising the services, by a group
9 practice of which such physician is a member
10 under a billing number assigned to the group
11 practice, or by an entity that is wholly owned
12 by such physician or such group practice,

13 if the ownership or investment interest in such serv-
14 ices meets such other requirements as the Secretary
15 may impose by regulation as needed to protect
16 against program or patient abuse.

17 “(3) PREPAID PLANS—In the case of services
18 furnished by an organization—

19 “(A) with a contract under section 1876 of
20 the Social Security Act to an individual enrolled
21 with the organization,

22 “(B) described in section 1833(a)(1)(A) of
23 such Act to an individual enrolled with the or-
24 ganization,

1 “(C) receiving payments on a prepaid
2 basis, under a demonstration project under sec-
3 tion 402(a) of the Social Security Amendments
4 of 1967 or under section 222(a) of the Social
5 Security Amendments of 1972, to an individual
6 enrolled with the organization, or

7 “(D) that is a qualified health maintenance
8 organization (within the meaning of section
9 1310(d)) to an individual enrolled with the or-
10 ganization.

11 “(4) OTHER PERMISSIBLE EXCEPTIONS.—In
12 the case of any other financial relationship which the
13 Secretary determines, and specifies in regulations,
14 does not pose a risk of program or patient abuse.

15 “(c) GENERAL EXCEPTION RELATED ONLY TO OWN-
16 ERSHIP OR INVESTMENT PROHIBITION FOR OWNERSHIP
17 IN PUBLICLY TRADED SECURITIES AND MUTUAL
18 FUNDS.—Ownership of the following shall not be consid-
19 ered to be an ownership or investment interest described
20 in subsection (a)(2)(A):

21 “(1) Ownership of investment securities (includ-
22 ing shares or bonds, debentures, notes, or other debt
23 instruments) which may be purchased on terms gen-
24 erally available to the public and which are—

1 “(A)(i) securities listed on the New York
2 Stock Exchange, the American Stock Exchange,
3 or any regional exchange in which quotations
4 are published on a daily basis, or foreign securi-
5 ties listed on a recognized foreign, national, or
6 regional exchange in which quotations are pub-
7 lished on a daily basis, or

8 “(ii) traded under an automated
9 interdealer quotation system operated by the
10 National Association of Securities Dealers, and

11 “(B) in a corporation that had, at the end
12 of the corporation’s most recent fiscal year, or
13 on average during the previous 3 fiscal years,
14 stockholder equity exceeding \$75,000,000.

15 “(2) Ownership of shares in a regulated invest-
16 ment company as defined in section 851(a) of the
17 Internal Revenue Code of 1986, if such company
18 had, at the end of the company’s most recent fiscal
19 year, or on average during the previous 3 fiscal
20 years, total assets exceeding \$75,000,000.

21 “(d) ADDITIONAL EXCEPTIONS RELATED ONLY TO
22 OWNERSHIP OR INVESTMENT PROHIBITION.—The follow-
23 ing, if not otherwise excepted under subsection (b), shall
24 not be considered to be an ownership or investment inter-
25 est described in subsection (a)(2)(A):

1 “(1) HOSPITALS IN PUERTO RICO.—In the case
2 of designated health services provided by a hospital
3 located in Puerto Rico.

4 “(2) RURAL PROVIDER.—In the case of des-
5 ignated health services furnished in a rural area (as
6 defined in section 1886(d)(2)(D) of the Social Secu-
7 rity Act) by an entity, if substantially all of the des-
8 ignated health services furnished by such entity are
9 furnished to individuals residing in such a rural
10 area.

11 “(3) HOSPITAL OWNERSHIP.—In the case of
12 designated health services provided by a hospital
13 (other than a hospital described in paragraph (1))
14 if—

15 “(A) the referring physician is authorized
16 to perform services at the hospital, and

17 “(B) the ownership or investment interest
18 is in the hospital itself (and not merely in a
19 subdivision of the hospital).

20 “(e) EXCEPTIONS RELATING TO OTHER COMPENSA-
21 TION ARRANGEMENTS.—The following shall not be consid-
22 ered to be a compensation arrangement described in sub-
23 section (a)(2)(B):

24 “(1) RENTAL OF OFFICE SPACE; RENTAL OF
25 EQUIPMENT.—

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

3 “(i) the lease is set out in writing,
4 signed by the parties, and specifies the
5 premises covered by the lease,

6 “(ii) the space rented or leased does
7 not exceed that which is reasonable and
8 necessary for the legitimate business pur-
9 poses of the lease or rental and is used ex-
10 clusively by the lessee when being used by
11 the lessee, except that the lessee may make
12 payments for the use of space consisting of
13 common areas if such payments do not ex-
14 ceed the lessee’s pro rata share of expenses
15 for such space based upon the ratio of the
16 space used exclusively by the lessee to the
17 total amount of space (other than common
18 areas) occupied by all persons using such
19 common areas,

20 “(iii) the lease provides for a term of
21 rental or lease for at least 1 year,

22 “(iv) the rental charges over the term
23 of the lease are set in advance, are consist-
24 ent with fair market value, and are not de-
25 termined in a manner that takes into ac-

1 count the volume or value of any referrals
2 or other business generated between the
3 parties,

4 “(v) the lease would be commercially
5 reasonable even if no referrals were made
6 between the parties, and

7 “(vi) the lease meets such other re-
8 quirements as the Secretary may impose
9 by regulation as needed to protect against
10 program or patient abuse.

11 “(B) EQUIPMENT.—Payments made by a
12 lessee of equipment to the lessor of the equip-
13 ment for the use of the equipment if—

14 “(i) the lease is set out in writing,
15 signed by the parties, and specifies the
16 equipment covered by the lease,

17 “(ii) the equipment rented or leased
18 does not exceed that which is reasonable
19 and necessary for the legitimate business
20 purposes of the lease or rental and is used
21 exclusively by the lessee when being used
22 by the lessee,

23 “(iii) the lease provides for a term of
24 rental or lease of at least 1 year,

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

8 “(v) the lease would be commercially
9 reasonable even if no referrals were made
10 between the parties, and

11 “(vi) the lease meets such other re-
12 quirements as the Secretary may impose
13 by regulation as needed to protect against
14 program or patient abuse.

15 “(2) BONA FIDE EMPLOYMENT RELATION-
16 SHIPS.—Any amount paid by an employer to a phy-
17 sician (or an immediate family member of such phy-
18 sician) who has a bona fide employment relationship
19 with the employer for the provision of services if—

20 “(A) the employment is for identifiable
21 services,

22 “(B) the amount of the remuneration
23 under the employment—

24 “(i) is consistent with the fair market
25 value of the services, and

1 “(ii) is not determined in a manner
2 that takes into account (directly or indi-
3 rectly) the volume or value of any referrals
4 by the referring physician,

5 “(C) the remuneration is provided pursu-
6 ant to an agreement which would be commer-
7 cially reasonable even if no referrals were made
8 to the employer, and

9 “(D) the employment meets such other re-
10 quirements as the Secretary may impose by reg-
11 ulation as needed to protect against program or
12 patient abuse.

13 Subparagraph (B)(ii) shall not prohibit the payment
14 of remuneration in the form of a productivity bonus
15 based on services performed personally by the physi-
16 cian (or an immediate family member of such physi-
17 cian).

18 “(3) PERSONAL SERVICE ARRANGEMENTS.—

19 “(A) IN GENERAL.—Remuneration from
20 an entity under an arrangement (including re-
21 muneration for specific physicians’ services fur-
22 nished to a nonprofit blood center) if—

23 “(i) the arrangement is set out in
24 writing, signed by the parties, and specifies
25 the services covered by the arrangement,

1 “(ii) the arrangement covers all of the
2 services to be provided by the physician (or
3 an immediate family member of such phy-
4 sician) to the entity,

5 “(iii) the aggregate services con-
6 tracted for do not exceed those that are
7 reasonable and necessary for the legitimate
8 business purposes of the arrangement,

9 “(iv) the term of the arrangement is
10 for at least 1 year,

11 “(v) the compensation to be paid over
12 the term of the arrangement is set in ad-
13 vance, does not exceed fair market value,
14 and except in the case of a physician in-
15 centive plan described in subparagraph
16 (B), is not determined in a manner that
17 takes into account the volume or value of
18 any referrals or other business generated
19 between the parties,

20 “(vi) the services to be performed
21 under the arrangement do not involve the
22 counseling or promotion or a business ar-
23 rangement or other activity that violates
24 any State or Federal law, and

1 “(vii) the arrangement meets such
2 other requirements as the Secretary may
3 impose by regulation as needed to protect
4 against program or patient abuse.

5 “(B) PHYSICIAN INCENTIVE PLAN EXCEP-
6 TION.—

7 “(i) IN GENERAL.—In the case of a
8 physician incentive plan (as defined in
9 clause (ii)) between a physician and an en-
10 tity, the compensation may be determined
11 in a manner (through a withhold, capita-
12 tion, bonus, or otherwise) that takes into
13 account directly or indirectly the volume or
14 value of any referrals or other business
15 generated between the parties, if the plan
16 meets the following requirements:

17 “(I) No specific payment is made
18 directly or indirectly under the plan to
19 a physician or a physician group as an
20 inducement to reduce or limit medi-
21 cally necessary services provided with
22 respect to a specific individual en-
23 rolled with the entity.

24 “(II) In the case of a plan that
25 places a physician or a physician

1 group at substantial financial risk as
2 determined by the Secretary pursuant
3 to section 1876(i)(8)(A)(ii) of the So-
4 cial Security Act, the plan complies
5 with any requirements the Secretary
6 may impose pursuant to such section.

7 “(III) Upon request by the Sec-
8 retary, the entity provides the Sec-
9 retary with access to descriptive infor-
10 mation regarding the plan, in order to
11 permit the Secretary to determine
12 whether the plan is in compliance with
13 the requirements of this clause.

14 “(ii) PHYSICIAN INCENTIVE PLAN DE-
15 FINED.—For purposes of this subpara-
16 graph, the term ‘physician incentive plan’
17 means any compensation arrangement be-
18 tween an entity and a physician or physi-
19 cian group that may directly or indirectly
20 have the effect of reducing or limiting serv-
21 ices provided with respect to individuals
22 enrolled with the entity.

23 “(4) REMUNERATION UNRELATED TO THE PRO-
24 VISION OF DESIGNATED HEALTH SERVICES.—In the
25 case of remuneration which is provided by a hospital

1 to a physician if such remuneration does not relate
2 to the provision of designated health services.

3 “(5) PHYSICIAN RECRUITMENT.—In the case of
4 remuneration which is provided by a hospital to a
5 physician to induce the physician to relocate to the
6 geographic area served by the hospital in order to be
7 a member of the medical staff of the hospital, if—

8 “(A) the physician is not required to refer
9 patients to the hospital,

10 “(B) the amount of the remuneration
11 under the arrangement is not determined in a
12 manner that takes into account (directly or in-
13 directly) the volume or value of any referrals by
14 the referring physician, and

15 “(C) the arrangement meets such other re-
16 quirements as the Secretary may impose by reg-
17 ulation as needed to protect against program or
18 patient abuse.

19 “(6) ISOLATED TRANSACTIONS.—In the case of
20 an isolated financial transaction, such as a one-time
21 sale of property or practice, if—

22 “(A) the requirements described in sub-
23 paragraphs (B) and (C) of paragraph (2) are
24 met with respect to the entity in the same man-
25 ner as they apply to an employer, and

1 “(B) the transaction meets such other re-
2 quirements as the Secretary may impose by reg-
3 ulation as needed to protect against program or
4 patient abuse.

5 “(7) CERTAIN GROUP PRACTICE ARRANGE-
6 MENTS WITH A HOSPITAL.—

7 “(A) IN GENERAL.—An arrangement be-
8 tween a hospital and a group under which des-
9 ignated health services are provided by the
10 group but are billed by the hospital if—

11 “(i) with respect to services provided
12 to an inpatient of the hospital, the ar-
13 rangement is pursuant to the provision of
14 inpatient hospital services under section
15 1861(b)(3) of the Social Security Act,

16 “(ii) the arrangement began before
17 December 19, 1989, and has continued in
18 effect without interruption since such date,

19 “(iii) with respect to the designated
20 health services covered under the arrange-
21 ment, substantially all of such services fur-
22 nished to patients of the hospital are fur-
23 nished by the group under the arrange-
24 ment,

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

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

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

18 “(vii) the arrangement between the
19 parties meets such other requirements as
20 the Secretary may impose by regulation as
21 needed to protect against program or pa-
22 tient abuse.

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

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

3 “(B) to an entity as compensation for
4 other items or services if the items or services
5 are furnished at a price that is consistent with
6 fair market value.

7 “(f) REPORTING REQUIREMENTS.—Each entity pro-
8 viding covered items or services for which a charge is im-
9 posed shall provide the Secretary with the information
10 concerning the entity’s ownership arrangements, includ-
11 ing—

12 “(1) the covered items and services provided by
13 the entity, and

14 “(2) the names and unique physician identifica-
15 tion numbers (used under title XVIII of the Social
16 Security Act) of all physicians with an ownership or
17 investment interest (as described in subsection
18 (a)(2)(A)) in the entity, or whose immediate rel-
19 atives have such an ownership or investment.

20 Such information shall be provided in such form, manner,
21 and at such times as the Secretary shall specify, Such in-
22 formation shall first be provided not later than December
23 31, 1994. The requirement of this subsection shall not
24 apply to covered items and services furnished outside the
25 United States or to entities which the Secretary deter-

1 mines furnishes services for which a charge is imposed
2 very infrequently.

3 “(g) SANCTIONS.—

4 “(1) NO LIABILITY FOR PAYMENT.—No individ-
5 ual, third party payer, or other entity is liable for
6 payment for designated health services for which a
7 claim is presented in violation of subsection
8 (a)(1)(B).

9 “(2) REQUIRING REFUNDS FOR CERTAIN
10 CLAIMS.—If a person collects any amounts that were
11 billed in violation of subsection (a)(1), the person
12 shall be liable to the individual for, and shall refund
13 on a timely basis to the individual, any amounts so
14 collected.

15 “(3) CIVIL MONEY PENALTY AND EXCLUSION
16 FOR IMPROPER CLAIMS.—Any person that presents
17 or causes to be presented a bill or a claim for a serv-
18 ice that such person knows or should know is for a
19 service for which payment may not be made under
20 paragraph (1) or for which a refund has not been
21 made under paragraph (2) shall be subject to a civil
22 money penalty of not more than \$15,000 for each
23 such service.

24 “(4) CIVIL MONEY PENALTY AND EXCLUSION
25 FOR CIRCUMVENTION SCHEMES.—Any physician or

1 other entity that enters into an arrangement or
2 scheme (such as a cross-referral arrangement) which
3 the physician or entity knows or should know has as
4 a principal purpose of assuring referrals by the phy-
5 sician to a particular entity which, if the physician
6 directly made referrals to such entity, would be in
7 violation of this section, shall be subject to a civil
8 money penalty of not more than \$100,000 for each
9 such arrangement or scheme.

10 “(5) FAILURE TO REPORT INFORMATION.—Any
11 person who is required, but fails, to meet a reporting
12 requirement of subsection (f) if subject to a civil
13 money penalty of not more than \$10,000 for each
14 day for which reporting is required to have been
15 made.

16 “(6) CIVIL MONEY PENALTY PROCEDURES.—
17 The provisions of section 1128A of the Social Secu-
18 rity Act (other than the first sentence of subsection
19 (a) and other than subsection (b)) shall apply to a
20 civil money penalty under this subsection in the
21 same manner as such provisions apply to a penalty
22 or proceeding under section 1128A(a) of such Act.

23 “(h) DEFINITIONS AND SPECIAL RULES.—For pur-
24 poses of this section:

1 “(1) COMPENSATION ARRANGEMENT; REMU-
2 NERATION.—(A) The term ‘compensation arrange-
3 ment’ means any arrangement involving any remu-
4 neration between a physician (or an immediate fam-
5 ily member of such physician) and an entity other
6 than an arrangement involving only remuneration
7 described in subparagraph (C).

8 “(B) The term ‘remuneration’ includes any re-
9 muneration, directly or indirectly, overtly or covertly,
10 in cash or in kind.

11 “(C) Remuneration described in this subpara-
12 graph is any remuneration consisting of any of the
13 following:

14 “(i) The forgiveness of amounts owed for
15 inaccurate tests or procedures, mistakenly per-
16 formed tests or procedures, or the correction of
17 minor billing errors.

18 “(ii) The provision of items, devices, or
19 supplies that are used solely to—

20 “(I) collect, transport, process, or
21 store specimens for the entity providing
22 the item, device, or supply, or

23 “(II) order or communicate the re-
24 sults of tests or procedures for such entity.

1 “(iii) A payment made by an insurer or a
2 self-insured plan to a physician to satisfy a
3 claim, submitted on a fee for service basis, for
4 the furnishing of health services by that physi-
5 cian to an individual who is covered by a policy
6 with the insurer or by the self-insured plan,
7 if—

8 “(I) the health services are not fur-
9 nished, and the payment is not made, pur-
10 suant to a contract or other arrangement
11 between the insurer or the plan and the
12 physician,

13 “(II) the payment is made to the phy-
14 sician on behalf of the covered individual
15 and would otherwise be made directly to
16 such individual,

17 “(III) the amount of the payment is
18 set in advance, does not exceed fair market
19 value, and is not determined in a manner
20 that takes into account directly or indi-
21 rectly the volume or value of any referrals,
22 and

23 “(IV) the payment meets such other
24 requirements as the Secretary may impose

1 by regulation as needed to protect against
2 program or patient abuse.

3 “(2) EMPLOYEE.—An individual is considered
4 to be ‘employed by’ or an ‘employee’ of an entity if
5 the individual would be considered to be an employee
6 of the entity under the usual common law rules ap-
7 plicable in determining the employer-employee rela-
8 tionship (as applied for purposes of section
9 3121(d)(2) of the Internal Revenue Code of 1986).

10 “(3) FAIR MARKET VALUE.—The term ‘fair
11 market value’ means the value in arms length trans-
12 actions, consistent with the general market value,
13 and, with respect to rentals or leases, the value of
14 rental property for general commercial purposes (not
15 taking into account its intended use) and, in the
16 case of a lease of space, not adjusted to reflect the
17 additional value the prospective lessee or lessor
18 would attribute to the proximity or convenience to
19 the lessor where the lessor is a potential source of
20 patient referrals to the lessee.

21 “(4) GROUP PRACTICE.—

22 “(A) DEFINITION OF GROUP PRACTICE.—
23 The term ‘group practice’ means a group of 2
24 or more physicians legally organized as a part-
25 nership, professional corporation, foundation,

1 not-for-profit corporation, faculty practice plan,
2 or similar association—

3 “(i) in which each physician who is a
4 member of the group provides substantially
5 the full range of services which the physi-
6 cian routinely provides, including medical
7 care, consultation, diagnosis, or treatment,
8 through the joint use of shared office
9 space, facilities, equipment and personnel,

10 “(ii) for which substantially all of the
11 services of the physicians who are members
12 of the group are provided through the
13 group and are billed under a billing num-
14 ber assigned to the group and amounts so
15 received are treated as receipts of the
16 group,

17 “(iii) in which the overhead expenses
18 of and the income from the practice are
19 distributed in accordance with methods
20 previously determined,

21 “(iv) except as provided in subpara-
22 graph (B)(i), in which no physician who is
23 a member of the group directly or indi-
24 rectly receives compensation based on the

1 volume or value of referrals by the physi-
2 cian,

3 “(v) in which members of the group
4 personally conduct no less than 75 percent
5 of the physician-patient encounters of the
6 group practice, and

7 “(vi) which meets such other stand-
8 ards as the Secretary may impose by regu-
9 lation.

10 “(B) SPECIAL RULES.—

11 “(i) PROFITS AND PRODUCTIVITY BO-
12 NUSES.—A physician in a group practice
13 may be paid a share of overall profits of
14 the group, or a productivity bonus based
15 on services personally performed or serv-
16 ices incident to such personally performed
17 services, so long as the share or bonus is
18 not determined in any manner which is di-
19 rectly related to the volume or value of re-
20 ferrals by such physician.

21 “(ii) FACULTY PRACTICE PLANS.—In
22 the case of a faculty practice plan associ-
23 ated with a hospital, institution of higher
24 education, or medical school with an ap-
25 proved medical residency training program

1 in which physician members may provide a
2 variety of different specialty services and
3 provide professional services both within
4 and outside the group, as well as perform
5 other tasks such as research, subparagraph
6 (A) shall be applied only with respect to
7 the services provided within the faculty
8 practice plan.

9 “(5) REFERRAL; REFERRING PHYSICIAN.—

10 “(A) PHYSICIANS’ SERVICES.—Except as
11 provided in subparagraph (C), in the case of an
12 item or service for which payment may be made
13 under part B, the request by a physician for the
14 item or service, including the request by a phy-
15 sician for a consultation with another physician
16 (and any test or procedure ordered by, or to be
17 performed by (or under the supervision of) that
18 other physician), constitutes a ‘referral’ by a
19 ‘referring physician’.

20 “(B) OTHER ITEMS.—Except as provided
21 in subparagraph (C), the request or establish-
22 ment of a plan of care by a physician which in-
23 cludes the provision of the designated health
24 service constitutes a ‘referral’ by a ‘referring
25 physician’.

1 “(C) CLARIFICATION RESPECTING CER-
2 TAIN SERVICES INTEGRAL TO A CONSULTATION
3 BY CERTAIN SPECIALISTS.—A request by a pa-
4 thologist for clinical diagnostic laboratory tests
5 and pathological examination services, a request
6 by a radiologist for diagnostic radiology serv-
7 ices, and a request by a radiation oncologist for
8 radiation therapy, if such services are furnished
9 by (or under the supervision of) such patholo-
10 gist, radiologist, or radiation oncologist pursu-
11 ant to a consultation requested by another phy-
12 sician does not constitute a ‘referral’ by a ‘re-
13 ferring physician’.

14 “(6) DESIGNATED HEALTH SERVICES.—The
15 term ‘designated health services’ means any of the
16 following items or services:

17 “(A) Clinical laboratory services.

18 “(B) Physical therapy services.

19 “(C) Occupational therapy services.

20 “(D) Radiology or other diagnostic serv-
21 ices.

22 “(E) Radiation therapy services.

23 “(F) Durable medical equipment.

24 “(G) Parenteral and enteral nutrients,
25 equipment, and supplies.

1 “(H) Prosthetics, orthotics, and prosthetic
2 devices.

3 “(I) Home health services.

4 “(J) Outpatient prescription drugs.

5 “(K) Inpatient and outpatient hospital
6 services.”.

7 (b) EFFECTIVE DATE.—The amendment made by
8 subsection (a) shall apply to referrals made on or after
9 January 1, 1995.

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