

9-1-1994

PROFESSIONS AND BUSINESSES Patient Self-Referral: Expand Definition of Designated Health Services to Include Certain Services

Laura Story

Follow this and additional works at: <https://readingroom.law.gsu.edu/gsulr>

 Part of the [Law Commons](#)

Recommended Citation

Laura Story, *PROFESSIONS AND BUSINESSES Patient Self-Referral: Expand Definition of Designated Health Services to Include Certain Services*, 11 GA. ST. U. L. REV. (1994).

Available at: <https://readingroom.law.gsu.edu/gsulr/vol11/iss1/35>

This Peach Sheet is brought to you for free and open access by the Publications at Reading Room. It has been accepted for inclusion in Georgia State University Law Review by an authorized editor of Reading Room. For more information, please contact mbutler@gsu.edu.

PROFESSIONS AND BUSINESSES

Patient Self-Referral: Expand Definition of Designated Health Services to Include Certain Services

CODE SECTION: O.C.G.A. § 43-1B-3 (amended)
BILL NUMBER: SB 565
ACT NUMBER: 891
SUMMARY: The Act modifies the definition of the term "designated health services" within the Patient Self-Referral Act of 1993 to include durable medical equipment, home infusion therapy services, and home health care services. A transition period extending until January 1, 1995 is provided for those investment interests acquired before July 1, 1994, during which time a health care provider may make an otherwise prohibited referral.
EFFECTIVE DATE: July 1, 1994¹

History

The Georgia General Assembly passed the Patient Self-Referral Act of 1993 to prohibit health care providers from referring patients for designated health care services to facilities in which the health care provider has an investment interest.² Under the 1993 Act, designated health services included clinical laboratory services, physical therapy, rehabilitation, diagnostic imaging, pharmaceutical services, and outpatient surgical services.³ This list did not include one of the fastest growing segments of the health care industry, home infusion and home health care services.⁴ Recent advances in medical technology have made home treatment available for illnesses, such as AIDS and cancer, once treated only in the hospital environment.⁵ In the 1980s, companies providing these services flourished, but in the 1990s, these

1. O.C.G.A. § 43-18-4, prohibiting patient referrals, shall not affect investors subject to this Act until January 1, 1995 so long as the investment interest was acquired before July 1, 1994. 1994 Ga. Laws 530, § 2.

2. 1993 Ga. Laws 521 (formerly found at O.C.G.A. §§ 43-1B-1 to -8 (Supp. 1993)); see also *Legislative Review*, 10 GA. ST. U. L. REV. 192 (1993).

3. 1993 Ga. Laws 521 (formerly found at O.C.G.A. § 43-1B-3(2) (Supp. 1993)).

4. See 1993 Ga. Laws 521; Michael Abramowitz, *Paying the Price for Home Care Costs Are Lower Than at Hospitals, but Lack of Regulation Raises Concerns*, WASH. POST, Oct. 6, 1991, at H1; Steve Sternberg, *Special Report RX for Profit: The Story of T2 Medical*, ATLANTA CONST., Dec. 13, 1992, at A1.

5. Abramowitz, *supra* note 3; Sternberg, *supra* note 3.

companies attracted criticism and controversy for recruiting doctors to become company investors or consultants in an effort to increase lucrative patient referrals.⁶ With the support of the AIDS Survival Project, Senator Ronald Slotin made an unsuccessful attempt to add these services to the bill by floor amendment.⁷ During the next legislative session, Senator Slotin and the AIDS Survival Project met again, and Senator Slotin reintroduced the amendment.⁸

SB 565

The Act amends Code section 43-1B-3 by changing the definition of the term "designated health services."⁹ This change is an effort to cover health services not covered by the original version of the Patient Self-Referral Act of 1993.¹⁰ The Act adds three services to those services already enumerated in the definition of "designated health services": durable medical equipment, home infusion therapy services (including related pharmaceutical and equipment), and home health care services.¹¹ This expansion of the designated health services list was intended to inform consumers of the options available when choosing home infusion and home health care companies¹² and to prevent a doctor's financial concerns from potentially influencing treatment choices.¹³ A health care provider who has acquired an investment interest in one of these services before July 1, 1994 may continue to refer patients to the facility until January 1, 1995.¹⁴

6. Abramowitz, *supra* note 3; see also Sternberg, *supra* note 3; Steve Sternberg, *T2 Recruited Doctors to Get Lucrative Referrals, Memo Indicates Company Draws Scrutiny in Congress*, ATLANTA CONST., Apr. 22, 1993, at D1.

7. Telephone Interview with Mark King of the AIDS Survival Project (May 4, 1994) [hereinafter King Interview]. On the day Senator Slotin prepared to introduce the amendment on the floor of the Senate, a national AIDS coalition heavily funded by Atlanta-based T2 Medical, one of the largest physician-owned home infusion companies in the country, issued a press release to all Georgia state senators urging them not to add the additional language to the bill. The resulting confusion caused the amendment to fail. *Id.*

8. Telephone Interview with Sen. Ronald Slotin, Senate District No. 39 (May 3, 1994) [hereinafter Slotin Interview]. An investigative report by Dale Russell of Channel 5 helped call attention to the need for the amendment. *Id.*

9. O.C.G.A. § 43-1B-3(2) (1994).

10. Slotin Interview, *supra* note 8. The failure to include these services was an oversight of which the legislature did not become aware until it was too late in the legislative session. *Id.*

11. O.C.G.A. § 43-1B-3(2) (1994).

12. Slotin Interview, *supra* note 8. Many patients were not given options by their doctor and instead were automatically referred to the companies in which the doctor had invested. These companies often charged expensive fees and caused the patient to "cap out" on their insurance sooner. King Interview, *supra* note 7.

13. Slotin Interview, *supra* note 8.

14. 1994 Ga. Laws 530, § 2.

The bill, as introduced, added definitions of the terms "compensation agreement" and "office practice" to Code section 43-1B-3.¹⁵ The term "compensation agreement" addressed any remuneration arrangements not covered by the term "investment interest" as defined in the Patient Self-Referral Act of 1993.¹⁶ However, the Senate Committee on Health and Human Services, in a substitute bill, removed this language because it was difficult to define.¹⁷ The term "office practice," defined as facilities in which the health care provider personally provides services "on an ongoing basis,"¹⁸ was added to expand the exception for referrals made within a group practice to include those made within the health care provider's own practice.¹⁹ This language was also deleted from the Senate Committee substitute because it did not pertain to the main goals of the bill and became too confusing.²⁰ The Senate Committee substitute passed the General Assembly with an attached House floor amendment.²¹ This amendment clarified that the effective date of the designated health services provision added by SB 565 was not to affect the effective date of those designated health services already contained in the Patient Self-Referral Act of 1993.²²

Laura Story

15. HB 565, as introduced, 1994 Ga. Gen. Assem.

16. *Id.*; see O.C.G.A. § 43-18-3(8) (Supp. 1993).

17. Slotin Interview, *supra* note 8.

18. SB 565, as introduced, 1994 Ga. Gen. Assem.

19. Slotin Interview, *supra* note 8.

20. *Id.*

21. SB 565 (HFA), 1994 Ga. Gen. Assem.

22. See 1994 Ga. Laws 530, § 2.