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State of Minnesota  
**HOUSE OF REPRESENTATIVES**

EIGHTY-SIXTH  
SESSION

**HOUSE FILE No. 1736**

March 16, 2009

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The bill was read for the first time and referred to the Committee on Health Care and Human Services Policy and Oversight

1.1 A bill for an act  
1.2 relating to health; prohibiting certain provider conflicts of interest; providing  
1.3 criminal and civil penalties; amending Minnesota Statutes 2008, section 62R.03,  
1.4 subdivision 3; proposing coding for new law in Minnesota Statutes, chapter 62J;  
1.5 repealing Minnesota Statutes 2008, sections 13.717, subdivision 3; 62J.23.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. **[62J.231] MEDICAL PROVIDER KICKBACKS.**

1.8 Subdivision 1. **Prohibitions.** It is unlawful for any person to:

1.9 (1) knowingly and intentionally solicit or receive any remuneration, including any  
1.10 kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in kind:

1.11 (i) in return for referring an individual to a person for the furnishing or arranging for  
1.12 the furnishing of any health care related item or service; or

1.13 (ii) in return for purchasing, leasing, ordering, or arranging for or recommending  
1.14 purchasing, leasing, or ordering any health care related good, facility, service, or item;

1.15 (2) knowingly and intentionally offer or pay any remuneration, including any  
1.16 kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in kind, to  
1.17 any person to induce the person:

1.18 (i) to refer an individual to a person for the furnishing or arranging for the furnishing  
1.19 of any health care related item or service; or

1.20 (ii) to purchase, lease, order, or arrange for or recommend purchasing, leasing, or  
1.21 ordering any health care related good, facility, service, or item; or

1.22 (3) issue a receipt or invoice for medical goods or services containing a false or  
1.23 misleading statement or make any other misrepresentation or omission with the intent to  
1.24 conceal the existence of any kickback, bribe, or rebate.

2.1 Subd. 2. **Exceptions.** The following are not prohibited under subdivision 1, clause  
2.2 (1) or (2):

2.3 (1) exempt conduct set forth in safe harbor regulations in Code of Federal  
2.4 Regulations, title 42, section 1001.952, according to United States Code, title 42, section  
2.5 1320a-7b, paragraph (b), clause (3);

2.6 (2) rebates paid directly to a consumer in connection with the purchase of  
2.7 prescription drugs prescribed to that consumer, so long as the rebates otherwise comport  
2.8 with the requirements of state and federal law and the rebates:

2.9 (i) are not paid to consumers who are participating in any state or federal health  
2.10 care program; and

2.11 (ii) do not exceed the amount paid directly by the consumer for the drug; and

2.12 (3) prescription drug samples provided to a medical provider, which the medical  
2.13 provider gives free of charge to a patient, provided that the samples are distributed and  
2.14 tracked according to state and federal law and drug manufacturers account for the samples  
2.15 in their price reporting to the federal Medicare program and state Medicaid programs.

2.16 Subd. 3. **Definitions.** As used in this section, "person" means any individual,  
2.17 corporation, firm, partnership, incorporated and unincorporated association, or any other  
2.18 legal, professional, or commercial entity.

2.19 Subd. 4. **Criminal penalty.** A person who violates subdivision 1 is guilty of a  
2.20 felony and may be fined not more than \$25,000 or imprisoned for not more than five years.  
2.21 A prosecution for violation of this section may be brought by the Office of the Attorney  
2.22 General or any county attorney's office.

2.23 Subd. 5. **Civil remedy; commissioner of health.** The commissioner of health  
2.24 may investigate any alleged violation of subdivision 1 and may assess a civil fine  
2.25 against a person who the commissioner determines violates subdivision 1. The amount  
2.26 of the fine is \$1,000 per violation or 110 percent of the estimated financial benefit that  
2.27 the person realized as a result of the prohibited relationship, whichever is greater. The  
2.28 commissioner's investigatory powers under this section include, but are not limited to,  
2.29 the authority to issue subpoenas to require the attendance and testimony of witnesses and  
2.30 the production of any documents or other information relevant to the investigation. The  
2.31 subpoenas may be served upon any person anywhere in the state by any person authorized  
2.32 to serve subpoenas or other processes in civil actions of the district courts. If a person  
2.33 does not comply with the subpoena, the commissioner may apply to the district court in  
2.34 any district and the court shall order the person to comply with the subpoena.

2.35 Subd. 6. **Civil remedy; attorney general.** The attorney general may investigate any  
2.36 alleged violation of subdivision 1 and, having reasonable cause to believe a violation is

3.1 imminent, is occurring, or has occurred, the attorney general may institute a court action  
3.2 seeking appropriate relief. The investigatory authority of the attorney general under this  
3.3 section shall include, but not be limited to, the authority provided in section 8.31. In  
3.4 any civil action brought by the attorney general under this section, the court may award  
3.5 injunctive relief, damages, costs of investigation, reasonable attorney fees, and equitable  
3.6 relief, including, but not limited to, disgorgement. The attorney general may also sue for  
3.7 and recover for the state, from any person who is found to have violated this section, a  
3.8 civil penalty in an amount to be determined by the court, not in excess of \$25,000 for  
3.9 each illegal transaction.

3.10 Subd. 7. **Audits of exempt providers.** The commissioner of health may audit the  
3.11 referral patterns of providers that qualify for exceptions under the federal Stark Law,  
3.12 United States Code, title 42, section 1395nn. The commissioner has access to provider  
3.13 records according to section 144.99, subdivision 2. The commissioner shall report to  
3.14 the legislature any audit results that reveal a pattern of referrals by a provider for the  
3.15 furnishing of health services to an entity with which the provider has a direct or indirect  
3.16 financial relationship.

3.17 Sec. 2. Minnesota Statutes 2008, section 62R.03, subdivision 3, is amended to read:

3.18 Subd. 3. **Health provider cooperatives.** A health provider cooperative shall not  
3.19 be considered a mutual insurance company under chapter 60A, a health maintenance  
3.20 organization under chapter 62D, a nonprofit health services corporation under chapter  
3.21 62C, or a community integrated service network under chapter 62N. A health provider  
3.22 network shall not be considered to violate any limitations on the corporate practice of  
3.23 medicine. Health care service contracts under section 62R.06 shall not be considered to  
3.24 violate section ~~62J.23~~ 62J.231.

3.25 Sec. 3. **REPEALER.**

3.26 Minnesota Statutes 2008, sections 13.717, subdivision 3; and 62J.23, are repealed.

**13.717 INSURANCE; HEALTH CARE COST CONTAINMENT DATA CODED ELSEWHERE.**

Subd. 3. **Provider conflicts of interest.** Certain data in transition plans submitted by providers to comply with section 62J.23, subdivision 2, on conflicts of interest are classified under that section.

**62J.23 PROVIDER CONFLICTS OF INTEREST.**

Subdivision 1. **Rules prohibiting conflicts of interest.** The commissioner of health shall adopt rules restricting financial relationships or payment arrangements involving health care providers under which a person benefits financially by referring a patient to another person, recommending another person, or furnishing or recommending an item or service. The rules must be compatible with, and no less restrictive than, the federal Medicare antikickback statute, in section 1128B(b) of the Social Security Act, United States Code, title 42, section 1320a-7b(b), and regulations adopted under it. However, the commissioner's rules may be more restrictive than the federal law and regulations and may apply to additional provider groups and business and professional arrangements. When the state rules restrict an arrangement or relationship that is permissible under federal laws and regulations, including an arrangement or relationship expressly permitted under the federal safe harbor regulations, the fact that the state requirement is more restrictive than federal requirements must be clearly stated in the rule.

Subd. 2. **Restrictions.** (a) From July 1, 1992, until rules are adopted by the commissioner under this section, the restrictions in the federal Medicare antikickback statutes in section 1128B(b) of the Social Security Act, United States Code, title 42, section 1320a-7b(b), and rules adopted under the federal statutes, apply to all persons in the state, regardless of whether the person participates in any state health care program.

(b) Nothing in paragraph (a) shall be construed to prohibit an individual from receiving a discount or other reduction in price or a limited-time free supply or samples of a prescription drug, medical supply, or medical equipment offered by a pharmaceutical manufacturer, medical supply or device manufacturer, health plan company, or pharmacy benefit manager, so long as:

(1) the discount or reduction in price is provided to the individual in connection with the purchase of a prescription drug, medical supply, or medical equipment prescribed for that individual;

(2) it otherwise complies with the requirements of state and federal law applicable to enrollees of state and federal public health care programs;

(3) the discount or reduction in price does not exceed the amount paid directly by the individual for the prescription drug, medical supply, or medical equipment; and

(4) the limited-time free supply or samples are provided by a physician or pharmacist, as provided by the federal Prescription Drug Marketing Act.

(c) No benefit, reward, remuneration, or incentive for continued product use may be provided to an individual or an individual's family by a pharmaceutical manufacturer, medical supply or device manufacturer, or pharmacy benefit manager, except that this prohibition does not apply to:

(1) activities permitted under paragraph (b);

(2) a pharmaceutical manufacturer, medical supply or device manufacturer, health plan company, or pharmacy benefit manager providing to a patient, at a discount or reduced price or free of charge, ancillary products necessary for treatment of the medical condition for which the prescription drug, medical supply, or medical equipment was prescribed or provided; and

(3) a pharmaceutical manufacturer, medical supply or device manufacturer, health plan company, or pharmacy benefit manager providing to a patient a trinket or memento of insignificant value.

(d) Nothing in this subdivision shall be construed to prohibit a health plan company from offering a tiered formulary with different co-payment or cost-sharing amounts for different drugs.

Subd. 3. **Penalty.** The commissioner may assess a fine against a person who violates this section. The amount of the fine is \$1,000 or 110 percent of the estimated financial benefit that the person realized as a result of the prohibited financial arrangement or payment relationship, whichever is greater. A person who is in compliance with a transition plan approved by the commissioner under subdivision 2, or who is making a good faith effort to obtain the commissioner's approval of a transition plan, is not in violation of this section.

Subd. 4. **Chapter 62N networks.** (a) The legislature finds that the formation and operation of community integrated service networks will accomplish the purpose of the federal

APPENDIX

Repealed Minnesota Statutes: 09-3111

Medicare antikickback statute, which is to reduce the overutilization and overcharging that may result from inappropriate provider incentives. Accordingly, it is the public policy of the state of Minnesota to support the development of community integrated service networks. The legislature finds that the federal Medicare antikickback laws should not be interpreted to interfere with the development of community integrated service networks or to impose liability for arrangements between an integrated service network or a community integrated service network and its participating entities.

(b) An arrangement between a community integrated service network and any or all of its participating entities is not subject to liability under subdivisions 1 and 2.

**Subd. 5. Audits of exempt providers.** The commissioner may audit the referral patterns of providers that qualify for exceptions under the federal Stark Law, United States Code, title 42, section 1395nn. The commissioner has access to provider records according to section 144.99, subdivision 2. The commissioner shall report to the legislature any audit results that reveal a pattern of referrals by a provider for the furnishing of health services to an entity with which the provider has a direct or indirect financial relationship.