

### § 411.353

compensation, must be made available to the Secretary upon request.

[66 FR 956, Jan. 4, 2001]

### § 411.353 Prohibition on certain referrals by physicians and limitations on billing.

(a) *Prohibition on referrals.* Except as provided in this subpart, a physician who has a direct or indirect financial relationship with an entity, or who has an immediate family member who has a direct or indirect financial relationship with the entity, may not make a referral to that entity for the furnishing of DHS for which payment otherwise may be made under Medicare. A physician's prohibited financial relationship with an entity that furnishes DHS is not imputed to his or her group practice or its members or its staff; however, a referral made by a physician's group practice, its members, or its staff may be imputed to the physician, if the physician directs the group practice, its members, or its staff to make the referral or if the physician controls referrals made by his or her group practice, its members, or its staff.

(b) *Limitations on billing.* An entity that furnishes DHS pursuant to a referral that is prohibited by paragraph (a) of this section may not present or cause to be presented a claim or bill to the Medicare program or to any individual, third party payer, or other entity for the DHS performed pursuant to the prohibited referral.

(c) *Denial of payment.* Except as provided in paragraph (e) of this section, no Medicare payment may be made for a designated health service that is furnished pursuant to a prohibited referral.

(d) *Refunds.* An entity that collects payment for a designated health service that was performed under a prohibited referral must refund all collected amounts on a timely basis, as defined in § 1003.101 of this title.

(e) *Exception for certain entities.* Payment may be made to an entity that submits a claim for a designated health service if—

(1) The entity did not have actual knowledge of, and did not act in reckless disregard or deliberate ignorance of, the identity of the physician who

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made the referral of the designated health service to the entity; and

(2) The claim otherwise complies with all applicable Federal laws, rules, and regulations.

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### § 411.354 Financial relationship, compensation, and ownership or investment interest.

(a) *Financial relationships.* (1) *Financial relationship* means—

(i) A direct or indirect ownership or investment interest (as defined in paragraph (b) of this section) in any entity that furnishes DHS; or

(ii) A direct or indirect compensation arrangement (as defined in paragraph (c) of this section) with an entity that furnishes DHS.

(2) A *direct* financial relationship exists if remuneration passes between the referring physician (or a member of his or her immediate family) and the entity furnishing DHS without any intervening persons or entities (not including an agent of the physician, the immediate family member, or the entity furnishing DHS).

(3) An *indirect* financial relationship exists under the conditions described in paragraphs (b)(5) and (c)(2) of this section.

(b) *Ownership or investment interest.* An ownership or investment interest may be through equity, debt, or other means, and includes an interest in an entity that holds an ownership or investment interest in any entity that furnishes DHS.

(1) An ownership or investment interest includes, but is not limited to, stock, partnership shares, limited liability company memberships, as well as loans, bonds, or other financial instruments that are secured with an entity's property or revenue or a portion of that property or revenue.

(2) An ownership or investment interest in a subsidiary company is neither an ownership or investment interest in the parent company, nor in any other subsidiary of the parent, unless the subsidiary company itself has an ownership or investment interest in the parent or such other subsidiaries. It may, however, be part of an indirect financial relationship.