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Bulletin 17-04

Date: May 19, 2017

To: Health Care Entities and Health Care Practitioners

Re: Senate Bill 369 (Chapter 226, 2017 Acts) – Maryland Patient Referral Law – Compensation Arrangement Under Federally Approved Programs and Models

Section 15-143 Participation Agreement Review:

The purpose of this Bulletin is to advise health care entities and health care practitioners (collectively referred to as “Parties”) of a new law affecting certain compensation arrangements between the Parties. This past legislative session, the General Assembly enacted Senate Bill 369. This bill amended the patient referral law found in § 1-302 of the Health Occupations Article, Annotated Code of Maryland. With certain exemptions listed in § 1-302 (d)(1)-(11), current law prohibits a health care practitioner from referring a patient, or directing an employee under contract with the health care practitioner to refer a patient, to a health care entity in which the practitioner or an immediate family member owns a beneficial interest or has a compensation arrangement.

Effective June 1, 2017, § 1-302(d)(12) creates a new exemption for compensation arrangements funded by or paid under certain types of accountable care organization models authorized under 42 U.S.C. § 1395J and 42 U.S.C. § 1315A, or a model, including an alternative payment model, (collectively referred to as “Models”) approved by the Federal Centers for Medicare and Medicaid Services (“New Exemption”). The New Exemption, however, is subject to certain limitations set forth in § 1-302(f). Among other things, Senate Bill 369 establishes a procedure for the Parties to submit a Participation Agreement, as defined in new § 15-143(a) of the Insurance Article, to the Maryland Insurance Commissioner (“Commissioner”) for review to ensure that the compensation arrangement, funded by or paid under one of the above-referenced Models, does not constitute the business of insurance and does not violate the Insurance Article or a regulation adopted under the Insurance Article.

Section 15-143 Participation Agreement Review Filing Procedure:

Beginning June 1, 2017, at least 60 days before implementing a Participation Agreement, which includes a compensation arrangement permitted under the New Exemption, the Participation

Agreement must be filed with the Administration and must be accompanied by a \$125.00 filing fee and a cover sheet required by the Commissioner. Filing instructions, including the required cover sheet, may be accessed at the following hyperlink: <http://insurance.maryland.gov/Insurer/Documents/rates-and-forms/Section-15-143-C-FilingForm.pdf>. The Commissioner is charged with reviewing the Participation Agreement within 60 days and issuing a determination. It is important that all documents be provided promptly.

Please note that a compensation arrangement permitted by the New Exemption and funded fully by or paid fully under the Medicare or Medicaid program is not subject to this filing requirement and does not require filing with the Administration prior to implementation.

Upon review, the Commissioner may issue an Order, pursuant to § 15-143 of the Insurance Article, finding that a compensation arrangement which is permitted by the New Exemption violates the Insurance Article or a regulation adopted under the Insurance Article. The Commissioner's Order renders the New Exemption for the health care practitioner who has the compensation arrangement with a health care entity null and void. Prior to issuing an Order, however, the Commissioner shall hold a hearing and shall give written notice of the hearing to the filer at least 10 days before the hearing.

Thank you in advance for your attention to this new filing requirement. Questions regarding this Bulletin should be directed to Associate Commissioner Robert D. Morrow, Jr. at (410) 468-2212 or bob.morrow@maryland.gov.

**Al Redmer, Jr.
Commissioner**

By:

signature on original

Nancy Grodin, Deputy Commissioner

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§15-143(C) PARTICIPATION AGREEMENT REVIEW
FILING FORM

Name of Individual making this filing: _____
Your business email address _____
Your business telephone #: _____

Name of your Business Entity: _____
Business entity address: _____

What is the NAME of your Participation Agreement: _____

File No. 15-143(C) (For MIA Use)

Date Filing Stamped in: (For MIA Use)

YOU MUST COMPLETE THE FOLLOWING QUESTIONS AND INCLUDE THIS FORM WITH YOUR FILING IN ORDER FOR YOUR FILING TO BE COMPLETE:

- 1) Is the compensation arrangement described in this Participation Agreement between the health care practitioner and the health care entity -
- a. Fully funded or paid for by Medicare or Medicaid?
_____Yes _____No
- b. Exempt under another provision found in §1-302(d)(1)-(11)?
_____Yes _____No

If you answered **YES** to either (a) or (b) of Question #1, you are not required to file your Participation Agreement with the Maryland Insurance Commissioner. Please disregard the remainder of this Form and do not file your Agreement. If you answered **NO** to both (a) and (b) of Question #1, please complete this Form and file your Agreement.

- 2) On what **PAGE** and in what **SECTION** of the Participation Agreement are the payment/compensation provisions of this Participation Agreement located?

Page(s)_____ Section(s) _____

- 3) I have attached a check for the \$125 filing fee made payable to the Maryland Insurance Administration.
_____Yes _____No (Your Form and Participation Agreement will be returned to you without review. Please re-file your form with the required filing fee.)

- 4) Please mail this completed Form and the filing fee to: Maryland Insurance Administration
200 St. Paul Place, Suite 2700
Baltimore, MD 21202
Attn: Life & Health Unit, Form 15-143(c) Filing

Questions regarding this Form may be directed to Associate Commissioner Robert J. Morrow, Jr. at bob.morrow@maryland.gov