

California Tightens Restrictions on Referrals of Workers' Compensation Patients

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On August 31, 2012, the California legislature approved Senate Bill 863, which, among other things, added Section 139.32 to the Labor Code. This provision creates a new series of referral prohibitions relating to the treatment of workers' compensation patients. It is effective January 1, 2013.

New Section 139.32 states, in pertinent part,

"except as otherwise permitted by law, it is unlawful for an interested party...to refer a person for services provided by another entity, if the other entity will be paid for those services pursuant to [the workers' compensation reimbursement system] and the interested party has a financial interest in the other entity."

Under the section, "financial interest" means any type of ownership or compensation relationship (whether direct or indirect) between the interested party and the other entity to which the workers' compensation patient is referred for services. "Interested party" is likewise relatively broadly defined to include, among others, all providers of any medical services or products.

Particularly significant about Section 139.32 is the broad spectrum of services to which the referral prohibition applies. Under the existing workers' compensation referral prohibitions in Labor Code Section 139.3, the covered services are limited to clinical laboratory, diagnostic nuclear medicine, radiation oncology, physical therapy and rehabilitation, psychometric testing, home infusion therapy, outpatient surgery, or diagnostic imaging services. However, new Section 139.32 applies to any service. Of particular interest here is that a few key services previously untouched by the workers' compensation self-referral limitation—such as durable medical equipment—are now included under the umbrella of the new prohibition.

Further, Section 139.3 was limited to referrals by a physician to an entity with which the physician had a financial relationship. New Section 139.32, as noted above, applies to any compensated referral for a workers' compensation product or service. This implicates many marketing arrangements that fell outside the law's ambit previously because no physician was involved.

The take away here is that any compensated referral for virtually any service under workers' compensation is potentially prohibited by Section 139.32.

Violation of Section 139.32 is a misdemeanor, punishable by civil penalties of up to \$15,000 for each prohibited referral and subjects the licensee to disciplinary action by his or her licensing board. It

also subjects the interested party to "general business practice" penalties under § 129.5.

The law does carve out certain arrangements that are not considered financial interests for purposes of the referral prohibition. Such permitted arrangements are generally:

- (1) Loans or space/equipment leases between an interested party and the entity receiving the referral;
- (2) Ownership of publicly-traded corporate investment securities;
- (3) Services performed by, or determinations of compensation issues made by, employees of an interested party in the course of that employment;
- (4) A referral for legal services if that referral is not prohibited by the Rules of Professional Conduct of the State Bar; and
- (5) A physician's referral that is exempted by Section 139.31 from the prohibitions prescribed by Section 139.3.

So what does this mean for your workers' compensation business? First and foremost, it means that all of your contractual arrangements (or any compensation arrangement, for that matter) with potential or actual referral sources need to be reviewed for compliance with Labor Code Section 139.32 before the end of the year. Second, it means that ownership interests in medical groups, physician practices, suppliers and/or other companies that provide medical or ancillary services or equipment to workers' compensation beneficiaries may trigger a referral prohibition.



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