



STATE OF ILLINOIS
HEALTH FACILITIES AND SERVICES REVIEW BOARD

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DOCKET ITEM: F-01	BOARD MEETING:	PROJECT NUMBER: SR-001-19
BUSINESS ITEM: Illinois Health Care Worker Self-Referral Act Advisory Opinion Request		
REQUESTING ENTITY: Brian Hester, D.C		

STATE BOARD STAFF REPORT
HEALTH CARE WORKER SELF-REFERRAL
ADVISORY OPINION REQUEST

I. BACKGROUND INFORMATION

The Health Facilities Planning Board (“State Board”) has been requested to provide an advisory opinion under the Illinois Health Care Worker Self-Referral Act (“the Act”) [225 ILCS 47]. The advisory opinion is to determine whether Integrated Health of Southern Illinois, Ltd. (“Integrated Health”) is in violation of Section 20 of the Act, through its independent contractor relationship with a network that provides access to discounted laboratory tests performed by a third-party laboratory.

Integrated Health operates two chiropractic offices, and is owned and operated by Dr. Brian Hester, a licensed chiropractor in the State of Illinois. Integrated Health has two offices with one located in Carterville, Illinois and the other located in Harrisburg, Illinois. In 2016, Integrated Health started using Quest Diagnostics (“Quest”) to process and analyze blood draws for its patients.

In 2017, Quest and Integrated Health entered into an agreement, whereby Integrated Health agreed to operate an independent draw site, at each of its office sites, for Quest. As an independent draw site, patients with orders for laboratory work can come to Integrated Health, even if they are not a patient of Integrated Health, to have their blood drawn by an Integrated Health employed phlebotomist. Any blood samples collected by Integrated Health are picked up by a courier contracted by Quest and taken to a Quest facility for processing. Quest reports results to ordering providers.

For Integrated Health's patients, Quest bills any patients with insurance benefits directly. If patients do not have insurance, Integrated Health bills those patients directly. The arrangement between Integrated Health and Quest continues to this day.

In January 2018, Dr. Hester entered an independent contractor relationship with Howell Diagnostic Network (“HDN”). HDN is a network of health care providers that have negotiated access to lower fees for laboratory services performed by Quest in exchange for an annual fee of \$100 to HDN. Integrated Health is given access to the same laboratory services performed by Quest for uninsured patients at a lower price. There are no financial arrangements between Integrated Health and HDN or fees paid by Integrated Health to HDN.

Quest invoices Integrated Health monthly for the total of all laboratory services provided at the fee schedule offered to HDN members. Integrated Health pays Quest's invoice each month. For patients that do not have insurance benefits, Integrated Health bills patients directly at a fee schedule that is slightly higher than the HDN fee. Integrated Health pays Quest but lower than the rate Quest's standard fee for that service. By entering into this agreement with HDN, Integrated Health has been able to provide laboratory services to patients without insurance at a lower cost. Patients with insurance benefits are billed directly by Quest and are therefore, not able to access HDN's fee schedule rates.

II. COMPLETENESS REVIEW

In accordance with the requirements of the Act and the State Board's administrative rules associated with this statute (77 ILAC 1235/310), the "*State Board Staff shall determine whether the request is substantially complete within 10 days after receiving the request for advisory opinion.*" Board staff shall review the request to determine whether all required information has been submitted. Board staff may request the health care worker to submit additional information.

77 IAC 1235.310(b) of the State Board's rules requires that a Request for Opinion contain the following information to be complete:

The request must contain the following information to be complete:

- 1) The name and identifying information of the health care worker requesting the opinion;
- 2) Identification of the entity and description of the health care services being provided or proposed by or through the entity;
- 3) The type and amount of existing or proposed investment interest in the entity;
- 4) A description of the nature of the investment interest and copies of any existing or proposed documents between the health care worker and the entity, including leases, contracts, organizational documents, etc.
- 5) Certification and notarized signature of the health care worker requesting the opinion that the information contained in the request for opinion and supporting documentation is true and correct to the best of his or her information and belief.

On March 7, 2019 the State Board Staff requested additional information. The Board Staff requested the following information:

1. An attestation from Dr. Hester that the payment arrangement for the blood draws (e.g., that Quest Diagnostics bills insured patients directly and that for non-insured patients Integrated Health of Southern Illinois, Ltd. bills those patients at a rate slightly higher than the Howell Diagnostic Network ("HSN") fee).
2. Does "other patients" (p. 3 of the request) mean uninsured patients of Integrated Health of Southern Illinois or something else?
3. Do other physicians or non-physicians have an ownership interest in Integrated Health of Southern Illinois, Ltd.?
4. Is the contract with HSN with Dr. Hester individually or with the entity (Integrated Health of Southern Illinois, Ltd)?

On March 19, 2019 the State Board Staff received responses to the information requested above. On March 21, 2019 the Advisory Opinion request was deemed complete by the State Board Staff.

The State Board shall issue its advisory opinion within 90 days from the date the request for advisory opinion was deemed complete.

III. DEFINITIONS

The following definitions from Section 15 of the Act and 77 IAC 1235.50 will apply to the terms used throughout this document:

“Health Care Worker” means any individual licensed under the laws of this State to provide health services, including but not limited to: dentists licensed under the Illinois Dental Practice Act; dental hygienists licensed under the Illinois Dental Practice Act; nurses licensed under the Illinois Nursing Act of 1987; pharmacists licensed under the Pharmacy Practice Act of 1987; physical therapists licensed under the Illinois Physical Therapy Act; physicians licensed under the Medical Practice Act of 1987; clinical psychologists licensed under the Clinical Psychologist Licensing Act; clinical social workers licensed under the Clinical Social Work and Social Work Practice Act; speech-language pathologists and audiologists licensed under the Illinois Speech-Language Pathology and Audiology Practice Act; or hearing and dispensers licensed under the Hearing Aid Consumer Protection Act or any of their successor Acts.

“Health Services” means health care procedures and services provided by or through a health care worker.

“Investment Interest” means an equity or debt security issued by an entity, including, without limitation, shares or stock in a corporation, units or other interests in a partnership, bonds, debentures, notes, or other equity interests or debt instruments except that investment interest does not include interest in a hospital licensed under the laws of the State of Illinois.

“Investor” means an individual or entity directly or indirectly owning a legal or beneficial ownership or investment interest (such as through an immediate family member, trust, or another entity related to the investor).

“Office Practice” includes the facility or facilities at which a health care worker, on an ongoing basis, provides or supervises the provision of professional health services to individuals.

IV. Analysis

Based on the information provided, the State Board Staff notes the following:

Dr. Hester (chiropractor) qualifies as a “Health Care Worker” as defined by Section 15(d) of the Act and 77 IAC 1235.50.

Dr. Hester qualifies as an “Investor” as defined by Section 15(h) of the Act and 77 IAC 1235.50 and as having an “Investment Interest” as defined by Section 15(g) of the Act and 77 IAC 1235.50. Dr. Hester owns Integrated Health of Southern Illinois, Ltd., but has no financial interest in Quest Diagnostics or Howell Diagnostic Network. Integrated Health of Southern Illinois, Ltd. is not anticipated to be a publicly traded entity. As a result, Section 20(c) of the Act and 77 IAC 1235.100(c) are not applicable.

Based on the information submitted, it appears Integrated Health of Southern Illinois, Ltd. constitutes an “office practice”. As a result, Section 20(a) of the Act and 77 IAC 1235.100(a) are not applicable. Dr. Hester attests the services (blood draws) that will be provided at Integrated Health of Southern Illinois, Ltd. is an extension of his individual office practices.

There is no indication that Dr. Hester is making patient referrals to another health care worker or entity based upon the condition that the health care worker or entity will make referrals with the intent to evade the prohibitions of the Self-Referral Act by inducing patient referrals which would be prohibited if Dr Hester made the referral directly. As a result, Section 20(e) of the Act and 77 IAC 1235.100(b) are not applicable.

VI. STATE BOARD REVIEW

The provisions stipulated at 77 IAC 1235.320 apply to the State Board. These include the following:

1. Issue its advisory opinion within 90 days from the date the request for advisory opinion was deemed complete (77 IAC 1235.320(a)).
2. During the course of review, the State Board may request supplemental information. The State Board may, within the 90-day review period, defer action on the application until such times as the supplemental information has been received.
3. If the State Board does not render an opinion within 90 days from the date of declaring a request complete, it shall create a rebuttable presumption that a referral described in the request is not or will not be a violation of the Act.
4. An advisory opinion does not constitute a final administrative decision within the meaning of the Administrative Review Law [735 ILCS/5].

VII. ATTACHMENTS

A copy of the original Request for Opinion and additional information provided by the physicians upon request the Health Care Worker Self-Referral Act.