

## **SELF-REFERRAL ACT ADVISORY OPINION**

**RE: Application of Alliance Xpress Care, L.L.C.**

### **REQUEST**

On July 9, 2015, Alliance Xpress Care, L.L.C. (“Alliance”), a Virginia corporation, submitted an application for an advisory opinion to the Board of Health Professions (“Board”). The purpose of the application is to seek clarification of the definition of “referral” under the Virginia Practitioner Self-Referral Act (“Act”). Alliance seeks a determination of whether recommending Alliance to patients by a physician-investor as an urgent care option will qualify as a “referral” under the Act and violate Section 54.1-2411 of the Code of Virginia, as amended (“Code”), which prohibits referrals from a practitioner to another entity with whom the practitioner, or immediate family member, has an investment interest.

### **FACTS**

Alliance is a private entity that is currently not licensed, certified, or regulated by any State agency. Alliance will be operating at 200 ARH Lane, Suite 102 in Low Moor, Alleghany County, Virginia. The only other urgent care clinic set up for evening or weekend care within 30 miles of Alliance is the Alleghany Regional Hospital, also located in Low Moor, Virginia.

As of its application, Alliance consisted of 16 potential investors, 10 of whom are licensed physicians. Of the 10 physicians, five practice in the Alleghany County area. Three of the others practice outside of a 30 mile radius of Alliance, and two others practice outside of a 50 mile radius.

Alliance does not anticipate local physician-investors to actively refer patients to Alliance. Rather, Alliance asks whether casual, verbal references to Alliance as an option for follow-up urgent care when the physician-investor's office is closed constitutes a referral under the Act. In addition, Alliance asks if physician-investors leaving brochures for Alliance in their waiting rooms constitutes a referral. Alliance states that any brochure or other posted information will clearly disclose the ownership interest of the physician-investor to Alliance, in accordance with Section 54.1-2964 of the Code.

Finally, Alliance requests an opinion of whether physician-investors utilizing after-hours and weekend automated telephone messages at their offices that inform patients who call that Alliance, as well Alleghany Regional Hospital, is an option for evening or weekend urgent care is improper under the act.

### **VIRGINIA PRACTITIONER SELF-REFERRAL ACT**

Under the Act, a health care practitioner is prohibited from referring patients to another health care practitioner or entity outside the referring practitioner's office or entity, with whom the practitioner, or an immediate family member, has a financial investment.

The following pertinent terms are defined by the Act:

"Investment interest" means the ownership or holding of an equity or debt security, including, but not limited to, shares of stock in a corporation, interests or units of a partnership, bonds, debentures, notes, or other equity or debt instruments, except investment interests in a hospital licensed pursuant to Article 1 (Section 32.1-123 et seq.) of Chapter 5 of Title 32.1.

"Investor" means an individual or entity directly or indirectly possessing a legal or beneficial ownership interest, including an investment interest.

"Practitioner" means any individual certified or licensed by any of the health regulatory boards within the Department of Health Professions, except individuals regulated by the Board of Funeral Directors and Embalmers or the Board of Veterinary Medicine.

"Referral" means to send or direct a patient for health services to another health care practitioner or entity outside the referring practitioner's group practice or office practice or to establish a plan of care which requires the provision of any health services outside the referring practitioner's group practice or office practice.

### QUESTION

**Do the proposed actions of Alliance physician-investors meet the definition of “referral” under the Virginia Self-Referral Act if they provide information to a patient recommending Alliance as one of two current urgent care entities in the Alleghany County area?**

Referral as defined in the Act is a physician sending or directing a person to a particular physician or entity. Merriam-Webster defines “send” as “to tell *or cause* (someone or something) to go to a place. Further, “direct” is defined as “*to cause* (someone or something) to turn, move, or point in a particular way” or “to cause (someone’s attention, thoughts, emotions, etc.) to relate to a particular person, thing, goal, etc.” By defining “referral” with this language, the Act requires a practitioner to affirmatively send or direct a patient to a particular provider or entity in order to classify as a “referral.” Therefore, the Act does not contemplate passively informing a patient of an urgent care option as a “referral.”

Physician-investors stating that Alliance is an urgent care option does not, in itself, meet the definition of a “referral.” However, when Alliance is recommended as one option for urgent care, it must be recommended in conjunction with other urgent care facilities in order to not be a referral.

When a physician-investor makes a casual, verbal reference to Alliance as an option for urgent care, he must also disclose other urgent care options, such as Alleghany Regional Hospital, to avoid violating the Act. For example, if a physician-investor or employee

recommends Alliance as an entity to contact if a patient requires treatment after the physician-investor's office has closed for the day, he must also provide the same level of information for Alleghany Hospital or other urgent care entities in the area.

Section 54.1-2964 of the Code requires a physician to disclose any financial or ownership interest the physician has in an entity to which he refers a patient. Printed materials, such as brochures for Alliance, thus must disclose any investor interest in a referral location in bold print to the patient. Any printed materials given to patients at the office of physician-investors must also include other urgent care entities in the area in order to not be considered a referral. Provided the brochures left in the offices of physician-investors meet these requirements, Alliance physician-investors will not violate the Act.

Automated messages and other telephone-based reference to Alliance must meet the same requirements in order to not be considered a referral. Therefore, when patients who call the physician-investor or his office hear a telephone message listing Alliance as an option for urgent care, any reference to Alliance must also include a similar reference to Alleghany Regional Hospital or other urgent care entity in the same region. For example: if the telephone number for Alliance is repeated twice in an automated message, Alleghany Regional Hospital's number must also be repeated twice; if an address is given for Alliance, one must be provided for the Hospital; if there is ability to transfer telephone calls or forward messages from a patient to Alliance, the same ability must be offered for patients to contact the Hospital.

So long as efforts by physician-investors to provide patients with information about Alliance as an urgent care option do not outweigh efforts to provide information about Alleghany

Regional Hospital, or other urgent care facilities, physician-investors' actions will not constitute a "referral" under the Act.

### CONCLUSION

For the reasons set forth above, the Committee, pursuant to 18 VAC 75-20-60(E), recommends the following to the Board of Health Professions:

If Alliance physician-investors follow the procedures stated in its application, as well as this Opinion, they will not "refer" patients to Alliance within the meaning of the Act. These procedures describe the following:

(1) When the physician-investor gives casual, verbal reference to Alliance as an urgent care option, he must give Alleghany Regional Hospital and any other urgent care entity the same level of reference.

(2) Physician-investors provide written disclosure of their investment interest on all written or electronic documents given or made available to patients consistent with Section 54.1-2964 of the Code. These include, but are not limited to:

- (a) Pamphlets displayed in the office of physician-investor practice;
- (b) Electronic documents such as websites or emails;
- (c) Lists of urgent care centers in the Alleghany County area; and
- (d) Any other document providing information on Alliance.

(3) Any verbal or recorded message provided by telephone offering information on Alliance as an urgent care provider will also disclose with equal information and prominence any other urgent care provider in the Alleghany County region, including Alleghany Regional Hospital and any future urgent care entity.

NOTE: This Advisory Opinion does not contemplate whether Alliance meets the requirements for an exception under the Virginia Practitioner Self-Referral Act or meets any exemption to federal self-referral laws or regulations, as such determination is not relevant to the question asked in the application for an Advisory Opinion.