

Recommended Advisory Opinion

MEDSERVE, INC.

Findings of Fact

1. Medserve, Inc., a Delaware Corporation, proposes to purchase the assets of an existing physical therapy clinic from a group of physicians practicing in the Tidewater area of Virginia.
2. It is anticipated that Medserve will likely enter into a noncompete agreement with the physicians for a period of up to five (5) years and will make periodic payments, based upon a note held by the physicians, so long as the physicians abide by the agreement.
3. The foregoing note and periodic payments to the physicians create in the physicians an investment interest in the Medserve physical therapy clinic as that term is defined in Va. Code § 54.1-2410.
4. The Practitioner Self Referral Act, Va. Code § 54.1-2411(A) (the "Act"), prohibits the referral of patients for health services to an entity outside of the practitioners office or group practice if the practitioner or any of the practitioner's immediate family is an investor, [a person who directly or indirectly possesses a legal or beneficial ownership interest, including an investment interest pursuant to Va. Code § 54.1-2410] in the entity.
5. Medserve anticipates that it will treat physical therapy patients upon medical referral and upon referrals by entities such as HMO gatekeepers and employers seeking physical therapy for their employees.
6. The physicians may use (refer) or the physicians' patients may choose to use, or the patient's employer or insurance company may refer (require) the patients to receive physical therapy from Medserve.
7. Regulation 18 VAC 85-30-110 provides that "[a]ll services rendered by a physical therapist shall be performed only upon medical referral by and under the direction of a doctor of medicine, osteopathy, chiropractic, podiatry or dental surgery."
8. Va. Code § 54.1-2410 of the Act defines "referral" to mean to send or direct a patient for health services to another health care practitioner or entity outside of the referring practitioner's practice or to establish a plan of care which requires the provision of any health services outside the referring practitioner's practice.

Conclusions of Law

Based upon the foregoing findings of fact, it is the recommendation of the Committee as follows:

1. Pursuant to 18 VAC 85-30-110, the physicians, by virtue of their investment interest in Medserve, may not refer a patient for physical therapy unless they provide the service directly or will be personally involved in the provision of care to the referred patient in accordance with Va. Code § 54.1-2411(A).
2. The establishment of a plan of care by a physician for physical therapy at an entity outside of the physician's practice constitutes a referral pursuant to Va. Code § 54.1-2411(A). The foregoing should not be construed to prohibit referrals of patients pursuant to a contract with a health maintenance organization.