

Memorandum in Support

NYSBA Memorandum #1

February 8, 2011

A. 3551

By: M. of A. Gottfried
Assembly Committee: Health
Effective Date: Immediately

AN ACT to amend the public health law, in relation to referrals of patients for health or health related items or services

LAW AND SECTIONS REFERRED TO: Paragraph (g) of subdivision 2 of section 238-a of the public health law

THE NEW YORK STATE BAR ASSOCIATION SUPPORTS THIS LEGISLATION

The Health Law Section of the New York State Bar Association has long been concerned about the inconsistencies between the federal Stark law and New York's Health Care Practitioner Referrals Statute. The lack of conformity between the two statutes makes full compliance with the law nearly impossible. A.3551 (Gottfried) amends Public Health Law § 238-a to remedy this compliance dilemma.

The federal Stark law and the State Health Care Practitioner Referrals statute are both conflict of interest laws for medical professionals that limit certain types of referrals. The federal law -- 42 U.S.C. 1395nn -- and its regulations, however, provide for a variety of exceptions that are not acknowledged in the State law. Specifically, the State law does not contain exceptions for providing electronic medical record systems, donations of items and services to federally qualified health centers, and fair market value arrangements. Similarly, there are inconsistencies between the federal exception for in-office ancillary services, which permits an independent contractor relationship, and the State statute, which requires an employer/employee relationship. As the sponsors note, each of these examples represent arrangements or referrals that are in the public's interest, and therefore should be permitted. Furthermore, this legislation would prevent future inappropriate inconsistencies by ensuring that any arrangement permitted under the federal law will also be permitted under the State law, unless the Public Health Council and Commissioner of Health find that such arrangements pose a substantial risk of payer or patient abuse.

This legislation would update the State law to conform with the federal Stark act, thereby: (1) enhancing compliance with State law and (2) enabling providers and attorneys to know the appropriate way to structure certain arrangements.

Based on the foregoing, the New York State Bar Association **SUPPORTS** this legislation, an affirmative legislative proposal developed by the Association's Health Law Section.