

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 8

Judiciary II Committee Substitute Adopted 3/3/93

Short Title: No Self-Referrals/Health.

(Public)

Sponsors:

Referred to: Judiciary II.

January 28, 1993

1 A BILL TO BE ENTITLED
2 AN ACT TO PROHIBIT HEALTH CARE PROVIDERS FROM REFERRING
3 PATIENTS TO HEALTH CARE GOODS OR SERVICES OFFERED BY
4 ENTITIES IN WHICH THE REFERRING PROVIDER HAS AN OWNERSHIP
5 INTEREST.

6 The General Assembly of North Carolina enacts:

7 Section 1. Chapter 90 of the General Statutes is amended by adding the
8 following new Article to read:

9 **"ARTICLE 28.**

10 **"SELF-REFERRALS BY HEALTH CARE PROVIDERS.**

11 **"§ 90-405. Definition.**

12 As used in this Article, the term

- 13 (a) 'Board' means any of the following boards created in Chapter 90 of this
14 Article relating respectively to the professions of medicine, dentistry,
15 optometry, osteopathy, chiropractic, nursing, podiatry, psychology,
16 physical therapy, occupational therapy, speech and language pathology
17 and audiology.
- 18 (b) 'Department' means the Department of Human Resources of the State
19 of North Carolina.
- 20 (c) 'Designated health care services' means, and includes for purposes of
21 this section, any health care procedure and service provided by a
22 health care provider.

- 1 (d) 'Entity' means any individual, partnership, firm, corporation, or other
2 business that provides health care services.
- 3 (e) 'Group practice' means a group of two or more health care providers
4 legally organized as a partnership, professional corporation, or similar
5 association:
- 6 (1) In which each health care provider who is a member of the
7 group provides services including consultation, diagnosis, or
8 treatment, through the joint use of shared facilities, equipment,
9 and personnel;
- 10 (2) For which substantially all the services of the health care
11 providers who are members of the group are provided through
12 the group and are billed in the name of the group and amounts
13 so received are treated as receipts of the group; and
- 14 (3) In which the overhead expenses of and the income from the
15 practice are distributed in accordance with methods previously
16 determined by members of the group.
- 17 (f) 'Health care provider' is any person who, pursuant to this Chapter 90,
18 is licensed, or is otherwise registered or certified to engage in the
19 practice of any of the following: medicine, dentistry, optometry,
20 osteopathy, chiropractic, nursing, podiatry, psychology, physical
21 therapy, occupational therapy or speech and language pathology and
22 audiology.
- 23 (g) 'Immediate family member' means a health care provider's spouse, or
24 dependent minor child.
- 25 (h) 'Investment interest' means an equity or debt security issued by an
26 entity, including, without limitation, shares of stock in a corporation,
27 units or other interests in a partnership, bonds, debentures, notes, or
28 other equity interests or debt instruments. 'Investment interest' shall
29 not include any interest in bonds or other debt instruments issued
30 pursuant to the provisions of Chapter 159 of the General Statutes; any
31 interest in an employee's stock purchase, savings, pension, profit
32 sharing or other similar benefit plan in which the investor does not
33 direct investments; ownership of investment securities (including
34 shares of stock, bonds, debentures, notes or other debt instruments) in
35 any corporation that is listed for trading on the New York Stock
36 Exchange, the American Stock Exchange or is a national market
37 system security traded under automated interdealer quotation system
38 operated by the National Association of Securities Dealers and has, at
39 the end of the corporation's most recent fiscal year, total assets
40 exceeding fifty million dollars (\$50,000,000), provided that one of the
41 following requirements is satisfied:
- 42 (1) the securities are purchase in a non-issuer transaction as
43 permitted by G.S. 78A-17(3); or

1 (2) the securities are issued in a transaction terminating a health
2 care provider's investment interest in a privately held entity
3 which such health care provider acquired before April 1, 1993,
4 provided that such transaction is completed before July 1, 1995
5 and the health care provider liquidates the securities by July 1,
6 1997.

7 (i) 'Investor' means an individual or entity owning a legal or beneficial
8 ownership or investment interest, directly or indirectly (including
9 without limitation, through an immediate family member, trust,
10 affiliate, or another entity related to the investor).

11 (j) 'Referral' means any referral of a patient for designated health care
12 services, including, without limitation:

13 (1) The forwarding of a patient by one health care provider to
14 another health care provider or to an entity that provides any
15 designated health care service; or

16 (2) The request or establishment of a plan of care by a health care
17 provider, which includes the provision of designated health care
18 services. 'Referral' does not mean any designated health care
19 service provided by a sole health care provider or by a member
20 of a group practice to the patients of that health care provider or
21 group practice or designated health care services provided or
22 performed at the direction or under the supervision of such a
23 health care provider or group practice.

24 **"§ 90-406. Self-referrals prohibited.**

25 (a) A health care provider shall not make any referral of any patient to any entity
26 in which the health care provider or group practice or any member of the group practice
27 is an investor.

28 (b) No invoice or claim for payment shall be presented by any entity or health
29 care provider to any individual, third party payer, or other entity for designated health
30 care services furnished pursuant to a referral prohibited under this Article.

31 (c) If an entity collects any amount pursuant to an invoice or claim presented in
32 violation of this section, the entity shall refund such amount to the payor or individual,
33 whichever is applicable, within ten working days of receipt.

34 (d) Any health care provider or other entity that enters into an arrangement or
35 scheme, such as a cross-referral arrangement that the health care provider or entity
36 knows or should know is intended to induce referrals of patients for designated health
37 care services to a particular entity and that, if the health care provider directly made
38 referrals to such entity, would constitute a prohibited referral under this section, shall be
39 in violation of this section.

40 **"§ 90-407. Disciplinary action and penalties.**

41 (a) Any violation of this Article shall constitute grounds for disciplinary
42 action to be taken by the applicable Board pursuant to Chapter 90 of the General
43 Statutes.

1 (b) Any health care provider who refers a patient in violation of G.S. 90-
2 406(a), or any health care provider or entity who

3 (1) presents or causes to be presented a bill or claim for service that the
4 health care provider or entity knows or should know is prohibited by
5 G.S. 90-406(b), or

6 (2) fails to make a refund as required by G.S. 90-406(c),

7 shall be subject to a civil penalty of not more than twenty thousand dollars (\$20,000) for
8 each such bill or claim, to be recovered in an action instituted either in Wake County
9 Superior Court, or any other county, by the Attorney General for the use of the State of
10 North Carolina.

11 (c) Any health care provider or other entity that enters into an arrangement or
12 scheme, such as cross-referral arrangement, that the health care provider or entity knows
13 or should know is intended to induce referrals or patients for designated health care
14 services to a particular entity and that, if the health care provider directly made referrals
15 to such entity, would violate G.S. 90-406(d), shall be subject to a civil penalty of not
16 more than \$75,000 for each such circumvention arrangement or scheme, to be recovered
17 in an action instituted either in Wake County Superior Court, or any other county, by
18 the Attorney General for the use of the State of North Carolina. No civil penalty shall
19 be assessed hereunder for any arrangement fully disclosed to the Attorney General in
20 writing which receives a favorable determination by the Attorney General that, in his
21 opinion, such arrangement is not a violation of G.S. 90-406, until a contrary
22 determination is made in a court of law.

23 **"§ 90-408. Exceptions for Underserved Areas.**

24 (a) The provisions of G.S. 90-406 shall not apply to the referral by any health
25 care provider to any entity in which such health care provider has an investment interest
26 upon receipt by such health care provider of a determination by the Department of
27 Human Resources that:

28 (1) There is a demonstrated need in the county where the entity is located
29 or is proposed to be located; and

30 (2) Alternative financing is not available on reasonable terms from other
31 sources to develop such entity.

32 (b) The Department shall promulgate regulations governing the form and content
33 of the applications to be filed by health care providers making application for exemption
34 from G.S. 90-406, the business conduct of any such entity and the fair and reasonable
35 access by all health care providers in such county to the entity. Any determination
36 made by the Department under this section shall be applicable for a period of five years
37 from the date of issuance.

38 (c) In all cases in which a health care provider refers a patient to a health care
39 facility outside that health care provider's practice in which the health care provider has
40 an investment interest, the health care provider shall disclose to the patient the health
41 care provider's investment interest. Patients shall be given a list of effective alternative
42 facilities if any such facilities become reasonably available, informed that they have the
43 option to use one of the alternative facilities, and assured that they will not be treated

1 differently by the health care provider if they do not choose the health care provider's
2 facility."

3 Sec. 2. This act becomes effective July 1, 1993, and shall apply to referrals
4 for designated health care services made on or after the effective date, provided that
5 with respect to an investment interest acquired by an investor before April 1, 1993, G.S.
6 90-406 shall not apply to referrals for designated health care services occurring before
7 July 1, 1995.