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SENATE BILL 8

Judiciary II Committee Substitute Adopted 3/3/93

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Short Title: No Self-Referrals/Health.

(Public)

Sponsors:

Referred to: Judiciary II.

January 28, 1993

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT HEALTH CARE PROVIDERS FROM REFERRING PATIENTS TO HEALTH CARE GOODS OR SERVICES OFFERED BY ENTITIES IN WHICH THE REFERRING PROVIDER HAS AN OWNERSHIP INTEREST.

The General Assembly of North Carolina enacts:

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

"ARTICLE 28.

"SELF-REFERRALS BY HEALTH CARE PROVIDERS.

"§ 90-405. Definition.

As used in this Article, the term

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

- 1 (d) 'Entity' means any individual, partnership, firm, corporation, or other
2 business that provides health care services.
- 3 (e) 'Fair market value' means the value of the rental property for
4 commercial purposes not adjusted to reflect the additional value that
5 one party (either the prospective lessee or lessor) would attribute to the
6 property as a result of its proximity or convenience to sources of
7 referrals or business.
- 8 (f) 'Group practice' means a group of two or more health care providers
9 legally organized as a partnership, professional corporation, or similar
10 association:
- 11 (1) In which each health care provider who is a member of the
12 group provides services including consultation, diagnosis, or
13 treatment, through the joint use of shared facilities, equipment,
14 and personnel;
- 15 (2) For which substantially all the services of the health care
16 providers who are members of the group are provided through
17 the group and are billed in the name of the group and amounts
18 so received are treated as receipts of the group; and
- 19 (3) In which the overhead expenses of and the income from the
20 practice are distributed in accordance with methods previously
21 determined by members of the group.
- 22 (g) 'Health care provider' is any person who, pursuant to this Chapter 90,
23 is licensed, or is otherwise registered or certified to engage in the
24 practice of any of the following: medicine, dentistry, optometry,
25 osteopathy, chiropractic, nursing, podiatry, psychology, physical
26 therapy, occupational therapy or speech and language pathology and
27 audiology.
- 28 (h) 'Immediate family member' means a health care provider's spouse, or
29 dependent minor child.
- 30 (i) 'Investment interest' means an equity or debt security issued by an
31 entity, or a lease or retained interest in real property held by an entity,
32 including, without limitation, shares of stock in a corporation, units or
33 other interests in a partnership, bonds, debentures, notes, leases,
34 options or contracts related to real property or other equity interests or
35 debt instruments. 'Investment interest' shall not include any interest in
36 bonds or other debt instruments issued pursuant to the provisions of
37 Chapter 159 of the General Statutes; any direct or indirect interest in a
38 written lease of real property for a term of one year or more, which
39 fully describes the leased premises, the terms and conditions for the
40 lease thereof, with the aggregate rental charge, set in advance,
41 consistent with fair market value in arms-length transactions and not
42 determined in a manner that takes into account the volume or value of
43 any referrals or business otherwise generated between the parties to the
44 lease; any interest in an employee's stock purchase, savings, pension,

1 profit sharing or other similar benefit plan in which the investor does
2 not direct investments; ownership of investment securities (including
3 shares of stock, bonds, debentures, notes or other debt instruments) in
4 any corporation that is listed for trading on the New York Stock
5 Exchange, the American Stock Exchange or is a national market
6 system security traded under automated interdealer quotation system
7 operated by the National Association of Securities Dealers and has, at
8 the end of the corporation's most recent fiscal year, total assets
9 exceeding fifty million dollars (\$50,000,000), provided that one of the
10 following requirements is satisfied:

- 11 (1) the securities are purchase in a non-issuer transaction as
12 permitted by G.S. 78A-17(3); or
13 (2) the securities are issued in a transaction terminating a health
14 care provider's investment interest in a privately held entity
15 which such health care provider acquired before April 1, 1993,
16 provided that such transaction is completed before July 1, 1995
17 and the health care provider liquidates the securities by July 1,
18 1997.

19 (j) 'Investor' means an individual or entity owning a legal or beneficial
20 ownership or investment interest, directly or indirectly (including
21 without limitation, through an immediate family member, trust,
22 affiliate, or another entity related to the investor).

23 (k) 'Referral' means any referral of a patient for designated health care
24 services, including, without limitation:

- 25 (1) The forwarding of a patient by one health care provider to
26 another health care provider or to an entity that provides any
27 designated health care service; or
28 (2) The request or establishment of a plan of care by a health care
29 provider, which includes the provision of designated health care
30 services. 'Referral' does not mean any designated health care
31 service provided by a sole health care provider or by a member
32 of a group practice to the patients of that health care provider or
33 group practice or designated health care services provided or
34 performed at the direction or under the supervision of such a
35 health care provider or group practice.

36 **"§ 90-406. Self-referrals prohibited.**

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

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

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

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

10 **"§ 90-407. Disciplinary action and penalties.**

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

14 (b) Any health care provider who refers a patient in violation of G.S. 90-
15 406(a), or any health care provider or entity who

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

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

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

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

36 **"§ 90-408. Exceptions for Underserved Areas.**

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

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

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

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

7 (c) In all cases in which a health care provider refers a patient to a health care
8 facility outside that health care provider's practice in which the health care provider has
9 an investment interest, the health care provider shall disclose to the patient the health
10 care provider's investment interest. Patients shall be given a list of effective alternative
11 facilities if any such facilities become reasonably available, informed that they have the
12 option to use one of the alternative facilities, and assured that they will not be treated
13 differently by the health care provider if they do not choose the health care provider's
14 facility."

15 Sec. 2. This act becomes effective July 1, 1993, and shall apply to referrals
16 for designated health care services made on or after the effective date, provided that
17 with respect to an investment interest acquired by an investor before April 1, 1993, G.S.
18 90-406 shall not apply to referrals for designated health care services occurring before
19 July 1, 1995.