

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

S

4

SENATE BILL 8

Judiciary II Committee Substitute Adopted 3/3/93

Third Edition Engrossed 3/11/93

House Committee Substitute Favorable 7/15/93

Short Title: No Self-Referrals/Health.

(Public)

Sponsors:

Referred to:

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

(1) '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.

(2) 'Department' means the Department of Human Resources of the State of North Carolina.

- 1 (3) 'Designated health care services' means, and includes for purposes of
2 this section, any health care procedure and service provided by a
3 health care provider that is covered by or insured under any health
4 benefit plan regulated by Chapter 58 of the General Statutes, any
5 employee welfare benefit plan regulated by the Employee Retirement
6 Income Security Act of 1974, any federal or State employee insurance
7 program, Medicare or Medicaid.
- 8 (4) 'Entity' means any individual, partnership, firm, corporation, or other
9 business that provides health care services.
- 10 (5) 'Fair market value' means the value of the rental property for
11 commercial purposes not adjusted to reflect the additional value that
12 one party (either the prospective lessee or lessor) would attribute to the
13 property as a result of its proximity or convenience to sources of
14 referrals or business.
- 15 (6) 'Group practice' means a group of two or more health care providers
16 legally organized as a partnership, professional corporation, or similar
17 association:
- 18 a. In which each health care provider who is a member of the
19 group provides services including consultation, diagnosis, or
20 treatment, through the joint use of shared facilities, equipment,
21 and personnel;
- 22 b. For which substantially all the services of the health care
23 providers who are members of the group are provided through
24 the group and are billed in the name of the group and amounts
25 so received are treated as receipts of the group; and
- 26 c. In which the overhead expenses of and the income from the
27 practice are distributed in accordance with methods previously
28 determined by members of the group.
- 29 (7) 'Health care provider' is any person who, pursuant to Chapter 90 of the
30 General Statutes, is licensed, or is otherwise registered or certified to
31 engage in the practice of any of the following: medicine, dentistry,
32 optometry, osteopathy, chiropractic, nursing, podiatry, psychology,
33 physical therapy, occupational therapy or speech and language
34 pathology and audiology.
- 35 (8) 'Immediate family member' means a health care provider's spouse or
36 dependent minor child.
- 37 (9) 'Investment interest' means an equity or debt security issued by an
38 entity, or a lease or retained interest in real property held by an entity,
39 including, without limitation, shares of stock in a corporation, units or
40 other interests in a partnership, bonds, debentures, notes, leases,
41 options or contracts related to real property or other equity interests or
42 debt instruments. 'Investment interest' and legal or beneficial interest
43 shall not include any interest in:

- 1 a. Bonds or other debt instruments issued pursuant to the
2 provisions of Chapter 159 of the General Statutes;
- 3 b. A written lease of real property entered into on or before
4 January 1, 1990, for a term of five years or more or a written
5 lease of real property for a term of one year or more, which
6 fully describes the leased premises, the terms and conditions for
7 the lease thereof, with the aggregate rental charge, set in
8 advance, consistent with fair market value in arms-length
9 transactions and not determined in a manner that takes into
10 account the volume or value of any referrals or business
11 otherwise generated between the parties to the lease;
- 12 c. An employee's stock purchase, savings, pension, profit sharing
13 or other similar benefit plan in which the investor does not
14 direct investments;
- 15 d. Investment interests (including shares of stock, bonds,
16 debentures, notes or other debt instruments) in any corporation
17 that is listed for trading on the New York Stock Exchange, the
18 American Stock Exchange, or is a national market system
19 security traded under automated interdealer quotation system
20 operated by the National Association of Securities Dealers and
21 has, at the end of the corporation's most recent fiscal year, total
22 assets exceeding fifty million dollars (\$50,000,000), provided
23 that one of the following requirements is satisfied:
- 24 1. The investment interests are purchased in a nonissuer
25 transaction as permitted by G.S. 78A-17(3); or
- 26 2. The investment interests are issued in a transaction
27 terminating a health care provider's legal, beneficial, or
28 investment interest in a privately held entity which such
29 health care provider acquired before April 1, 1993,
30 provided that such transaction is completed before July
31 1, 1995, and the health care provider liquidates the
32 investment interests by July 1, 1997.
- 33 (10) 'Investor' means an individual or entity owning a legal or beneficial
34 ownership or investment interest, directly or indirectly (including
35 without limitation, through an immediate family member, trust,
36 affiliate, or another entity related to the investor).
- 37 (11) 'Referral' means any referral of a patient for designated health care
38 services, including, without limitation:
- 39 a. The forwarding of a patient by one health care provider to
40 another health care provider or to an entity that provides any
41 designated health care service; or
- 42 b. The request or establishment of a plan of care by a health care
43 provider, which includes the provision of designated health care
44 services.

1 'Referral' does not mean any designated health care service or any
2 referral to an entity for a designated health care service which is
3 provided by, or provided under the personal supervision of, a sole
4 health care provider or by a member of a group practice to the patients
5 of that health care provider or group practice.

6 **"§ 90-406. Self-referrals prohibited.**

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

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

13 (c) If an entity collects any amount pursuant to an invoice or claim presented in
14 violation of this section, the entity shall refund such amount to the payor or individual,
15 whichever is applicable, within 10 working days of receipt.

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

22 **"§ 90-407. Disciplinary action and penalties.**

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

26 (b) Any health care provider who refers a patient in violation of G.S. 90-
27 406(a), or any health care provider or entity who

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

31 (2) Fails to make a refund as required by G.S. 90-406(c),
32 shall be subject to a civil penalty of not more than twenty thousand dollars (\$20,000) for
33 each such bill or claim, to be recovered in an action instituted either in Wake County
34 Superior Court, or any other county, by the Attorney General for the use of the State of
35 North Carolina.

36 (c) Any health care provider or other entity that enters into an arrangement or
37 scheme, such as cross-referral arrangement, that the health care provider or entity knows
38 or should know is intended to induce referrals or patients for designated health care
39 services to a particular entity and that, if the health care provider directly made referrals
40 to such entity, would violate G.S. 90-406(d), shall be subject to a civil penalty of not
41 more than seventy-five thousand dollars (\$75,000) for each such circumvention
42 arrangement or scheme, to be recovered in an action instituted either in Wake County
43 Superior Court, or any other county, by the Attorney General for the use of the State of
44 North Carolina. No civil penalty shall be assessed hereunder for any arrangement fully

1 disclosed to the Attorney General in writing which receives a favorable determination
2 by the Attorney General that, in his opinion, such arrangement is not a violation of G.S.
3 90-406, until a contrary determination is made in a court of law.

4 **"§ 90-408. Exceptions for underserved areas.**

5 (a) The provisions of G.S. 90-406 shall not apply to the referral by any health
6 care provider to any entity in which such health care provider has a legal, beneficial, or
7 investment interest upon receipt by such health care provider of a determination by the
8 Department of Human Resources that:

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

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

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

19 (c) In all cases in which a health care provider refers a patient to a health care
20 facility outside that health care provider's practice in which the health care provider has
21 a legal, beneficial, or investment interest, the health care provider shall disclose to the
22 patient the health care provider's investment interest. Patients shall be given a list of
23 effective alternative facilities if any such facilities become reasonably available,
24 informed that they have the option to use one of the alternative facilities, and assured
25 that they will not be treated differently by the health care provider if they do not choose
26 the health care provider's facility."

27 Sec. 2. This act is effective upon ratification, and applies to referrals for
28 designated health care services made on or after the effective date, provided that with
29 respect to a legal, beneficial, or investment interest acquired by an investor before April
30 1, 1993, G.S. 90-406 shall not apply to referrals for designated health care services
31 occurring before July 1, 1995.