

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 978

Short Title: Amend Health Care Self-Referral.

(Public)

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Sponsors: Senator Sherron.

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Referred to: Judiciary II/Election Laws

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May 4, 1995

A BILL TO BE ENTITLED

AN ACT TO AMEND THE SELF-REFERRALS BY HEALTH CARE PROVIDERS  
STATUTES TO PERMIT LIMITED INVESTMENT IN PUBLIC CORPORATIONS  
AND CERTAIN PRIVATE CORPORATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-405 reads as rewritten:

**"§ 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.

(3) 'Designated health care services' means, and includes for purposes of this section, any health care procedure and service provided by a health care provider that is covered by or insured under any health benefit plan regulated by Chapter 58 of the General Statutes, any employee welfare benefit plan regulated by the Employee Retirement Income Security Act

- 1 of 1974, any federal or State employee insurance program, Medicare or  
2 Medicaid.
- 3 (4) 'Entity' means any individual, partnership, firm, corporation, or other  
4 business that provides health care services.
- 5 (5) 'Fair market value' means the value of the rental property for  
6 commercial purposes not adjusted to reflect the additional value that one  
7 party (either the prospective lessee or lessor) would attribute to the  
8 property as a result of its proximity or convenience to sources of  
9 referrals or business.
- 10 (6) 'Group practice' means a group of two or more health care providers  
11 legally organized as a partnership, professional corporation, or similar  
12 association:
- 13 a. In which each health care provider who is a member of the group  
14 provides services including consultation, diagnosis, or treatment,  
15 through the joint use of shared facilities, equipment, and  
16 personnel;
- 17 b. For which substantially all the services of the health care  
18 providers who are members of the group are provided through  
19 the group and are billed in the name of the group and amounts so  
20 received are treated as receipts of the group; and
- 21 c. In which the overhead expenses of and the income from the  
22 practice are distributed in accordance with methods previously  
23 determined by members of the group.
- 24 (7) 'Health care provider' is any person who, pursuant to Chapter 90 of the  
25 General Statutes, is licensed, or is otherwise registered or certified to  
26 engage in the practice of any of the following: medicine, dentistry,  
27 optometry, osteopathy, chiropractic, nursing, podiatry, psychology,  
28 physical therapy, occupational therapy or speech and language  
29 pathology and audiology.
- 30 (8) 'Immediate family member' means a health care provider's spouse or  
31 dependent minor child.
- 32 (9) 'Investment interest' means an equity or debt security issued by an  
33 entity, or a lease or retained interest in real property held by an entity,  
34 including, without limitation, shares of stock in a corporation, units or  
35 other interests in a partnership, bonds, debentures, notes, leases, options  
36 or contracts related to real property or other equity interests or debt  
37 instruments. 'Investment interest' and legal or beneficial interest shall  
38 not include any interest in:
- 39 a. Bonds or other debt instruments issued pursuant to the provisions  
40 of Chapter 159 of the General Statutes;
- 41 b. A written lease of real property entered into on or before January  
42 1, 1990, for a term of five years or more or a written lease of real  
43 property for a term of one year or more, which fully describes the

1 leased premises, the terms and conditions for the lease thereof,  
2 with the aggregate rental charge, set in advance, consistent with  
3 fair market value in arms-length transactions and not determined  
4 in a manner that takes into account the volume or value of any  
5 referrals or business otherwise generated between the parties to  
6 the lease;

7 c. An employee's stock purchase, savings, pension, profit sharing or  
8 other similar benefit plan in which the investor does not direct  
9 investments;

10 d. Investment interests (including shares of stock, bonds,  
11 debentures, notes or other debt instruments) in any corporation  
12 that is ~~listed for trading on the New York Stock Exchange, the~~  
13 ~~American Stock Exchange, or is a national market system security~~  
14 ~~traded under automated interdealer quotation system operated by the~~  
15 ~~National Association of Securities Dealers and either:~~

16 (i) a public corporation as defined in G.S. 55-1-40(18a); or

17 (ii) a nonpublic corporation which has engaged in business,  
18 whether on its own, through one or more affiliates, or  
19 through the operations of any other entities, the assets of  
20 which have been acquired by the corporation or any  
21 affiliate thereof, for a period in excess of five years, and  
22 which has, at the end of the corporation's most recent  
23 fiscal year, total consolidated assets exceeding ~~fty-two~~  
24 million dollars (~~\$50,000,000~~), (~~\$2,000,000~~);

25 provided that one of the following requirements is satisfied:

26 1. The investment interests are purchased in a nonissuer  
27 transaction as permitted by G.S. 78A-17(3); ~~or~~

28 2. The investment interests are issued in a transaction  
29 terminating a health care provider's legal, beneficial, or  
30 investment interest in a privately held entity which such  
31 health care provider acquired before April 1, 1993,  
32 provided that such transaction is completed before July 1,  
33 1995, and the health care provider liquidates the  
34 investment interests by July 1, ~~1997-1997~~; or

35 3. On or after July 1, 1995, the health care provider owns  
36 legally or beneficially, directly or indirectly (including,  
37 without limitation, through an immediate family member,  
38 trust, affiliate, or another entity related to the health care  
39 provider), less than twenty percent (20%) of the capital  
40 stock of the corporation and no more than forty-nine  
41 percent (49%) of the capital stock of the corporation is  
42 held by health care providers in the aggregate.

- 1           (10) 'Investor' means an individual or entity owning a legal or beneficial  
2           ownership or investment interest, directly or indirectly (including  
3           without limitation, through an immediate family member, trust, affiliate,  
4           or another entity related to the investor).
- 5           (11) 'Referral' means any referral of a patient for designated health care  
6           services, including, without limitation:
- 7           a.       The forwarding of a patient by one health care provider to  
8           another health care provider or to an entity that provides any  
9           designated health care service; or
- 10          b.       The request or establishment of a plan of care by a health care  
11          provider, which includes the provision of designated health care  
12          services.
- 13          'Referral' does not mean any designated health care service or any  
14          referral to an entity for a designated health care service which is  
15          provided by, or provided under the personal supervision of, a sole health  
16          care provider or by a member of a group practice to the patients of that  
17          health care provider or group practice."
- 18          Sec. 2. This act is effective upon ratification.