

SENATE HEALTH, HUMAN SERVICES AND SENIOR
CITIZENS COMMITTEE

STATEMENT TO

SENATE, No. 787

with committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 14, 2008

The Senate Health, Human Services and Senior Citizens Committee reports without recommendation and with amendments Senate Bill No. 787.

This bill amends section 2 of P.L.1989, c.19 (N.J.S.A.45:9-22.5), which currently prohibits physicians and other health care practitioners from referring patients to health care services in which the practitioner or the practitioner's immediate family has a significant beneficial interest.

This bill would exempt from the prohibition a health care service provided at a surgical practice established, or an ambulatory surgical facility licensed by the Department of Health and Senior Services, on the effective date of the bill, if the practitioner who provided the referral also performs the surgery and the practitioner's remuneration as an owner of or investor in the surgical practice or facility is directly proportional to his ownership interest and not to the volume of patients the practitioner refers to the surgical practice or facility. The bill defines "surgical practice" to mean a practice (defined by the Department of Health and Senior Services by regulation at N.J.A.C.8:43A-1.3) at which surgery, other than "minor surgery" (as defined by the Board of Medical Examiners regulations at N.J.A.C.13:35-4A.3), is performed.

The bill further provides that, notwithstanding any prior remuneration agreements, a practitioner's remuneration shall comply with the provisions of this bill as of the effective date of the bill in order to qualify for the exemption.

The bill applies to an ambulatory surgical facility, irrespective of whether such facility is owned solely by practitioners or in conjunction with non-practitioners. The bill also requires that all clinically-related decisions at the facility shall be made by practitioners and shall be in the best interests of the patient.

Disclosure of the referring practitioner's significant beneficial interest in the surgical practice or facility shall be made to the patient in writing, at or prior to the time that the referral is made, consistent with the provisions of section 3 of P.L.1989, c.19 (N.J.S.A.45:9-22.6).

The disclosure shall inform the patient whether the services provided at the surgical practice or facility will be considered to be, and reimbursed at, an “out-of-network” level by the patient’s insurance carrier or other third party payer.

The bill further provides that ownership of an exempted surgical practice or ambulatory surgical facility may be transferred, and the practice or facility may be expanded at the same location or relocated, with no effect on the practice’s or facility’s continued exemption.

The exemption is extended to surgical practices and ambulatory surgical facilities that have filed, prior to the effective date of the bill, their plans, specifications, and required documents with the Health Care Plan Review Unit of the Department of Community Affairs or the municipality in which the facility will be located, as applicable, provided that the surgical practice or facility otherwise meets the requirements of the bill, and in the case of a facility, obtains State licensure.

In addition, a referral made by a practitioner prior to the bill’s effective date to a surgical practice or an ambulatory surgical facility that complies with the requirement that the referring physician perform the surgery and the requirement concerning the practitioner’s remuneration on the effective date shall be deemed to comply with the provisions of the bill.

The committee amendments:

- add surgical practices to the list of exempted facilities;
- clarify what constitutes permissible remuneration arrangements;
- specify that all clinically-related decisions are to be made by practitioners and are to be in the patients’ best interests;
- provide for disclosure to patients;
- permit the transfer of ownership of existing practices or facilities, and expansion at the same location, or relocation, without violating the provisions of the bill;
- allow the exemption to apply to surgical practices and ambulatory surgical facilities that filed plans, specifications and documents to the local municipality or the Department of Community Affairs, as applicable, prior to the effective date of the bill; and
- deem compliant with the bill referrals made by practitioners before the effective date of the bill to practices or facilities that otherwise meet the requirements of the bill on the effective date.

This bill is similar to Assembly No. 1933 (Conaway), which is pending in the Assembly Health and Senior Services Committee.