

45:9-22.4

LEGISLATIVE HISTORY CHECKLIST

NJSA: 45:9-22.4 (Health care services-- physicians to disclose their financial interests)

LAWS OF: 1989 CHAPTER: 19

BILL NO: S734

SPONSOR(S): Codey and Russo

Date Introduced: Pre-filed

Committee: Assembly: Health and Human Resources
Senate: Institutions, Health and Welfare

Amended during passage: Yes Senate Committee substitute enacted. (1R)

Date of Passage: Assembly: October 27, 1988 Re-enacted 1-26-89
Senate: May 2, 1988 Re-enacted 1-12-89

Date of Approval: February 6, 1989

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: Assembly Yes
Senate Yes

Fiscal Note: No

Veto Message: Yes

Message on Signing: No

Following were printed:

Reports: No

Hearings: No

See newspaper clippings-- attached:

"Disclosures required," 2-7-89 Asbury Park Press.

rdv

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P.L. 1989, CHAPTER 19, *approved February 6, 1989*
Senate Committee Substitute (*First Reprint*) for
1988 Senate Nos. 734 and 2091

1 **AN ACT** concerning disclosure of financial interests by certain
health care practitioners and supplementing chapter 9 of Title
3 45 of the Revised Statutes.

5 **BE IT ENACTED** by the Senate and General Assembly of the
State of New Jersey:

7 1. For the purposes of this act:

"Health care service" means a business entity which provides
9 on an inpatient or outpatient basis: testing for or diagnosis or
treatment of human disease or dysfunction; or, dispensing of
11 drugs or medical devices for the treatment of human disease or
dysfunction. Health care service includes, but is not limited to,
13 a bioanalytical laboratory, pharmacy, home health care agency,
rehabilitation facility, nursing home, hospital, or a facility
15 which provides radiological or other diagnostic imagery services,
physical therapy, ambulatory surgery, or ophthalmic services.

17 "Immediate family" means the practitioner's spouse and
children, the practitioner's siblings and parents, the
19 practitioner's spouse's siblings and parents, and the spouses of
the practitioner's children.

21 "Practitioner" means a physician, chiropractor or podiatrist
licensed pursuant to Title 45 of the Revised Statutes.

23 "Significant beneficial interest" means any financial interest
that is equal to or greater than the lesser of: (1) 5% of the
25 whole, or (2) \$5,000.00; but does not include ownership of a
building wherein the space is leased to a person at the
27 prevailing rate under a straight lease agreement, or any interest
held in publicly traded securities.

29 2. A practitioner shall not refer a patient ¹or direct an
employee of the practitioner to refer a patient¹ to a health care
31 service in which the practitioner ^{1,1} or the practitioner's
immediate family ¹, or the practitioner in combination with

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:
Senate amendments adopted in accordance with Governor's
recommendations January 10, 1989.

1 practitioner's immediate family¹ has a significant beneficial
interest unless the practitioner discloses the significant
3 beneficial interest to the patient.

The practitioner shall provide the patient with a written
5 disclosure form, prepared pursuant to section 3 of this act ¹, and
post a copy of this disclosure form in a conspicuous public place
7 in the practitioner's office¹.

3. The written disclosure form required pursuant to section 2
9 of this act shall be in the following form:

Public law of the State of New Jersey mandates
11 that a physician, chiropractor or podiatrist inform
his patients of any significant financial interest he
13 may have in a health care service.

Accordingly, I wish to inform you that I do have a
15 financial interest in ¹[a health care service] the
following health care service(s)¹ to which I refer my
17 patients ¹[.] :

19 (list applicable health care services)¹

21 You may, of course, seek treatment at a health
care service provider of your own choice. A listing
23 of alternative health care service providers can be
found in the classified section of your telephone
25 directory under the appropriate heading.

4. The disclosure requirements of this act do not apply in the
27 case of a practitioner who is providing health care services
pursuant to a prepaid capitated contract entered into with the
29 Division of Medical Assistance and Health Services in the
Department of Human Services.

5. A practitioner who violates the provisions of this act is
31 liable for a penalty ¹[of not more than \$2,500.00 for the first
33 offense and not more than \$5,000.00 for any subsequent
offense. The penalty shall be recovered in a summary
35 proceeding brought in the name of the State pursuant to "the
penalty enforcement law," N.J.S.2A:58-1 et seq.] pursuant to
37 section 12 of P.L.1978, c.73 (C.45:1-25).¹

6. The State Board of Medical Examiners established pursuant
39 to R.S.45:9-1 shall adopt rules and regulations necessary to

1 carry out the purposes of this act pursuant to the
2 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
3 seq.).

4 7. This act shall take effect immediately.

5

6

HEALTH
Regulated Professions

8

9 Requires physicians, chiropractors and podiatrists to disclose
10 their financial interest in health care services to patients.
11

[FIRST REPRINT]

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, Nos. 734 and 2091

STATE OF NEW JERSEY

ADOPTED APRIL 18, 1988

Sponsored by Senators CODEY and RUSSO

1 AN ACT concerning disclosure of financial interests by certain
health care practitioners and supplementing chapter 9 of Title
3 45 of the Revised Statutes.

5 BE IT ENACTED *by the Senate and General Assembly of the
State of New Jersey:*

7 1. For the purposes of this act:

"Health care service" means a business entity which provides
9 on an inpatient or outpatient basis: testing for or diagnosis or
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11 drugs or medical devices for the treatment of human disease or
dysfunction. Health care service includes, but is not limited to,
13 a bioanalytical laboratory, pharmacy, home health care agency,
rehabilitation facility, nursing home, hospital, or a facility
15 which provides radiological or other diagnostic imagery services,
physical therapy, ambulatory surgery, or ophthalmic services.

17 "Immediate family" means the practitioner's spouse and
children, the practitioner's siblings and parents, the
19 practitioner's spouse's siblings and parents, and the spouses of
the practitioner's children.

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licensed pursuant to Title 45 of the Revised Statutes.

23 "Significant beneficial interest" means any financial interest
that is equal to or greater than the lesser of: (1) 5% of the
25 whole, or (2) \$5,000.00; but does not include ownership of a
building wherein the space is leased to a person at the
27 prevailing rate under a straight lease agreement, or any interest
held in publicly traded securities.

29 2. A practitioner shall not refer a patient ¹or direct an
employee of the practitioner to refer a patient¹ to a health care
31 service in which the practitioner ^{1,1} or the practitioner's
immediate family ¹, or the practitioner in combination with

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.
Senate amendments adopted in accordance with Governor's
recommendations January 10, 1989.

1 practitioner's immediate family¹ has a significant beneficial
2 interest unless the practitioner discloses the significant
3 beneficial interest to the patient.

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5 disclosure form, prepared pursuant to section 3 of this act ¹, and
6 post a copy of this disclosure form in a conspicuous public place
7 in the practitioner's office¹.

8 3. The written disclosure form required pursuant to section 2
9 of this act shall be in the following form:

10 Public law of the State of New Jersey mandates
11 that a physician, chiropractor or podiatrist inform
12 his patients of any significant financial interest he
13 may have in a health care service.

14 Accordingly, I wish to inform you that I do have a
15 financial interest in ¹[a health care service] the
16 following health care service(s)¹ to which I refer my
17 patients ¹[.] :

18 (list applicable health care services)¹

19 You may, of course, seek treatment at a health
20 care service provider of your own choice. A listing
21 of alternative health care service providers can be
22 found in the classified section of your telephone
23 directory under the appropriate heading.
24

25 4. The disclosure requirements of this act do not apply in the
26 case of a practitioner who is providing health care services
27 pursuant to a prepaid capitated contract entered into with the
28 Division of Medical Assistance and Health Services in the
29 Department of Human Services.

30 5. A practitioner who violates the provisions of this act is
31 liable for a penalty ¹[of not more than \$2,500.00 for the first
32 offense and not more than \$5,000.00 for any subsequent
33 offense. The penalty shall be recovered in a summary
34 proceeding brought in the name of the State pursuant to "the
35 penalty enforcement law," N.J.S.2A:58-1 et seq.] pursuant to
36 section 12 of P.L.1978, c.73 (C.45:1-25).¹
37

38 6. The State Board of Medical Examiners established pursuant
39 to R.S.45:9-1 shall adopt rules and regulations necessary to

1 carry out the purposes of this act pursuant to the
"Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
3 seq.).

7. This act shall take effect immediately.

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HEALTH
Regulated Professions

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11 Requires physicians, chiropractors and podiatrists to disclose
their financial interest in health care services to patients.

SENATE, No. 734

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel
PRE-FILED FOR INTRODUCTION IN THE 1988 SESSION

By Senator CODEY

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1 AN ACT concerning disclosure of certain financial interests by
2 physicians and supplementing chapter 9 of Title 45 of the
3 Revised Statutes.

5 BE IT ENACTED *by the Senate and General Assembly of the*
6 *State of New Jersey:*

7 1. For the purposes of this act:

8 a. "Health care service" means a for profit business entity
9 which provides on an inpatient or outpatient basis: testing for or
10 diagnosis or treatment of human disease; or, dispensing of drugs
11 or medical devices for the treatment of human disease. Health
12 care service includes, but is not limited to, a bioanalytical
13 laboratory, pharmacy, home health care agency, rehabilitation
14 facility, nursing home, hospital, a facility which provides
15 radiological services, and a facility which provides ambulatory
16 surgery.

17 b. "Immediate family" means the physician's spouse and
18 children, the physician's parents and the physician's spouse's
19 parents and the spouses of the physician's children.

20 c. "Significant beneficial interest" means any financial
21 interest that is equal to or greater than the lesser of: (1) 5% of
22 the whole, or (2) \$5,000.00; but does not include ownership of a
23 building wherein the space is leased to a person at the
24 prevailing rate under a straight lease agreement, or any interest
25 held in publicly traded securities.

26 2. A physician shall not refer a patient to a health care
27 service in which the physician or the physician's immediate
28 family has a significant beneficial interest unless the physician
29 discloses in writing to the patient the significant beneficial
30 interest in the service. The written disclosure shall also
31 indicate that the patient may choose any other appropriate
32 health care provider for the purpose of having the prescribed
33 health care service performed.

3. The disclosure requirements of this act do not apply in

1 the case of a physician who is providing health care services
2 pursuant to a prepaid capitated contract entered into with the
3 Division of Medical Assistance and Health Services in the State
4 Department of Human Services.

5 4. A physician who violates the provisions of this act is liable
6 for disciplinary action by the State Board of Medical Examiners
7 pursuant to R.S. 45:9-1 et seq.

8 5. The State Board of Medical Examiners established pursuant
9 to R.S. 45::9-1 et seq. shall adopt rules and regulations
10 necessary to carry out the purposes of this act pursuant to the
11 "Administrative Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1
12 et seq.).

13 6. This act shall take effect immediately.

15

16 STATEMENT

17

18 This bill prohibits physicians from referring patients to other
19 health care services in which the physician or the physician's
20 immediate family has a significant beneficial interest unless the
21 physician discloses that interest in writing to the patient.
22 Further, the disclosure statement shall advise the patient that
23 the patient may choose another health care provider in order to
24 have the prescribed health care service carried out. Physicians
25 who are in violation of the disclosure requirement are subject to
26 disciplinary action by the State Board of Medical Examiners.

27 Under the bill, the term "health care service" indicates
28 bioanalytical laboratories, home health care agencies,
29 rehabilitation facilities, nursing homes, hospitals and facilities
30 which provide either radiological services or ambulatory
31 surgery. The bill defines significant beneficial interest as any
32 financial interest that is equal to or greater than the lesser of
33 5% of the whole or \$5,000.00.

34 This bill addresses the increasing practice by physicians of
35 referring their patients to health care services, such as
36 diagnostic laboratories and radiologic imaging centers, in which
37 the physician has a financial interest. While this practice does
38 not necessarily mean that physicians are not acting in a
39 patient's best interest by making unnecessary or inappropriate

1 referrals or by charging noncompetitive rates for the service, it
is likely that this referral practice could create a conflict of
3 interest for the physician since the physician's profits from the
health care service would depend, at least in part, on his
5 referral of patients to the health care service.

It is not the intent of this bill to prohibit physicians from
7 investing in various health care services; but in order to protect
the public's interest in the receipt of health care, it is
9 necessary to require physicians to disclose their financial
interest in prescribed services and to advise their patients that
11 they may obtain the needed services from other providers, as
well. With this type of disclosure, patients would be better able
13 to make informed decisions about their health care.

15

HEALTH

17

Health Care Facilities and Providers

19

Requires physicians to disclose their financial interest in certain
health care services to patients.

ASSEMBLY HEALTH AND HUMAN RESOURCES COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR

SENATE, Nos. 734 and 2091

STATE OF NEW JERSEY

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DATED: SEPTEMBER 22, 1988

The Assembly Health and Human Resources Committee favorably reports the Senate Committee Substitute for Senate Bill Nos. 734 and 2091.

This substitute prohibits physicians, chiropractors, and podiatrists from referring patients to other health care services in which the practitioner or the practitioner's immediate family has a significant beneficial interest, unless the practitioner discloses that interest in writing to the patient.

The substitute provides that the disclosure statement shall advise the patient that the patient may choose another health care provider in order to have the prescribed health care service carried out. Practitioners who are in violation of the disclosure requirement are liable for a penalty of up to \$2,500 for the first offense and \$5,000 for a subsequent offense.

The substitute defines a "health care service" as a bioanalytical laboratory, pharmacy, home health care agency, rehabilitation facility, nursing home, hospital and a facility which provides radiological or other diagnostic imagery services, physical therapy, ambulatory surgery, or ophthalmic services. The substitute defines "significant beneficial interest" as a financial interest that is equal to or greater than the lesser of 5% of the whole, or \$5,000.

This substitute is intended to address the increasing practice by certain health care practitioners of referring their patients to health care services, such as diagnostic laboratories and radiologic imaging centers, in which the practitioner has a financial interest. This referral practice could create a conflict of interest for the practitioner since the practitioner's profits from the health care service would depend, at least in part, on his referral of patients to the health care service. With the type of disclosure required by this substitute, patients would be better able to make informed decisions about their health care.

This substitute is identical to Assembly Bill No. 2485 (Haytaian), which the committee also reported on this date.

SENATE INSTITUTIONS, HEALTH AND WELFARE COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR

SENATE, Nos. 734 and 2091

STATE OF NEW JERSEY

DATED: APRIL 18, 1988

The Senate Institutions, Health and Welfare Committee favorably reports a Senate Committee Substitute for Senate Bill Nos. 734 and 2091.

This substitute prohibits physicians, chiropractors, and podiatrists from referring patients to other health care services in which the practitioner or the practitioner's immediate family has a significant beneficial interest, unless the practitioner discloses that interest in writing to the patient.

The substitute provides that the disclosure statement shall advise the patient that the patient may choose another health care provider in order to have the prescribed health care service carried out. Practitioners who are in violation of the disclosure requirement are liable for a penalty of up to \$2,500.00 for the first offense and \$5,000.00 for any subsequent offense.

Under the substitute, the term "health care service" means a bioanalytical laboratory, home health care agency, rehabilitation facility, nursing home, hospital and a facility which provides radiological or other diagnostic imagery services, physical therapy, ambulatory surgery, or ophthalmic services. The substitute defines significant beneficial interest as any financial interest that is equal to or greater than the lesser of 5% of the whole, or \$5,000.00.

This substitute addresses the increasing practice by certain health care practitioners of referring their patients to health care services, such as diagnostic laboratories and radiologic imaging centers, in which the practitioner has a financial interest. While this practice does not necessarily mean that a practitioner is not acting in a patient's best interest by making unnecessary or inappropriate referrals or by charging noncompetitive rates for the service, it is likely that this referral practice could create a conflict of interest for the practitioner since the practitioner's profits from the health care service would depend, at least in part, on his referral of patients to the health care service.

It is not the intent of this substitute to prohibit practitioners from investing in various health care services; but in order to protect the public's interest in the receipt of health care, it is necessary to require practitioners to disclose their financial interest in prescribed services and to advise their patients that they may obtain the needed services from other providers, as well. With this type of disclosure, patients would be better able to make informed decisions about their health care.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

December 5, 1988

SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NOS. 734 and 2091

To the Senate:

Pursuant to Article V, Section 1, Paragraph 14 of the Constitution, I am returning Senate Committee Substitute for Senate Bill Nos. 734 and 2091 with my objections for reconsideration.

This bill prohibits physicians, chiropractors, or podiatrists from referring a patient to a health care service in which the practitioner or the practitioner's immediate family has a significant beneficial interest, unless the practitioner discloses that interest to the patient. As defined in this bill, health care service will include, but not be limited to, bioanalytical laboratories; pharmacies; home health care agencies; rehabilitation facilities; nursing homes; hospitals; or facilities that provide radiological or other diagnostic imagery services, physical therapy, ambulatory surgery or ophthalmic services.

The disclosure required by this legislation is triggered by the presence of a significant beneficial interest which is defined as any financial interest that is equal to, or greater than, the lesser of five percent of the whole or \$5,000. This legislation specifically excludes, however, ownership of a building wherein the space is leased to a person at the prevailing rate under a straight lease agreement, or an interest held in publicly traded securities.

I support the concept of practitioner disclosure embodied in this legislation. Physicians and other health care providers are becoming increasingly diversified in the health care field by acquiring financial interests in a broader spectrum of health care services. Many practitioners are thus placed in a position in which they routinely refer patients to related health care services in which they share a financial interest. While this phenomenon may have benefits in terms of efficiency and convenience for both the practitioner and the patient, I want to insure that the referral of patients to specific health care services continues to be based on purely medical considerations and that the decision not be influenced, or appear to be influenced, by any financial gain that may accrue from the referral. This legislation will assure that patients are properly advised of any apparent conflicts. However, I believe that several AMENDMENTS WILL FURTHER the intent of this legislation.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

As this bill has reached my desk, the level of financial interest that requires disclosure can be met by either the practitioner or the practitioner's immediate family. I favor amendments that will require disclosure if a significant beneficial interest is held by the practitioner, the practitioner's immediate family, or the practitioner in combination with his immediate family.

In addition, this bill does not address referrals made by employees of a practitioner. Accordingly, I recommend language to clarify that all employees of the practitioner, as well as the practitioner, must disclose the practitioner's interest in a related health care service before making a referral.

This bill also fails to specify the timing of the required disclosure. Notification of a practitioner's interest in other health care services prior to the referral stage of treatment may assist patients in their decision-making throughout their medical care. In addition to written notification, therefore, I recommend amendments that will require practitioners to post the disclosure form in a conspicuous public place in the practitioner's office.

Finally, the written disclosure form mandated by this legislation requires only that the practitioner notify the patient that the practitioner has a financial interest in a health care service to which they refer their patients. It does not require the practitioner to specify the name of those health care services. If this legislation is to be effective, I believe practitioners should specifically list the health care services in which they have a significant beneficial interest. I also recommend technical amendments to the penalty enforcement provision of this bill to maintain conformity with existing law.

Therefore, I herewith return Senate Committee Substitute for Senate Bill Nos. 734 and 2091 and recommend that it be amended as follows:

- | | |
|------------------------------------|---|
| <u>Page 1, Section 2, Line 29:</u> | After "patient" insert "or direct an employee of the practitioner to refer a patient" |
| <u>Page 1, Section 2, Line 30:</u> | After "practitioner" insert "," |
| <u>Page 1, Section 2, Line 31:</u> | After "family" insert ", or the practitioner in combination with practitioner's immediate family" |
-

3
STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

a copy of this disclosure form in a
conspicuous public place in the
practitioner's office"

Page 2, Section 3, Line 10:

After "in" delete "a health care
service" insert "the following
health care service(s)"

Page 2, Section 3, Line 11:

After "patients" delete "." insert
":

(list applicable health care
services)"

Page 2, Section 5, Lines 23-27:

After "penalty" delete remainder
of line 23, delete lines 24-27 in
their entirety and insert
"pursuant to section 12 of
P.L. 1978, c.73 (C.45:1-25)."

Respectfully,

/s/ Thomas H. Kean

GOVERNOR

[seal]

Attest:

/s/ Michael R. Cole

Chief Counsel