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LAW

SENATE SUBSTITUTE FOR

SENATE SUBSTITUTE FOR

SENATE, No. 787

STATE OF NEW JERSEY

213th LEGISLATURE

ADOPTED NOVEMBER 24, 2008

Sponsored by:

Senator RICHARD J. CODEY

District 27 (Essex)

Senator JOHN H. ADLER

District 6 (Camden)

Assemblyman HERB CONAWAY, JR.

District 7 (Burlington and Camden)

Assemblyman NELSON T. ALBANO

District 1 (Cape May, Atlantic and Cumberland)

Assemblyman MATTHEW W. MILAM

District 1 (Cape May, Atlantic and Cumberland)

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

Co-Sponsored by:

**Senator Van Drew, Assemblywoman Greenstein and Assemblyman
Connors**

SYNOPSIS

Requires single operating-room facilities to register with DHSS, permits practitioners to refer patients to ambulatory surgery facilities in which practitioners have financial interest under certain circumstances.

CURRENT VERSION OF TEXT

Substitute as adopted by the Senate.

(Sponsorship Updated As Of: 2/6/2009)

1 AN ACT concerning ambulatory surgical facilities, amending
2 P.L.1971, c.136, and amending and supplementing P.L. 1989,
3 c.19.

4

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

7

8 1. Section 12 of P.L.1971, c.136 (C.26:2H-12) is amended to
9 read as follows:

10 12. a. No health care service or health care facility shall be
11 operated unless it shall: (1) possess a valid license issued pursuant
12 to this act, which license shall specify the kind or kinds of health
13 care services the facility is authorized to provide; (2) establish and
14 maintain a uniform system of cost accounting approved by the
15 commissioner; (3) establish and maintain a uniform system of
16 reports and audits meeting the requirements of the commissioner;
17 (4) prepare and review annually a long range plan for the provision
18 of health care services; and (5) establish and maintain a centralized,
19 coordinated system of discharge planning which assures every
20 patient a planned program of continuing care and which meets the
21 requirements of the commissioner which requirements shall, where
22 feasible, equal or exceed those standards and regulations
23 established by the federal government for all federally-funded
24 health care facilities but shall not require any person who is not in
25 receipt of State or federal assistance to be discharged against his
26 will.

27 b. (1) Application for a license for a health care service or health
28 care facility shall be made upon forms prescribed by the
29 department. The department shall charge a single, nonrefundable
30 fee for the filing of an application for and issuance of a license and
31 a single, nonrefundable fee for any renewal thereof, and a single,
32 nonrefundable fee for a biennial inspection of the facility, as it shall
33 from time to time fix in rules or regulations; provided, however,
34 that no such licensing fee shall exceed \$10,000 in the case of a
35 hospital and \$4,000 in the case of any other health care facility for
36 all services provided by the hospital or other health care facility,
37 and no such inspection fee shall exceed \$5,000 in the case of a
38 hospital and \$2,000 in the case of any other health care facility for
39 all services provided by the hospital or other health care facility.
40 No inspection fee shall be charged for inspections other than
41 biennial inspections. The application shall contain the name of the
42 health care facility, the kind or kinds of health care service to be
43 provided, the location and physical description of the institution,
44 and such other information as the department may require. (2) A
45 license shall be issued by the department upon its findings that the

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.

1 premises, equipment, personnel, including principals and
2 management, finances, rules and bylaws, and standards of health
3 care service are fit and adequate and there is reasonable assurance
4 the health care facility will be operated in the manner required by
5 this act and rules and regulations thereunder.

6 c. (Deleted by amendment, P.L.1998, c.43).

7 d. The commissioner may amend a facility's license to reduce
8 that facility's licensed bed capacity to reflect actual utilization at the
9 facility if the commissioner determines that 10 or more licensed
10 beds in the health care facility have not been used for at least the
11 last two succeeding years. For the purposes of this subsection, the
12 commissioner may retroactively review utilization at a facility for a
13 two-year period beginning on January 1, 1990.

14 e. If a prospective applicant for licensure for a health care
15 service or facility that is not subject to certificate of need review
16 pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.) so requests, the
17 department shall provide the prospective applicant with a pre-
18 licensure consultation. The purpose of the consultation is to
19 provide the prospective applicant with information and guidance on
20 rules, regulations, standards and procedures appropriate and
21 applicable to the licensure process. The department shall conduct
22 the consultation within 60 days of the request of the prospective
23 applicant.

24 f. Notwithstanding the provisions of any other law to the
25 contrary, an entity that provides magnetic resonance imaging or
26 computerized axial tomography services shall be required to obtain
27 a license from the department to operate those services prior to
28 commencement of services, except that a physician who is
29 operating such services on the effective date of P.L.2004, c.54 shall
30 have one year from the effective date of P.L.2004, c.54 to obtain the
31 license.

32 g. (1) Notwithstanding the provisions of any other law to the
33 contrary, an entity that operates a surgical practice on the effective
34 date of this section of P.L. , c. (pending before the Legislature as
35 this bill), as defined in this subsection, shall be required to register
36 with the department within one year of the effective date of P.L. ,
37 c. .

38 (2) An entity that has not commenced operation as a surgical
39 practice on the effective date of this section of P.L. , c. (pending
40 before the Legislature as this bill), but has filed or files before the
41 180th day after the effective date of this section of P.L. , c. its
42 plans, specifications, and required documents with the municipality
43 in which the surgical practice will be located, shall register with the
44 department prior to the commencement of services.

45 (3) As a condition of registration with the department, a surgical
46 practice shall be required to obtain certification by the Centers for
47 Medicare and Medicaid Services as an ambulatory surgery center

1 provider or obtain ambulatory care accreditation from an
2 accrediting body recognized by the Centers for Medicare and
3 Medicaid Services.

4 (4) As a condition of registration with the department, a surgical
5 practice shall be required to report the following information
6 annually: the number of patients served by payment source,
7 including the number of Medicaid-eligible and medically indigent
8 persons served; the number of new patients accepted; and the
9 number of physicians, physician assistants, and advance practice
10 nurses providing professional services at the surgical practice.

11 (5) As used in this subsection and subsection i. of this section,
12 “surgical practice” means a structure or suite of rooms that has the
13 following characteristics:

14 (a) has no more than one room dedicated for use as an operating
15 room which is specifically equipped to perform surgery, and is
16 designed and constructed to accommodate invasive diagnostic and
17 surgical procedures;

18 (b) has one or more post-anesthesia care units or a dedicated
19 recovery area where the patient may be closely monitored and
20 observed until discharged; and

21 (c) is established by a physician, physician professional
22 association surgical practice, or other professional practice form
23 specified by the State Board of Medical Examiners pursuant to
24 regulation solely for the physician’s, association’s or other
25 professional entity’s private medical practice.

26 “Surgical practice” includes an unlicensed entity that is certified
27 by the Centers for Medicare and Medicaid Services as an
28 ambulatory surgery center provider.

29 (6) Nothing in this subsection shall be construed to limit the
30 State Board of Medical Examiners from establishing standards of
31 care with respect to the practice of medicine.

32 h. An ambulatory care facility licensed to provide surgical and
33 related services shall be required to obtain ambulatory care
34 accreditation from an accrediting body recognized by the Centers
35 for Medicare and Medicaid Services as a condition of licensure by
36 the department.

37 An ambulatory care facility that is licensed to provide surgical
38 and related services on the effective date of this section of P.L. , c.
39 (pending before the Legislature as this bill) shall have one year
40 from the effective date of this section of P.L. , c. to obtain
41 ambulatory care accreditation.

42 i. Beginning on the effective date of this section of P.L. , c.
43 (pending before the Legislature as this bill), the department shall
44 not issue a new registration to a surgical practice or a new license to
45 an ambulatory care facility to provide surgical and related services
46 unless:

- 1 (1) in the case of a registered surgical practice or licensed facility
2 in which a transfer of ownership of the practice or facility is
3 proposed, the commissioner reviews the qualifications of the new
4 owner or owners and approves the transfer;
- 5 (2) (a) except as provided in subparagraph (b) of this paragraph,
6 in the case of a registered surgical practice or licensed facility for
7 which a relocation of the practice or facility is proposed, the
8 relocation is within 20 miles of the practice's or facility's current
9 location or the relocation is to a "Health Enterprise Zone"
10 designated pursuant to section 1 of P.L.2004, c.139 (C.54A:3-7),
11 there is no expansion in the scope of services provided at the new
12 location from that of the current location, and the commissioner
13 reviews and approves the relocation; or
- 14 (b) in the case of a licensed facility described in paragraphs (5)
15 or (6) of this subsection for which a relocation of the facility is
16 proposed, the commissioner reviews and approves the relocation;
- 17 (3) the entity is a surgical practice required to be registered
18 pursuant to paragraph (1) of subsection g. of this section and meets
19 the requirements of that subsection;
- 20 (4) the entity has filed its plans, specifications, and required
21 documents with the Health Care Plan Review Unit of the
22 Department of Community Affairs or the municipality in which the
23 surgical practice or facility will be located, as applicable, on or
24 before the 180th day following the effective date of this section of
25 P.L. , c. ;
- 26 (5) the facility is owned jointly by a general hospital in this State
27 and one or more other parties; or
- 28 (6) the facility is owned by a hospital or medical school.
- 29 (j) (1) The department shall require an applicant for registration
30 as a surgical practice, as provided in subsection g. of this section, to
31 submit an application for registration in a form and manner
32 prescribed by the department. The applicant shall submit the name
33 and address of the surgical practice that is to be registered, the name
34 of the chief administrator or designated agent of the practice, the
35 names and addresses of all owners of the practice, the scope of
36 services provided at the practice, proof of certification by the
37 Centers for Medicare and Medicaid Services or accreditation from
38 an accrediting body recognized by the Centers for Medicare and
39 Medicaid Services, and such other information as the commissioner
40 deems necessary and as provided by regulation.
- 41 (2) The registration shall be valid for a one-year period and may
42 be renewed upon submission to the department of an application for
43 renewal.
- 44 (3) The commissioner may suspend, revoke, or deny a
45 registration if the registrant or applicant, as applicable, is not in
46 compliance with the requirements of this section.

1 (4) No registered surgical practice shall be owned, managed, or
2 operated by any person convicted of a crime relating adversely to
3 the person's capability of owning, managing, or operating the
4 practice.

5 (5) The department may charge a reasonable fee for filing an
6 application for registration and for each renewal thereof.

7 (cf: P.L. 2004, c.54, s.4)

8

9 2. Section 2 of P.L.1989, c.19 (C.45:9-22.5) is amended to read
10 as follows:

11 a. A practitioner shall not refer a patient or direct an employee
12 of the practitioner to refer a patient to a health care service in which
13 the practitioner, or the practitioner's immediate family, or the
14 practitioner in combination with the practitioner's immediate family
15 has a significant beneficial interest; except that, in the case of a
16 practitioner, a practitioner's immediate family or a practitioner in
17 combination with the practitioner's immediate family who had the
18 significant beneficial interest prior to the effective date of P.L.1991,
19 c.187 (C.26:2H-18.24 et al.), and in the case of a significant
20 beneficial interest in a health care service that provides lithotripsy
21 or radiation therapy pursuant to an oncological protocol that was
22 held prior to the effective date of this section of P.L. , c. (pending
23 before the Legislature as this bill), the practitioner may continue to
24 refer a patient or direct an employee to do so if that practitioner
25 discloses the significant beneficial interest to the patient.

26 b. If a practitioner is permitted to refer a patient to a health care
27 service pursuant to [subsection a. of] this section, the practitioner
28 shall provide the patient with a written disclosure form, prepared
29 pursuant to section 3 of P.L.1989, c.19 (C.45:9-22.6), and post a
30 copy of this disclosure form in a conspicuous public place in the
31 practitioner's office.

32 c. The restrictions on referral of patients established in this
33 section shall not apply to:

34 (1) [a health care service that is provided at the practitioner's
35 medical office and for which the patient is billed directly by the
36 practitioner; and] medical treatment or a procedure that is provided
37 at the practitioner's medical office and for which a bill is issued
38 directly in the name of the practitioner or the practitioner's medical
39 office;

40 (2) [radiation therapy pursuant to an oncological protocol,
41 lithotripsy and] renal dialysis; and

42 (3) ambulatory surgery or procedures requiring anesthesia
43 performed at a surgical practice registered with the Department of
44 Health and Senior Services pursuant to subsection g. of section 12
45 of P.L.1971, c.136 (C.26:2H-12) or at an ambulatory care facility
46 licensed by the Department of Health and Senior Services to

1 perform surgical and related services, if the following conditions
2 are met:

3 (a) the practitioner who provided the referral personally performs
4 the procedure;

5 (b) the practitioner's remuneration as an owner of or investor in
6 the practice or facility is directly proportional to his ownership
7 interest and not to the volume of patients the practitioner refers to
8 the practice or facility;

9 (c) all clinically-related decisions at a facility owned in part by
10 non-practitioners are made by practitioners and are in the best
11 interests of the patient; and

12 (d) disclosure of the referring practitioner's significant beneficial
13 interest in the practice or facility is made to the patient in writing, at
14 or prior to the time that the referral is made, consistent with the
15 provisions of section 3 of P.L.1989, c.19 (C.45:9-22.6).

16 (cf: P.L.1991, c.187, s.47)

17

18 3. Section 3 of P.L.1989, c.19 (C.45:9-22.6) is amended to read
19 as follows:

20 3. The written disclosure form required pursuant to section 2 of
21 **[this act]** P.L.1989, c.19 (C.45:9-22.5) shall be **[in the following**
22 **form:**

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

26 Accordingly, I wish to inform you that I do have a financial
27 interest in the following health care service(s) to which I refer my
28 patients:

29 (list applicable health care services)

30 You may, of course, seek treatment at a health care service
31 provider of your own choice. A listing of alternative health care
32 service providers can be found in the classified section of your
33 telephone directory under the appropriate heading] prescribed by
34 regulation of the State Board of Medical Examiners. In addition to
35 such other information as the board determines necessary, the
36 disclosure shall inform the patient whether any services or facility
37 fees associated with the referral will be considered to be, and
38 reimbursed at, an "out-of-network" level by the patient's insurance
39 carrier or other third party payer.

40 (cf: P.L. 1989, c.19, s. 3)

41

42 4. (New Section) a. A referral for ambulatory surgery or a
43 procedure requiring anesthesia made prior to the effective date of
44 this section of P.L. , c. (pending before the Legislature as this bill)
45 by a practitioner to a surgical practice or ambulatory care facility
46 licensed by the Department of Health and Senior Services to
47 perform surgical and related services shall be deemed to comply

1 with the provisions of section 2 of P.L.1989, c.19 (C.45:9-22.5) if
2 the practitioner personally performed the procedure that is the
3 subject of the referral.

4 b. As used in this section, "surgical practice" means a structure
5 or suite of rooms that has the following characteristics:

6 (1) has no more than one room dedicated for use as an operating
7 room which is specifically equipped to perform surgery, and is
8 designed and constructed to accommodate invasive diagnostic and
9 surgical procedures;

10 (2) has one or more post-anesthesia care units or a dedicated
11 recovery area where the patient may be closely monitored and
12 observed until discharged; and

13 (3) is established by a physician, physician professional
14 association surgical practice, or other professional practice form
15 specified by the State Board of Medical Examiners pursuant to
16 N.J.A.C.13:35-6.16(f) solely for the physician's, association's or
17 other professional entity's private medical practice.

18 "Surgical practice" includes an unlicensed entity that is certified
19 by the Centers for Medicare and Medicaid Services as an
20 ambulatory surgery center provider.

21

22 5. (New section) a. A referral made during the first 12 months
23 after the effective date of this section of P.L. , c. (pending before
24 the Legislature as this bill) to a surgical practice or an ambulatory
25 care facility licensed by the Department of Health and Senior
26 Services to perform surgical and related services, shall be deemed
27 to comply with the provisions of section 2 of P.L.1989, c.19
28 (C.45:9-22.5) if:

29 (1) the practitioner who makes the referral also personally
30 performs the procedure; and

31 (2) disclosure of the referring practitioner's significant beneficial
32 interest in the surgical practice or licensed ambulatory care facility
33 is made to the patient in writing, at or prior to the time that the
34 referral is made, consistent with the provisions of section 3 of
35 P.L.1989, c.19 (C.45:9-22.6).

36 b. As used in this section, "surgical practice" means a structure
37 or suite of rooms that has the following characteristics:

38 (1) has no more than one room dedicated for use as an operating
39 room which is specifically equipped to perform surgery, and is
40 designed and constructed to accommodate invasive diagnostic and
41 surgical procedures;

42 (2) has one or more post-anesthesia care units or a dedicated
43 recovery area where the patient may be closely monitored and
44 observed until discharged; and

45 (3) is established by a physician, physician professional
46 association surgical practice, or other professional practice form
47 specified by the State Board of Medical Examiners pursuant to

1 N.J.A.C.13:35-6.16(f) solely for the physician's, association's or
2 other professional entity's private medical practice.

3 "Surgical practice" includes an unlicensed entity that is certified
4 by the Centers for Medicare and Medicaid Services as an
5 ambulatory surgery center provider.

6

7 6. The Commissioner of Health and Senior Services shall adopt
8 rules and regulations, pursuant to the "Administrative Procedure
9 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to carry out the
10 provisions of section 1 of this act, including prescribing the
11 application form and process to register with the department as a
12 surgical practice and the information that shall be reported to the
13 department pursuant to paragraph (4) of subsection g. of section 12
14 of P.L.1971, c.136 (C.26:2H-12).

15

16 7. This act shall take effect immediately, except that section 2
17 shall take effect on the first day of the 12th month after the date of
18 enactment, and section 5 shall expire on the first day of the 12th
19 month after the date of enactment.

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STATEMENT

23

24 This substitute seeks to establish standardized requirements for
25 health care facilities in the State that provide ambulatory surgery
26 and related procedures, to enhance quality of care and patient
27 safety, to address the economic disadvantage that hospitals face
28 with the proliferation of free-standing ambulatory surgical facilities
29 throughout the State, and to ensure that patients receiving care at
30 such facilities are adequately informed as to whether they will be
31 responsible for out-of-network cost sharing. Accordingly, the
32 substitute: (1) requires that single operating-room surgical facilities
33 register with the Department of Health and Senior Services (DHSS)
34 and report certain information to DHSS; (2) limits the issuance of
35 new registrations for surgical practices and licenses for ambulatory
36 care facilities in the State; and (3) revises the law pertaining to
37 patient referrals to health care services in which health care
38 practitioners or their immediate families have a significant
39 beneficial interest.

40

Specifically, the substitute provides as follows:

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- A surgical practice operating on the effective date of the substitute shall register annually with DHSS. The initial registration shall be within one year of the date of enactment of the substitute. In addition, as a condition of registration with DHSS, surgical practices shall obtain certification by the Centers for Medicare and Medicaid Services (CMS) or accreditation from an accrediting body recognized by CMS,

- 1 and comply with certain annual reporting requirements
2 concerning utilization and staffing. The substitute also
3 specifies the information that shall be submitted to the
4 department by an applicant for registration. The substitute
5 provides that its provisions shall not be construed to limit
6 the State Board of Medical Examiners from establishing
7 standards of care with respect to the practice of medicine.
- 8 • A surgical practice is defined as a structure or suite of rooms
9 that:
 - 10 -- has no more than one room dedicated for use as an
11 operating room which is specifically equipped to perform
12 surgery, and is designed and constructed to accommodate
13 invasive diagnostic and surgical procedures;
 - 14 -- has one or more post-anesthesia care units or a dedicated
15 recovery area where the patient may be closely monitored
16 and observed until discharged; and
 - 17 -- is established by a physician, physician professional
18 association surgical practice, or other professional practice
19 form specified by the State Board of Medical Examiners
20 solely for the physician's, association's, or other
21 professional entity's private medical practice.
 - 22 • As a condition of DHSS licensure, ambulatory care facilities
23 shall obtain ambulatory care accreditation from an
24 accrediting body recognized by CMS. Facilities shall have
25 one year from the date of enactment of the substitute to
26 comply with the requirement to obtain accreditation.
 - 27 • As of the date of enactment of the substitute, DHSS shall not
28 issue a new registration to a surgical practice or a new
29 license to an ambulatory care facility to provide surgical and
30 related services unless:
 - 31 -- in the case of a registered surgical practice or licensed
32 facility in which a transfer of ownership of the practice or
33 facility is proposed, the commissioner reviews the
34 qualifications of the new owner or owners and approves the
35 transfer;
 - 36 -- except as provided below, in the case of a registered
37 surgical practice or licensed facility for which a relocation of
38 the practice or facility is proposed, the relocation is within
39 20 miles of the practice's or facility's current location or is
40 to a State-designated "Health Enterprise Zone," there is no
41 expansion in the scope of services provided at the new
42 location from that of the current location, and the
43 commissioner reviews and approves the relocation. In the
44 case of a licensed facility owned jointly by a general hospital
45 in the State and other parties, or owned by a hospital or
46 medical school for which a relocation of the facility is

- 1 proposed, the commissioner reviews and approves the
2 relocation;
- 3 -- the entity is a surgical practice required to be registered,
4 and otherwise meets the requirements of the substitute;
- 5 -- the entity has filed, on or before the 180th day following
6 the effective date of the substitute, its plans, specifications,
7 and required documents with the Health Care Plan Review
8 Unit of the Department of Community Affairs or the
9 municipality in which the facility or surgical practice will be
10 located, as applicable;
- 11 -- the facility is owned jointly by a general hospital in this
12 State and one or more other parties; or
- 13 -- the facility is owned by a hospital or medical school.
- 14 • Effective one year after the date of enactment of the
15 substitute, practitioner self-referrals to a health care service
16 that provides lithotripsy or radiation therapy pursuant to an
17 oncological protocol in which the practitioner, the
18 practitioner's immediate family, or the practitioner in
19 combination with practitioner's immediate family has a
20 significant beneficial interest for health care services will be
21 prohibited; however, practitioners who held significant
22 beneficial interests in such health care services before the
23 effective date are permitted to continue referring patients to
24 those services, provided they comply with the substitute's
25 disclosure requirements.
- 26 • The substitute provides an exemption for referrals for
27 ambulatory surgery and procedures requiring anesthesia
28 performed at a registered surgical practice or at a licensed
29 ambulatory care facility if the following conditions are met:
- 30 -- the practitioner who provides the referral also personally
31 performs the procedure;
- 32 -- the practitioner's remuneration as an owner of or investor
33 in the practice or facility is directly proportional to his
34 ownership interest and not to the volume of patients the
35 practitioner refers to the practice or facility;
- 36 -- all clinically-related decisions at a facility owned in part
37 by non-practitioners are made by practitioners and are in the
38 best interests of the patient; and
- 39 -- disclosure of the referring practitioner's significant
40 beneficial interest in the practice or facility is made to the
41 patient in writing, at or prior to the time that the referral is
42 made.
- 43 • The provisions of this substitute concerning patient referrals
44 for ambulatory surgery performed in a facility in which a
45 practitioner or a member of the practitioner's immediate
46 family has a significant beneficial interest are not intended
47 to limit referrals between practitioners of a medical office

- 1 that are made for the benefit and in the best interests of the
2 patient.
- 3 • The substitute amends section 3 of P.L.1989, c.19 (C.45:9-
4 22.6) to provide that the State Board of Medical Examiners
5 shall prescribe the information which must be disclosed to
6 patients (rather than specifying in the statute the exact
7 language of the disclosure), although the substitute specifies
8 that the disclosure must include whether any services or
9 facility fees associated with a referral will be considered to
10 be, and reimbursed at, an “out-of-network” level by the
11 patient’s insurance carrier or other third party payer.
 - 12 • The substitute takes effect immediately, but provides a 12-
13 month transition period for: (1) surgical practices to meet the
14 requirements for DHSS registration, including obtaining
15 CMS certification or accreditation from an accrediting body
16 recognized by CMS, and (2) licensed facilities to obtain
17 accreditation from an accrediting body recognized by CMS.
18 Referrals for health care services in which a practitioner has
19 a beneficial interest made before and during the 12 months
20 after the date of enactment of the substitute shall be deemed
21 to comply with the substitute if the referring practitioner also
22 performs the procedure, and for referrals made during the
23 one-year period after the date of enactment of the substitute,
24 if the practitioner also discloses any significant beneficial
25 interest he may have in the health care service.

1 SPONSOR'S STATEMENT

2

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

8 This bill would exempt from the prohibition surgery provided at
9 an ambulatory care facility that is licensed by the Department of
10 Health and Senior Services on the effective date of the bill to
11 provide ambulatory surgery if:

- 12 •the physician who made the referral also performs the surgery; and
- 13 •the physician's remuneration as an owner/investor of the facility is
14 not related to the volume of patients the physician refers to the
15 facility.

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.

1 SPONSOR'S STATEMENT
2

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

8 This bill would exempt from the prohibition surgery provided at
9 an ambulatory care facility that is licensed by the Department of
10 Health and Senior Services on the effective date of the bill to
11 provide ambulatory surgery if:

- 12 • the physician who made the referral also performs the surgery; and
- 13 • the physician's remuneration as an owner/investor of the facility is
14 not related to the volume of patients the physician refers to the
15 facility.

ASSEMBLY HEALTH AND SENIOR SERVICES COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 1933

STATE OF NEW JERSEY

DATED: JUNE 19, 2008

The Assembly Health and Senior Services Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 1933.

This committee substitute amends section 2 of P.L.1989, c.19 (N.J.S.A.45:9-22.5), which prohibits 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, in order to permit practitioners to refer patients to certain surgical practices and licensed ambulatory surgical facilities in which they have a financial interest.

Under current law, a practitioner who had a significant beneficial interest in a health care service prior to the effective date of P.L.1991, c.187 (C.26:2H-18.24 et al.), is permitted to continue referring patients to that service provided that the practitioner discloses that interest to the patient.

The substitute provides specifically as follows:

- The substitute updates language concerning medical treatment provided at a practitioner's medical office to specify that the medical office includes, but is not limited to, a surgical practice, and specifies that bills for medical services must be issued directly in the name of the practitioner or the practitioner's medical or surgical practice.
- The substitute also imposes additional requirements regarding a practitioner's disclosure of financial interest to patients. The disclosure must be made at or before the time the referral is made, and must inform patients whether the services will be considered to be, and reimbursed at, an "out-of-network" level by the patient's insurance carrier or other third party payer.
- A surgical practice, which includes, but is not limited, to an entity that is certified by the Centers for Medicare and Medicaid Services as an ambulatory surgery center provider, is to be deemed a practitioner's medical office if all of the following conditions are met:
 - the practice has no more than one room dedicated for use as an operating room that is specifically equipped to perform surgery and is

designed and constructed to accommodate invasive diagnostic and surgical procedures;

-- the practitioner who provided the referral also personally performs the surgery or procedure;

-- all of the ownership interests of the practice are held by investors who are referring practitioners, or referring practitioners in combination with other practitioners, with a licensed hospital, or with closely allied licensed health care professionals, or a licensed hospital; and

-- the practitioner's remuneration as an owner of or investor in the practice is directly proportional to his ownership interest and not to the volume of patients that the practitioner refers to the practice.

- The substitute adds, to the list of exemptions from the prohibition on patient referrals, a referral for ambulatory surgery or procedures requiring anesthesia services, if the following conditions are met:

-- the surgery or procedure requiring anesthesia is performed at an ambulatory surgical facility licensed by the Department of Health and Senior Services (DHSS);

-- the practitioner who provided the referral also personally performs the surgery or procedure; and

-- the practitioner's remuneration as an owner of or investor in the facility is directly proportional to his ownership interest and not to the volume of patients that the practitioner refers to the facility.

- The exemption from the prohibition on patient referrals to an ambulatory surgical facility applies irrespective of whether that facility is owned solely by practitioners or in conjunction with non-practitioners. All clinically-related decisions at a facility owned in part by non-practitioners must be made by practitioners and be in the best interests of the patient.

- A referral made prior to the effective date of this substitute to a surgical practice or a licensed ambulatory surgical facility, which surgical practice or ambulatory surgical facility is in compliance with the requirement that the practitioner personally perform the procedure that is the subject of the referral on the effective date of the substitute, will be deemed to comply with the provisions of section 2 of P.L.1989, c.19.

- A surgical practice or licensed ambulatory surgical facility that is in operation on the effective date of this substitute will have six months from the effective date of the substitute to comply with the remuneration requirements. During the six-month period, if the surgical practice or licensed ambulatory surgical facility otherwise complies with the requirements of section 2 of P.L.1989, c.19, it will be deemed to be in compliance with the provisions of that section.

- The Commissioner of Health and Senior Services is directed to establish a two-year moratorium on the issuing of initial licenses to ambulatory surgical facilities, beginning on September 1, 2008. The moratorium will not:

-- apply to an ambulatory surgical facility that has filed, prior to September 1, 2008, its plans, specifications, and required documents with the Health Care Plan Review Unit of the Department of Community Affairs, provided that the ambulatory surgical facility otherwise meets the requirements of paragraph (3) of subsection c. of section 2 of P.L.1989, c.19 (C.45:9-22.5), and subsequently obtains DHSS licensure;

-- restrict the transfer of ownership, in whole or in part, of an ambulatory surgical facility;

-- restrict expansion at the same location of an ambulatory surgical facility which has filed its plans, specifications, and required documents with the Health Care Plan Review Unit of the Department of Community Affairs prior to September 1, 2008; or

-- restrict any licensed ambulatory surgical facility that is in operation on the effective date of this substitute from relocating its operations to a new location.

- A 15-member Practitioner Self Referral Review Task Force is established in the Division of Consumer Affairs in the Department of Law and Public Safety to review the impact of the provisions of P.L.1989, c.19 (C.45:9-22.4 et seq.) on the health care delivery system in the State. The task force is to:

-- consider developments that have occurred since the enactment of P.L.1989, c.19 in practitioner referral patterns, how and where ambulatory surgery and invasive diagnostic procedures are performed, and whether further requirements concerning practitioner referrals to services in which they have a financial interest are necessary to ensure compliance with the intent of P.L.1989, c.19; and

-- assess whether the moratorium established in this substitute should be continued.

- The membership of the task force is to include:

-- the Director of the Division of Consumer Affairs and the Commissioners of Health and Senior Services and Banking and Insurance, or their designees, as ex officio members; and

-- 12 public members, four each appointed by the Governor, the President of the Senate and the Speaker of the General Assembly, and including consumers, physicians, representatives of general hospitals in the State, representatives of licensed ambulatory surgical facilities in the State, and representatives of insurance carriers authorized to operate in the State.

- The task force is to report its findings and recommendations to the Governor and the Legislature 18 months after the effective date of the substitute, and will dissolve on the 30th day after the issuance of the report.

This committee substitute is similar to the Senate Substitute for Senate Bill No. 787 (Codey/Adler), which is pending before the Senate.