Article 28.

Self-Referrals by Health Care Providers.

§ 90-405. Definitions.

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 Health and Human Services 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 of 1974, any federal or State employee insurance program, Medicare or Medicaid.

(4) "Entity" means any individual, partnership, firm, corporation, or other business that provides health care services.

(5) "Fair market value" means the value of the rental property for commercial purposes not adjusted to reflect the additional value that one party (either the prospective lessee or lessor) would attribute to the property as a result of its proximity or convenience to sources of referrals or business.

(6) "Group practice" means a group of two or more health care providers legally organized as a partnership, professional corporation, or similar association:

a. In which each health care provider who is a member of the group provides services including consultation, diagnosis, or treatment, through the joint use of shared facilities, equipment, and personnel;

b. For which substantially all the services of the health care providers who are members of the group are provided through the group and are billed in the name of the group and amounts so received are treated as receipts of the group; and

c. In which the overhead expenses of and the income from the practice are distributed in accordance with methods previously determined by members of the group.

(7) "Health care provider" is any person who, pursuant to Chapter 90 of the General Statutes, is licensed, or is otherwise registered or certified to engage in the practice of any of the following: medicine, dentistry, optometry, osteopathy, chiropractic, nursing, podiatry, psychology, physical therapy, occupational therapy or speech and language pathology and audiology.

(8) "Immediate family member" means a health care provider's spouse or dependent minor child.

(9) "Investment interest" means an equity or debt security issued by an entity, or a lease or retained interest in real property held by an entity, including, without limitation, shares of stock in a corporation, units or other interests in a partnership, bonds, debentures, notes, leases, options or contracts related to

real property or other equity interests or debt instruments. "Investment interest" and legal or beneficial interest shall not include any interest in:

a. Bonds or other debt instruments issued pursuant to the provisions of Chapter 159 of the General Statutes;

b. A written lease of real property entered into on or before January 1, 1990, for a term of five years or more or a written lease of real property for a term of one year or more, which fully describes the leased premises, the terms and conditions for the lease thereof, with the aggregate rental charge, set in advance, consistent with fair market value in arms-length transactions and not determined in a manner that takes into account the volume or value of any referrals or business otherwise generated between the parties to the lease;

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

d. Investment interests (including shares of stock, bonds, debentures, notes or other debt instruments) in any corporation that is listed for trading on the New York Stock Exchange, the American Stock Exchange, or is a national market system security traded under automated interdealer quotation system operated by the National Association of Securities Dealers and has, at the end of the corporation's most recent fiscal year, total assets exceeding fifty million dollars ($50,000,000), provided that one of the following requirements is satisfied:

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

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

(10) "Investor" means an individual or entity owning a legal or beneficial ownership or investment interest, directly or indirectly (including without limitation, through an immediate family member, trust, affiliate, or another entity related to the investor).

(11) "Referral" means any referral of a patient for designated health care services, including, without limitation:

a. The forwarding of a patient by one health care provider to another health care provider or to an entity that provides any designated health care service; or

b. The request or establishment of a plan of care by a health care provider, which includes the provision of designated health care services.

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

group practice. (1993, c. 482, s. 1; 1995, c. 509, s. 46; 1997-443, s. 11A.118(a).)