

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 698

Short Title: Dentistry Management Arrangement Limits. (Public)

Sponsors: Representatives Dockham, T. Moore, and Gillespie (Primary Sponsors).
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Rules, Calendar, and Operations of the House.

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT DENTIST AGREEMENTS WITH MANAGEMENT COMPANIES DO NOT SHIFT CONTROL OF CLINICAL PATIENT SERVICES AWAY FROM LICENSED DENTISTS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 2 of Chapter 90 of the General Statutes is amended by adding a new section to read:

"§ 90-40.2. Management arrangements.

(a) No dentist, professional entity, or management company shall enter into a management arrangement unless the management arrangement meets the requirements of subsections (b) through (h) of this section.

(b) The following definitions apply in this section:

(1) Clinical. – Of or relating to the activities of a dentist as described in G.S. 90-29(b)(1) through (10).

(2) Management arrangement. – Any one or more contractual agreements, stipulations, understandings, arrangements, or other binding legal instruments or arrangements, by whatever name, whether written or oral, between a dentist or professional entity and a management company whereby the management company does any of the following:

a. Regularly provides services for the clinical-related business of a dentist or professional entity.

b. Exercises supervision, management, or control over the clinical, professional, or business aspects of a dentist or professional entity or the employees or contractors of the dental practice.

c. Provides control of business activities of the clinical or professional services of the dentist or professional entity.

(3) Management company. – Any individual, business corporation, nonprofit corporation, partnership, limited liability company, limited partnership, or other legal entity, by whatever name, other than a dentist licensed in this State or registered professional entity authorized to provide clinical dental services under this Article, that provides to a dentist or professional entity services described in sub-subdivisions (b)(2)a. through c. of this section.

(4) Professional entity. – A professional corporation, nonprofit corporation, partnership, professional limited liability company, professional limited



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1 partnership, or other entity or aggregation of individuals, by whatever name,
2 that is licensed, certified, or otherwise authorized to provide clinical dental
3 services under this Article.

4 (5) Unlicensed person. – Any person or entity, other than a dentist licensed in
5 this State or registered professional entity authorized to provide dental
6 services under this Article.

7 (c) All management arrangements shall meet the following requirements:

8 (1) Be submitted to the Board for a review and a determination of compliance
9 with this section and other provisions under this Article.

10 (2) Be evidenced by a written agreement that satisfies each of the following:

11 a. Is signed by all parties to the agreement.

12 b. Sets forth all material terms of the arrangement between or among
13 the parties to the agreement.

14 c. Describes all of the types of services to be provided by the
15 management company and the time periods during which those
16 services will be provided.

17 d. Sets forth the precise methodology for calculating the compensation
18 to be paid to the management company by the dentist or professional
19 entity and, whenever possible, the aggregate compensation to be paid
20 under the management arrangement.

21 e. Is implemented, administered, or carried out between the parties to
22 the agreement consistent with the terms of the writing.

23 (d) No management arrangement shall provide for or permit any provision, which alone
24 or in combination with others, (i) has a potential negative impact on patient care, (ii) affects the
25 provision of dental services, the professional decision making of the dentist, or other personnel
26 of the dentist or professional entity, (iii) assigns control of the dental practice to a management
27 company or unlicensed person, or (iv) gives the entity or unlicensed person actual or effective
28 ownership of the dental practice.

29 (e) No management arrangement shall provide for or permit any of the following:

30 (1) Control over the distribution of a revenue stream or control over a line of
31 business of the professional entity, except for the sale of fixed assets of a
32 dentist or professional entity permitted under the laws of this State.

33 (2) Ownership or exclusive control of patient records of the dental practice.

34 (3) Direct or indirect control over, or input into, the clinical practices of the
35 professional entity or its dentists or clinical personnel.

36 (4) Direct or indirect control over the employment or termination of dentists,
37 dental hygienists, or other personnel of the dentist or professional entity by
38 the management company, including the authority to prescribe or limit the
39 material terms of all the personnel's relationship with the dentist or
40 professional entity or the ability to restrict or limit the authority of the dental
41 practice to arrange the work schedule of the personnel. This subdivision
42 shall not be construed to prohibit the use of temporary personnel by a dentist
43 or dental practice for a period not to exceed six months.

44 (5) Authority to enter into, approve, or require its input into any contract or
45 other arrangement or material terms of the contract or arrangement between
46 the professional entity and a dentist for the provision of dental services.

47 (6) Direct or indirect control over the transfer of ownership interests in the
48 professional entity including, without limitation, any agreement or
49 arrangement limiting or requiring in whole or in part the transfer of
50 ownership interests in a professional entity.

- 1 (7) Payment of compensation or anything of value based on or related to an
2 increase or decrease in collections, profits, gross or net revenues, proceeds,
3 earnings, or any other income, however characterized, of the dentist or
4 professional entity.
- 5 (8) Payment of compensation that is likely to or is designed to exceed the profits
6 of the professional entity where such an outcome is foreseeable at the time
7 the management agreement is executed.
- 8 (9) Payment of compensation without specifying the precise methodology by
9 which the dentist or dental practice can determine the increased or decreased
10 management fees due under the agreement based upon an inverse correlation
11 between the change in fees and the increases or decreases in cost to the
12 practice from the management company's performance.
- 13 (10) Payment of compensation without (i) stating precisely all the charges to the
14 dentist or dental practice for all services being provided under the
15 agreement, (ii) identifying the methodology by which the dentist or dental
16 practice can calculate the total amount owed for all services to the
17 management company under the agreement, or (iii) providing access to the
18 dentist or dental practice accurate documentation supporting charges under
19 the agreement and regular audit opportunities for the dentist or dental
20 practice.
- 21 (11) Authority or input into the determination of which patients are seen by the
22 dental practice, including prioritizing the types of patients that should be
23 seen by the dental practice, such as patient selection criteria based on payor
24 source.
- 25 (12) Authority to establish or to limit the hours of operation of the dentist or
26 dental practice or require the management company's or unlicensed person's
27 agreement to hours of operation of the dental practice.
- 28 (13) Power to require a dentist, professional entity, or dental practice to use its
29 services exclusively.
- 30 (14) Exclusive right to provide the dentist or dental practice all supplies,
31 equipment, inventory, or furnishings, including from an affiliate owned or
32 controlled by the management company or unlicensed person.
- 33 (15) Control of a dentist or dental practice's funds, including the use of 'sweep
34 accounts' pursuant to which the management company or unlicensed person
35 sweeps the funds from the accounts of the dentist or dental practice into a
36 master account maintained or controlled by the management company or
37 unlicensed person.
- 38 (16) Decision-making authority over priority of payment to vendors or suppliers
39 of the dentist or dental practice, including for the payment of its fees.
- 40 (17) Authority to require that the dentist or dental practice bill patients in the
41 name of the management company or that patient payments be made directly
42 to the company or an unlicensed person.
- 43 (18) Ownership of all equipment, supplies, or inventory of the practice.
- 44 (19) Authority to lease or sublease office space to be used for the provision of
45 clinical services to a dental practice in which the precise terms of the lease
46 are not clearly delineated or are not on commercially reasonable terms.
- 47 (20) Authority to lease or sublease dental equipment used to provide clinical
48 services to a dental practice in which the precise terms of the lease are not
49 clearly delineated or are not on commercially reasonable terms.
- 50 (21) Authority to require the licensee or professional entity to lease, sublease, or
51 finance equipment used by a dental practice, which fails to provide for the

1 continued use of the equipment by the dental practice on commercially
2 reasonable terms after termination of the arrangement.

3 (22) Authority to lease or sublease office space for the provision of clinical
4 services to a dental practice, which does not provide for the continued lease
5 of the space on commercially reasonable terms after termination of the
6 arrangement.

7 (23) Power to limit the ability of dentists who own or are employed by the dental
8 practice to practice dentistry or provide clinical services other than in a
9 dental practice associated with the management company or unlicensed
10 person, such as a restrictive covenant or noncompetition clause.

11 (f) The provisions of subsection (e) of this section do not constitute an exhaustive list
12 of management arrangement provisions which violate this section or other sections of this
13 Article. The Board may, by rule or otherwise, identify other management arrangement
14 provisions that violate this section or other provisions of this Article.

15 (g) Notwithstanding subdivisions (e)(7) and (e)(8) of this section, a management
16 arrangement may do either of the following:

17 (1) Include a schedule of additional compensation to be paid to the management
18 company during the term of a management agreement based upon the
19 lowering of costs to the professional entity or dentist so long as any
20 additional compensation is based upon a specified schedule or method of
21 computing the additional compensation and is set forth in the management
22 agreement.

23 (2) Include a schedule of decreased compensation to the management company
24 during the term of the management agreement based upon increases in costs
25 to the professional entity or dentist so long as any decreased compensation is
26 based upon a specified schedule or method of computing the decreased
27 compensation and is set forth in the management agreement.

28 (h) No dentist, professional entity, management company, or unlicensed person shall
29 enter into an oral or written arrangement or scheme that the dentist or professional entity knows
30 or should know has a material purpose of creating an indirect arrangement that, if entered into
31 directly, would violate the provisions of this section.

32 (i) Upon submission for review, the Board shall issue a written advisory opinion
33 concerning the compliance or noncompliance of a management agreement with this section.
34 The Board may define by rule or otherwise the timing of and procedure for the review of
35 management agreements required by this section.

36 (j) Any licensee or management company which is dissatisfied with the Board's
37 advisory opinion that a proposed or existing management agreement violates any provision of
38 this section or this Article shall be afforded notice of the opportunity to request a hearing before
39 the Board. The proceedings shall be conducted pursuant to Article 3A of Chapter 150B of the
40 General Statutes. In connection with the proceedings, the Board is hereby authorized and
41 empowered to issue any orders, commissions, notices, subpoenas, or other process as might be
42 necessary or proper to effect the purposes of this subsection. However, no member of the Board
43 shall be subject to examination in connection with the proceedings.

44 (k) Anyone who enters into or renews any management arrangement before completion
45 of the Board's review process or a hearing under Article 3A of Chapter 150B of the General
46 Statutes, when applicable, does so subject to possible action by the Board if an executed
47 management arrangement violates any provision of this Article. A licensed dentist is subject to
48 possible disciplinary action pursuant to G.S. 90-41 and a management company or unlicensed
49 person is subject to possible injunctive action pursuant to G.S. 90-40.1 for any noncompliant
50 management arrangement that is executed or in operation before the Board makes a final
51 determination about its compliance or noncompliance under this Article.

1 (l) All records, papers, investigative files, investigative reports, other investigative
2 information, and other documents containing information in the possession of, gathered by, or
3 reviewed by the Board in connection with the review of a management arrangement as required
4 by this section shall not be considered public records within the meaning of Chapter 132 of the
5 General Statutes and are privileged, confidential, and not subject to discovery, subpoena, or
6 other means of legal compulsion for release to any person other than the Board, its employees,
7 agents, or consultants except as provided in subsection (m) of this section. For purposes of this
8 subsection, investigative information includes information relating to the identify of, and a
9 report made by, a licensee or other person performing an expert review for the Board of a
10 management arrangement and transcripts of any deposition taken by Board counsel in
11 preparation for or in anticipation of a hearing requested pursuant to this section, but not
12 admitted into evidence at the hearing. However, any notice or statement of charges against any
13 licensee, any notice to any licensee of a hearing in any proceeding, or any notice of hearing to a
14 management company or unlicensed person issued pursuant to subsection (j) of this section
15 shall be a public record within the meaning of Chapter 132 of the General Statutes even if it
16 may contain information collected and compiled as a result of any investigation, inquiry, or
17 interview. If any record, paper, or other document containing information collected and
18 compiled by the Board is received and admitted into evidence in any hearing before the Board
19 pursuant to this section, it shall then be a public record within the meaning of Chapter 132 of
20 the General Statutes.

21 (m) The Board shall provide a management company or licensee access to all
22 information in its possession that the Board intends to offer into evidence in presenting its case
23 in chief in a contested case hearing requested by the management company or licensee pursuant
24 to subsection (j) of this section, subject to any privilege or restriction set forth by rule, statute,
25 or legal precedent, upon written request from a licensee who, or management company which,
26 is a party to the contested case hearing. However, the Board is not required to provide any of
27 the following:

28 (1) A Board investigative report.

29 (2) The identity of a nontestifying complainant.

30 (3) Attorney-client communications, attorney work product, or other materials
31 covered by a privilege recognized by the North Carolina Rules of Civil
32 Procedure or the North Carolina Rules of Evidence.

33 (4) Any communications between the Board and its staff or among Board staff.

34 (n) The provisions of G.S. 90-29(b)(11) shall apply to this section and an individual or
35 entity shall be considered to be engaged in the practice of dentistry when obtaining or
36 exercising ownership, management, supervision, or control through or with a management
37 company or unlicensed person under a management arrangement.

38 (o) The venue for actions brought under G.S. 90-40.1 shall be the superior court of any
39 county in which acts constituting unlicensed or unlawful practice of dentistry are alleged to
40 have been committed or in which there appear reasonable grounds to believe that they will be
41 committed, in the county where at least one defendant in the action resides, or in Wake County.

42 (p) The Board shall have the power before filing a complaint and before trial to initiate
43 investigations or inquiries, conduct interviews, administer oaths, and issue subpoenas requiring
44 the attendance of persons and the production of papers and records before the Board to
45 determine whether any person or entity is or may be in violation of G.S. 90-40.1(a).

46 (q) If investigative information in the possession of the Board, its employees, or agents
47 indicates that a crime may have been committed, the Board may report the information to the
48 appropriate law enforcement agency or district attorney of the district in which the offense was
49 committed.

50 (r) The Board shall cooperate with and assist a law enforcement agency or district
51 attorney conducting a criminal investigation or prosecution of a licensee or person engaged in

1 the unauthorized practice of dentistry, including a management company, by providing
2 information that is relevant to the criminal investigation or prosecution to the investigating
3 agency or district attorney. Information disclosed by the Board to an investigative agency or
4 district attorney remains confidential and may not be disclosed by the investigating agency
5 except as necessary to further the investigation.

6 (s) The Board is authorized to conduct random audits, inspections, and investigations of
7 the management arrangements and the books and records of any management company which
8 enters into a management arrangement with a licensed dentist or professional entity, for the
9 purposes of ensuring that the management company and licensee or entity are complying with
10 this Article and rules adopted by the Board. Where the Board determines that a management
11 company or licensee is not complying with the provisions of this Article as related to a
12 management arrangement, the Board is authorized to conduct periodic audits, inspections, and
13 investigations to help ensure ongoing compliance with the provisions of this Article, to be on a
14 schedule and for a duration to be determined by the Board. In such cases, the management
15 company and licensee or entity shall be jointly responsible to reimburse the Board for the
16 reasonable costs of the periodic audits, inspections, and investigations, including the reasonable
17 costs of attorneys, accountants, or other professional consultants employed or retained by the
18 Board to conduct or assist in the process.

19 (t) The Board, in its discretion, shall be entitled to assess against the other party its
20 reasonable costs, including the Board's reasonable attorneys' fees, related to the following
21 matters:

- 22 (1) A hearing pursuant to subsection (j) of this section in which the respondent
23 is found to have violated the provisions of this Article or rules adopted by
24 the Board.
25 (2) An action for injunctive relief pursuant to G.S. 90-40.1 in which the Board
26 prevails."

27 **SECTION 2.** This act becomes effective October 1, 2011, and applies to any
28 dentistry management arrangement, as defined under G.S. 90-40.2, enacted by Section 1 of this
29 act, entered into or renewed on or after that date.