CHAPTER 113

Provider Self‑Referral

**SECTION 44‑113‑10.** Short title.

 This chapter may be cited as the “Provider Self‑Referral Act of 1993”.

HISTORY: 1993 Act No. 71, Section 3.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Medical and Health Professionals Section 6, Statutory Limitations on Practice of Medicine.

**SECTION 44‑113‑20.** Definitions.

 As used in this chapter:

 (1) “Board” means any of the boards created pursuant to Title 40, as amended, to license, certify, or register health care professionals.

 (2) “Comprehensive rehabilitation services” means services that are provided by health care professionals licensed under Chapter 36, Chapter 45, or Chapter 67 of Title 40 to provide speech, occupational, or physical therapy services on an outpatient or ambulatory basis.

 (3) “Department” means the South Carolina Department of Health and Environmental Control.

 (4) “Designated health services” means any health care procedure, service, or item provided by a health care provider.

 (5) “Entity” means an individual, partnership, firm, corporation, or other business entity.

 (6) “Fair market value” means value in arms length transactions, consistent with the general market value, and, with respect to rentals or leases, the value of rental property for general commercial purposes, not taking into account its intended use, and in the case of a lease of space, not adjusted to reflect the additional value the prospective lessee or lessor would attribute to the proximity or convenience to the lessor where the lessor is a potential source of patient referrals to the lessee.

 (7) “Health care facility” means a health care facility as defined in Section 44‑7‑130(10).

 (8) “Health care provider”, “provider”, or “health care professional” means a person licensed, certified, or registered under the laws of this State to provide health care services.

 (9) “Immediate family member” means a health care provider’s spouse, child, child’s spouse, grandchild, grandchild’s spouse, parent, parent‑in‑law, or sibling.

 (10) “Investment interest” means an equity or debt security issued by an entity including, except as provided below, but not limited to, shares of stock in a corporation, units or other interests in a partnership, bonds, debentures, notes, other equity interests, or debt instruments. The following investment interests are excepted from this definition:

 (a) an investment interest in an entity that is the sole provider of designated health services in a rural area;

 (b) an investment interest in real property resulting in a landlord‑tenant relationship between the health care provider and the entity in which the equity interest is held, unless the rent is determined, in whole or in part, by the business volume or profitability of the tenant or exceeds fair market value;

 (c) an investment interest in an entity which owns or leases and operates a hospital or a nursing home facility licensed under Title 44, Chapter 7;

 (d) an investment interest acquired before June 15, 1993;

 (e) an investment interest in an entity which provides health care services pursuant to a health services network.

 (11) “Investor” means a person or entity owning a legal or beneficial ownership or investment interest, directly or indirectly including, but not limited to, through an immediate family member, trust, or corporation, the stock of which is owned in whole or in part by the investor or another entity related to the investor.

 (12) “Referral” means a referral of a patient by a health care provider for health care services including, but not limited to:

 (a) the forwarding of a patient by a health care provider to another health care provider or to an entity outside the health care professional’s office or group practice which provides or supplies designated health services or any other health care item or service; or

 (b) the request or establishment of a plan of care by a health care provider, which includes the provision of a designated health service or any other health care item or service outside the health care professional’s office or group practice.

 (13) “Rural area” means a county with a population of one hundred thousand persons or less according to the latest United States census.

 (14) “Group practice” means a group of two or more health care professionals legally organized as a partnership, professional corporation, not‑for‑profit corporation, faculty practice plan, or similar association in which:

 (a) each health care professional who is a member, employee, or independent contractor of the group provides substantially the full range of services which the professional routinely provides including consultation, diagnosis, and treatment through the use of office space, facilities, equipment, and personnel of the group;

 (b) substantially all of the services of the health care professionals 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) the overhead expenses of and the income from the practice are distributed by methods previously determined by the group.

 (15) “Office practice” means the facility or facilities at which a health care professional, on an ongoing basis, provides or supervises the provision of health services to individuals.

HISTORY: 1993 Act No. 71, Section 3.

CROSS REFERENCES

Person permitted under this section to make referrals to entity in which he has investment interest must submit information concerning such referral to Department of Health and Environmental Control, see Section 44‑113‑80.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Medical and Health Professionals Section 6, Statutory Limitations on Practice of Medicine.

Attorney General’s Opinions

A physician’s ownership of shares of common stock in a publicly‑held company whose subsidiary provides designated health services does not constitute a prohibited investment interest. S.C. Op.Atty.Gen. (December 8, 1994) 1994 WL 738182.

Generally, there is no prohibition against a physician being a shareholder in a corporation, but the nature of the corporation might make the Provider Self‑Referral Act applicable if the physician‑shareholder were to refer patients to the corporation for any of its described services. S.C. Op.Atty.Gen. (November 2, 1993) 1993 WL 524143.

There is no prohibition against a doctor being an independent contractor for a corporation so long as the doctor retains unfettered discretion to make medical decisions he deems appropriate to the patient’s care without restraint or restriction by the corporation. S.C. Op.Atty.Gen. (November 2, 1993) 1993 WL 524143.

NOTES OF DECISIONS

In general 1

1. In general

Provider Self‑Referral Act applies to physicians and physical therapists. Sloan v. South Carolina Bd. of Physical Therapy Examiners (S.C. 2006) 370 S.C. 452, 636 S.E.2d 598, rehearing denied. Health 192; Health 948

**SECTION 44‑113‑30.** Health care provider not to refer patient to entity in which it has investment interest; exceptions; violations; penalties.

 (A) Except as provided in this section and other provisions of this chapter, a health care provider may not refer a patient for the provision of designated health services to an entity in which the health care provider is an investor or has an investment interest. However, this prohibition does not apply to:

 (1) an investment interest where the health care professional directly provides the health care services within the entity or will be personally involved in the provision, supervision, or direction of care to the referred patient.

 (2) the provider’s investment interest is in registered securities purchased on a national exchange or over‑the‑counter market and issued by a publicly‑held corporation:

 (a) whose shares are traded on a national exchange or on the over‑the‑counter market; and

 (b) whose total assets at the end of the corporation’s most recent fiscal quarter exceeded fifty million dollars; or

 (3) with respect to an entity other than a publicly‑held corporation described in subsection (A)(2) and a referring provider’s investment interest in the entity, each of the following requirements are met:

 (a) no more than fifty percent of the value of the investment interests are held by investors who are in a position to make referrals to the entity;

 (b) the terms under which an investment interest is offered to an investor who is in a position to make referrals to the entity are no different from the terms offered to investors who are not in a position to make referrals;

 (c) the terms under which an investment interest is offered to an investor who is in a position to make referrals to the entity are not related to the previous or expected volume of referrals from that investor to the entity;

 (d) there is no requirement that an investor make referrals or be in a position to make referrals to the entity as a condition for becoming or remaining an investor.

 (B) With respect to an entity or to a publicly‑held corporation in subsection (A)(2):

 (1) the entity or corporation does not lend funds to or guarantee a loan for an investor who is in a position to make referrals to the entity or corporation if the investor uses any part of the loan to obtain the investment interest;

 (2) the amount distributed to an investor representing a return on the investment interest is directly proportional to the amount of the capital investment, including the fair market value of preoperational services rendered in the entity or corporation by that investor.

 (C) No claim for payment may be presented by an entity to an individual, third party payor, or other entity for a service furnished pursuant to a referral prohibited under this section.

 (D) If an entity collects any amount that was billed in violation of this section, the entity shall refund the amount on a timely basis to the payor or individual, whichever is applicable.

 (E) A health care provider who makes a referral prohibited by this section or who fails to disclose information required by Section 44‑113‑40(A) or presents or causes to be presented a bill or a claim for services that the health care provider knows or should know is for a service for which payment may not be made under subsection (C) or for which a refund has not been made under subsection (D) is subject to a civil penalty of not more than five thousand dollars for each such service to be imposed and collected by the appropriate board.

 (F) A health care provider or other entity that enters into an arrangement or scheme which the health care provider or entity knows or should know has a principal purpose of assuring referrals by the health care provider to a particular entity which, if the health care provider directly made referrals to the entity would be in violation of this section, is subject to a civil penalty of not more than twenty‑five thousand dollars for each circumvention arrangement or scheme to be imposed and collected by the appropriate board.

 (G) A violation of this section by a health care provider constitutes grounds for disciplinary action to be taken by the applicable board. A hospital licensed under Title 44, Chapter 7 found in violation of this section is subject to the regulations promulgated by the department.

 (H) A hospital licensed under Title 44, Chapter 7 that discriminates against or otherwise penalizes a health care provider for compliance with this chapter is subject to a civil penalty of not more than one hundred thousand dollars to be imposed and collected by the department.

 (I) Each board, and in the case of hospitals, the department, shall encourage the use by licensees of an advisory opinion procedure to determine the applicability of this section or any regulation promulgated pursuant to this section as it applies solely to the licensee.

HISTORY: 1993 Act No. 71, Section 3.

Library References

Health 191.

Westlaw Topic No. 198H.

C.J.S. Drugs and Narcotics Sections 69 to 70.

C.J.S. Physicians, Surgeons, and Other Health‑Care Providers Sections 30 to 33, 54, 71 to 75, 77.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Medical and Health Professionals Section 6, Statutory Limitations on Practice of Medicine.

**SECTION 44‑113‑40.** When provider may refer patient to entity in which it has investment interest; signed disclosure required.

 (A) A health care provider may refer a patient to an entity in which the health care provider is an investor if the referral is permitted under Section 44‑113‑20(10)(d) or Section 44‑113‑30(A)(3) if before the referral the provider furnishes the patient with a written disclosure form informing the patient of:

 (1) the existence of the investment interest;

 (2) the name and address of each applicable entity to which a referral is made in which the referring health care provider is an investor;

 (3) the patient’s right to obtain the item or services for which the patient has been referred at the location or from the provider or supplier of the patient’s choice, including the entity in which the referring provider is an investor;

 (4) the names and addresses of at least two alternative sources of these items or services available to the patient;

 (5) a schedule of typical fees for items or services usually provided by the entity or, if impracticable because of the nature of the treatment, a written estimate specific to the patient.

 (B) The referring provider must obtain the patient’s signature that the information required under subsection (A) has been provided to the patient.

HISTORY: 1993 Act No. 71, Section 3.

Library References

Health 191.

Westlaw Topic No. 198H.

C.J.S. Drugs and Narcotics Sections 69 to 70.

C.J.S. Physicians, Surgeons, and Other Health‑Care Providers Sections 30 to 33, 54, 71 to 75, 77.

Attorney General’s Opinions

A physician who owns stock in a publicly‑held corporation which does not constitute a prohibited investment interest can refer patients for diagnostic services to an entity owned by that corporation, and the referring physician is not required to disclose his permissible investment interest to patients. S.C. Op.Atty.Gen. (January 10, 1995) 1995 WL 67618.

**SECTION 44‑113‑50.** Report to department of results of action taken by boards.

 The results of an action taken by the respective boards pursuant to this chapter must be reported promptly to the department with a full description of the proceedings.

HISTORY: 1993 Act No. 71, Section 3.

Library References

Health 191.

Westlaw Topic No. 198H.

C.J.S. Drugs and Narcotics Sections 69 to 70.

C.J.S. Physicians, Surgeons, and Other Health‑Care Providers Sections 30 to 33, 54, 71 to 75, 77.

**SECTION 44‑113‑60.** Kickback defined; penalty.

 (A) As used in this section, the term “kickback” means a remuneration or payment back pursuant to an investment interest, compensation arrangement, or otherwise by a provider of health care services or items of a portion of the charges for services rendered to a referring health care provider as an incentive or inducement to refer patients for future services or items when the payment is not tax deductible as an ordinary and necessary expense.

 (B) It is unlawful for a health care provider or a provider of health care services to offer, pay, solicit, or receive a kickback, directly or indirectly, overtly or covertly, in cash or in kind, for referring or soliciting patients.

 (C) A person who violates this section is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned for not more than thirty days.

HISTORY: 1993 Act No. 71, Section 3.

Library References

Health 191.

Westlaw Topic No. 198H.

C.J.S. Drugs and Narcotics Sections 69 to 70.

C.J.S. Physicians, Surgeons, and Other Health‑Care Providers Sections 30 to 33, 54, 71 to 75, 77.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Medical and Health Professionals Section 6, Statutory Limitations on Practice of Medicine.

**SECTION 44‑113‑70.** Employers providing health insurance benefits to employees may report over‑utilization of services to Department of Insurance.

 Any employer providing health insurance benefits to its employees may report instances of alleged over‑utilization of services to the South Carolina Department of Insurance pursuant to Section 38‑55‑170.

HISTORY: 1993 Act No. 71, Section 3.

Library References

Health 191.

Westlaw Topic No. 198H.

C.J.S. Drugs and Narcotics Sections 69 to 70.

C.J.S. Physicians, Surgeons, and Other Health‑Care Providers Sections 30 to 33, 54, 71 to 75, 77.

**SECTION 44‑113‑80.** Person permitted to make referral to entity in which he has interest must submit certain information to department.

 A health care professional permitted under Section 44‑113‑20(10)(d) to make referrals to an entity in which the health care professional has an investment interest must submit information to the department, including the professional’s name, name of the entity, and the percentage of the health care professional’s ownership.

HISTORY: 1993 Act No. 71, Section 3.

Library References

Health 191.

Westlaw Topic No. 198H.

C.J.S. Drugs and Narcotics Sections 69 to 70.

C.J.S. Physicians, Surgeons, and Other Health‑Care Providers Sections 30 to 33, 54, 71 to 75, 77.