

SENATE, No. 2661

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED JULY 2, 2020

Sponsored by:
Senator NICHOLAS P. SCUTARI
District 22 (Middlesex, Somerset and Union)

SYNOPSIS

Permits physicians to make referrals to certain surgical centers.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning surgical practices and amending
2 P.L.1989, c.19.

3

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

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

9 2. a. A practitioner shall not refer a patient or direct an
10 employee of the practitioner to refer a patient to a health care
11 service in which the practitioner, or the practitioner's immediate
12 family, or the practitioner in combination with the practitioner's
13 immediate family has a significant beneficial interest; except that,
14 in the case of a practitioner, a practitioner's immediate family, or a
15 practitioner in combination with the practitioner's immediate family
16 who had the significant beneficial interest prior to the effective date
17 of P.L.1991, c.187 (C.26:2H-18.24 et al.), and in the case of a
18 significant beneficial interest in a health care service that provides
19 lithotripsy or radiation therapy pursuant to an oncological protocol
20 that was held prior to the effective date of this section of
21 P.L.2009, c.24, the practitioner may continue to refer a patient or
22 direct an employee to do so if that practitioner discloses the
23 significant beneficial interest to the patient.

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

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

31 (1) medical treatment or a procedure that is provided at the
32 practitioner's medical office and for which a bill is issued directly in
33 the name of the practitioner or the practitioner's medical office;

34 (2) renal dialysis;

35 (3) ambulatory surgery or ambulatory procedures involving the
36 use of any anesthesia performed at a surgical practice licensed by
37 the Department of Health pursuant to subsection g. of section 12 of
38 P.L.1971, c.136 (C.26:2H-12) or at an ambulatory care facility
39 licensed by the Department of Health to perform surgical and
40 related services or lithotripsy services, if the following conditions
41 are met:

42 (a) the practitioner who provided the referral personally
43 performs the procedure;

44 (b) the practitioner's remuneration as an owner of or investor in
45 the practice or facility is directly proportional to the practitioner's

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 ownership interest and not to the volume of patients the practitioner
2 refers to the practice or facility;

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

6 (d) disclosure of the referring practitioner's significant
7 beneficial interest in the practice or facility is made to the patient in
8 writing, at or prior to the time that the referral is made, consistent
9 with the provisions of section 3 of P.L.1989, c.19 (C.45:9-22.6);
10 **【and】**

11 (4) medically-necessary intraoperative monitoring services
12 rendered during a neurosurgical, neurological, or neuro-radiological
13 surgical procedure that is performed in a hospital; **【and】**

14 (5) **【Referrals】** referrals that a practitioner makes, or directs an
15 employee of the practitioner to make, to a health care service in
16 which the referring practitioner has a significant beneficial interest,
17 when participants in an alternative payment model registered with
18 the Department of Health pursuant to section 3 of P.L.2017, c.111
19 (C.45:9-22.5c) make a bona fide determination that the significant
20 beneficial interest is reasonably related to the alternative payment
21 model standards filed with the Department of Health, provided that
22 the determination is documented and retained for a period of 10
23 years; and

24 (6) any procedure performed at a surgical practice licensed by
25 the Department of Health pursuant to subsection g. of section 12 of
26 P.L.1971, c.136 (C.26:2H-12).
27 (cf: P.L.2017, c.283, s.2)

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29 2. This act shall take effect immediately.
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32 STATEMENT

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34 This bill permits physicians to make referrals to certain surgical
35 centers. Under current law and with limited exceptions, a health
36 care practitioner is generally prohibited from referring a patient or
37 directing an employee of the practitioner to refer a patient to a
38 health care service in which the practitioner, or the practitioner's
39 immediate family, or the practitioner in combination with the
40 practitioner's immediate family has a significant beneficial interest.

41 Under the bill, the above general prohibition does not apply to a
42 referral for a procedure performed at a surgical practice licensed by
43 the Department of Health pursuant to subsection g. of section 12 of
44 P.L.1971, c.136 (C.26:2H-12). Under this statute, "surgical
45 practice" means a structure or suite of rooms that has the following
46 characteristics: (1) has no more than one room dedicated for use as
47 an operating room which is specifically equipped to perform

1 surgery, and is designed and constructed to accommodate invasive
2 diagnostic and surgical procedures; (2) has one or more post-
3 anesthesia care units or a dedicated recovery area where the patient
4 may be closely monitored and observed until discharged; and (3) is
5 established by a physician, physician professional association
6 surgical practice, or other professional practice form specified by
7 the State Board of Medical Examiners pursuant to regulation solely
8 for the physician's, association's, or other professional entity's
9 private medical practice.