

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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SENATE BILL 655

Short Title: Dentistry Management Arrangements. (Public)

Sponsors: Senators Pate, Brunstetter, Allran; Apodaca, D. Berger, Brock, Purcell, and Stevens.

Referred to: Health Care.

April 20, 2011

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT DENTIST AGREEMENTS WITH MANAGEMENT COMPANIES DO NOT COMPROMISE THE FUNDAMENTAL PUBLIC PURPOSE OF THE DENTAL PRACTICE ACT, WHICH IS ENSURING THAT CITIZENS HAVE ACCESS TO HIGH QUALITY DENTAL CARE THAT IS OWNED, CONTROLLED, AND SUPERVISED BY LICENSED AND PROFESSIONAL DENTISTS WITH DEMONSTRATED CLINICAL SKILLS AND WHO ARE ACCOUNTABLE FOR THEIR DENTAL DECISIONS.

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.



- 1           (4) Professional entity. – A professional corporation, nonprofit corporation,  
2 partnership, professional limited liability company, professional limited  
3 partnership, or other entity or aggregation of individuals, by whatever name,  
4 that is licensed, certified, or otherwise authorized to provide clinical dental  
5 services under this Article.
- 6           (5) Unlicensed person. – Any person or entity, other than a dentist licensed in  
7 this State or registered professional entity authorized to provide dental  
8 services under this Article.
- 9       (c) All management arrangements shall meet the following requirements:
- 10           (1) Be submitted to the Board for a review and a determination of compliance  
11 with this section and other provisions under this Article.
- 12           (2) Be evidenced by a written agreement that satisfies each of the following:
- 13               a. Is signed by all parties to the agreement.
- 14               b. Sets forth all material terms of the arrangement between or among  
15 the parties to the agreement.
- 16               c. Describes all of the types of services to be provided by the  
17 management company and the time periods during which those  
18 services will be provided.
- 19               d. Sets forth the precise methodology for calculating the compensation  
20 to be paid to the management company by the dentist or professional  
21 entity and, whenever possible, the aggregate compensation to be paid  
22 under the management arrangement.
- 23               e. Is implemented, administered, or carried out between the parties to  
24 the agreement consistent with the terms of the writing.
- 25       (d) No management arrangement shall provide for or permit any provision, which alone  
26 or in combination with others, (i) has a potential negative impact on patient care, (ii) affects the  
27 provision of dental services, the professional decision-making of the dentist, or other personnel  
28 of the dentist or professional entity, (iii) assigns control of the dental practice to a management  
29 company or unlicensed person, or (iv) gives the entity or unlicensed person actual or effective  
30 ownership of the dental practice.
- 31       (e) No management arrangement shall provide for or permit any of the following:
- 32           (1) Control over the distribution of a revenue stream or control over a line of  
33 business of the professional entity, except for the sale of fixed assets of a  
34 dentist or professional entity permitted under the laws of this State.
- 35           (2) Ownership or exclusive control of patient records of the dental practice.
- 36           (3) Direct or indirect control over, or input into, the clinical practices of the  
37 professional entity or its dentists or clinical personnel.
- 38           (4) Direct or indirect control over the employment or termination of dentists,  
39 dental hygienists, or other personnel of the dentist or professional entity by  
40 the management company, including the authority to prescribe or limit the  
41 material terms of all the personnel's relationship with the dentist or  
42 professional entity or the ability to restrict or limit the authority of the dental  
43 practice to arrange the work schedule of the personnel. This subdivision  
44 shall not be construed to prohibit the use of temporary personnel by a dentist  
45 or dental practice for a period not to exceed six months.
- 46           (5) Authority to enter into, approve, or require its input into any contract or  
47 other arrangement or material terms of the contract or arrangement between  
48 the professional entity and a dentist for the provision of dental services.
- 49           (6) Direct or indirect control over the transfer of ownership interests in the  
50 professional entity including, without limitation, any agreement or

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

1           (21) Authority to require the licensee or professional entity to lease, sublease, or  
2           finance equipment used by a dental practice, which fails to provide for the  
3           continued use of the equipment by the dental practice on commercially  
4           reasonable terms after termination of the arrangement.

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

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

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

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

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

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

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

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

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

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

1 management arrangement that is executed or in operation before the Board makes a final  
2 determination about its compliance or noncompliance under this Article.

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

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

30 (1) A Board investigative report.

31 (2) The identity of a nontestifying complainant.

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

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

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

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

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

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

1       (r) The Board shall cooperate with and assist a law enforcement agency or district  
2 attorney conducting a criminal investigation or prosecution of a licensee or person engaged in  
3 the unauthorized practice of dentistry, including a management company, by providing  
4 information that is relevant to the criminal investigation or prosecution to the investigating  
5 agency or district attorney. Information disclosed by the Board to an investigative agency or  
6 district attorney remains confidential and may not be disclosed by the investigating agency  
7 except as necessary to further the investigation.

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

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

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

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