

## SUBCHAPTER 16X – MANAGEMENT ARRANGEMENTS

### SECTION .0100 – MANAGEMENT ARRANGEMENTS

#### 21 NCAC 16X .0101 MANAGEMENT ARRANGEMENTS

(a) No dentist or professional entity shall enter into a management arrangement, contractual agreement, stipulation, or other legal binding instrument with a business entity, corporation, proprietorship, or other business entity, for the provision of defined business services, bundled business services, or other business services, the effect of which may provide control of business activities or clinical/professional services of that dentist or professional entity, unless such management arrangement meets the requirements of Paragraphs (b) and (c) of this Rule. This Rule shall not apply to agreements for the provision of legal, financial, or other services not related to the provision of management services for a fee or to employment arrangements between an employee and the dentist or professional entity.

(b) Any management arrangement, contractual agreement, stipulation, or other binding instrument shall:

- (1) be in a writing that:
  - (A) is signed by all parties to the agreement;
  - (B) sets forth all material terms of the arrangement between or among the parties thereto;
  - (C) describes all of the types of services to be provided by the management company and the time periods during which those services will be provided; and
  - (D) sets forth the aggregate compensation to be paid under the management arrangement, contractual agreement, stipulation, or other legal binding instrument with a business entity or the precise methodology for calculating such compensation.
- (2) be reviewed by the Board.

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

- (1) direct or indirect ownership of, or control over clinical aspects of, the dental business of a dentist or professional entity by a management company or the grant to the management company or another non-professional entity control over the distribution of a revenue stream or control over a line of business of the professional entity except for the sale of fixed assets of a dentist or professional entity permitted under the laws of the State of North Carolina;
- (2) ownership or exclusive control of patient records by a management company;
- (3) direct or indirect control over, or input into, the clinical practices of the professional entity or its dentists or ancillary personnel by a management company;
- (4) direct or indirect control over the hiring and firing of clinical personnel or material terms of clinical personnel's relationship with the dentist or professional entity by a management company or a related person;
- (5) authority in the management company to enter into or approve any contract or other arrangement, or material terms of such contract or arrangement, between the professional entity and a dentist for the provision of dental services or the requirement that the management company or related person approve or give input into such contract or arrangement;
- (6) direct or indirect control over the transfer of ownership interests in the professional entity by a management company or other non-professional entity including, without limitation, any agreement or arrangement limiting or requiring in whole or in part the transfer of ownership interests in a professional entity;
- (7) payment to the management company of anything of value based on a formula that will foreseeably increase or decrease because of the increase or decrease in profitability, gross revenues or net revenues of the dentist or professional entity; or
- (8) payments to the management company that, at the time of execution of an agreement as required under Paragraph (b) of this Rule, are likely, foreseeably and purposely in excess of the likely profits of the professional entity not taking into account the compensation to be paid to the management company under the management arrangement.

(d) Notwithstanding Subparagraphs (c)(7) and (c)(8) of this Rule, a management arrangement may provide for the following:

- (1) increased payments to the management company based upon the lowering of costs to the professional entity or dentist;
- (2) decreased payments to the management company based upon increases in costs to the professional entity or dentist; or

- (3) collection of monies, or payment of costs, of the professional entity or dentist by the management company so long as the amounts retained by the management company following payment of any costs of the professional entity or dentist comply with the provisions of this Rule relating to compensation to the management company and all sums collected or retained by the management company in excess of costs paid by the management company plus its compensation are paid at least monthly and at regular intervals to the professional entity.
- (e) No dentist or professional entity shall enter into an oral or written arrangement or scheme that the dentist or professional entity knows or should know has a material purpose of creating an indirect arrangement that, if entered into directly, would violate this Rule.
- (f) For purposes of this Rule, the following terms shall have the following meanings:
  - (1) "Ancillary personnel" shall mean any individual that regularly assists a dentist in the clinical aspects of the practice of dentistry;
  - (2) "Clinical" shall mean of or relating to the activities of a dentist as described in G.S. 90-29(b)(1)-(10);
  - (3) "Employment arrangement" shall mean an arrangement between a professional entity or dentist and an individual who is considered an employee of the professional entity or dentist under the common law test of an employer/employee relationship, or a leased employee working under a written employee leasing agreement which provides that:
    - (A) the individual, although employed by the leasing company, provides services as the leased employee of the dentist or professional entity; and
    - (B) the dentist or professional entity exercises control over all actions taken by the leased employee with regard to the rendering of services to the same extent as the dentist or professional entity would exercise such control if the leased employee were directly employed by the dentist or professional entity;
  - (4) "Management arrangement" shall mean any one or more agreements, understandings or arrangements, alone or together, whether written or oral, between a management company and a dentist or professional entity whereby:
    - (A) a management company regularly provides services for the clinical-related business of a dentist or professional entity; or
    - (B) a management company exerts control over the management or clinical aspects of the business of a dentist or professional entity or its or their employees or contractors; or
    - (C) a management company receives a percentage of the net or gross revenues or profits of a dentist or professional entity.
  - (5) "Management company" shall mean any individual, business corporation, nonprofit corporation, partnership, limited liability company, limited partnership or other legal entity that is not a professional entity or dentist;
  - (6) "Professional entity" shall mean a professional corporation, nonprofit corporation, partnership, professional limited liability company, professional limited partnership or other entity or aggregation of individuals that is licensed or certified or otherwise explicitly permitted to practice dentistry under North Carolina General Statutes; and
  - (7) "Related person" shall mean any person or entity, other than a dentist or professional entity, that owns, is employed by, or regularly receives consideration from, a management company or another related person.

*History Note: Authority G.S. 90-29(b)(11); 90-48;  
Eff. April 1, 2001.*