FIRST REGULAR SESSION

HOUSE BILL NO. 785

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES KENNEDY, THOMPSON, RICHARDSON, JOHNSON (90) AND JOHNSON (61) (Co-sponsors).

Read 1st time February 14, 2001, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

1074L.01I

AN ACT

To amend chapter 334, RSMo, by adding thereto one new section relating to surgical comanagement arrangements, with a penalty provision.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 334, RSMo, is amended by adding thereto one new section, to be known as section 334.109, to read as follows:

334.109. 1. As used in this section, the following terms shall mean:

(1) "Eye care provider", a physician or surgeon licensed pursuant to this chapter who is an ophthalmologist or an optometrist licensed pursuant to chapter 336, RSMo;

(2) "Ophthalmologist", a physician who has graduated from an accredited ophthalmology residency;

(3) "Surgical comanagement", the collaboration and sharing of responsibilities between two eye care providers in which some or all of the preoperative or postoperative care of an eye care patient is delegated by the operating surgeon to another eye care provider practicing independently. Surgical comanagement does not include delegating tasks relating to the care of a surgical patient by the surgeon to ancillary personnel working under the supervision of the surgeon.

2. A surgical comanagement arrangement may be entered into only when:

(1) The distance from the patient's home to the operating surgeon's office would result in an unreasonable hardship for the patient; except that, such a surgical comanagement arrangement shall not be entered into if a qualified local surgeon is available;

(2) Extenuating circumstances exist which prevent the patient from visiting the surgeon's office for routine preoperative or postoperative care and such care can be

provided by another qualified eye care provider;

(3) A qualified surgeon is not available to perform the operation and associated care within a reasonable proximity to the patient's home; or

(4) The operating surgeon will not be available to provide postoperative care after the surgery.

3. The comanaging eye care provider shall not receive a percentage of the surgical fee that exceeds the relative value of services provided to the patient which are reasonable and necessary for the patient's care.

4. The comanaging eye care provider to whom care has been delegated shall be licensed or certified and qualified to treat the patient during the preoperative or postoperative period. If at any time during preoperative or postoperative treatment surgical intervention is required, the patient shall be referred back to the operating surgeon or to another surgeon with comparable skills.

5. Surgical comanagement arrangements shall not be permitted if:

(1) Two or more eye care providers comanage all patients indiscriminately as a matter of policy rather than on a case-by-case basis;

(2) The patient requests care from the operating surgeon and the operating surgeon is available;

(3) The purpose of the surgical comanagement arrangement is to induce a referral to a surgeon or from a referring eye care provider; or

(4) The patient would otherwise have been released from further care following surgery.

6. A patient shall be fully informed in writing of all aspects of a surgical comanagement arrangement and shall sign a statement acknowledging that the details of the surgical comanagement arrangement have been fully explained to the patient, including all of the following:

(1) The licensure or certification and qualifications of the eye care providers who will be managing the patient's care preoperatively, during the operation and postoperatively;

(2) The financial arrangement between the comanaging eye care providers, including how the surgical fee is being split among the providers participating in the surgical comanagement arrangement;

(3) The patient's right to receive care from the operating surgeon at the patient's request; and

(4) The patient's right to decline to participate in the surgical comanagement arrangement.

The comanagement informed consent shall be documented in the patient's medical records maintained by both the operating surgeon and the comanaging eye care provider, including the patient's acknowledgment of and agreement to the surgical comanagement arrangement.

7. The operating surgeon and the comanaging eye care provider shall establish written protocols governing the manner in which care will be provided to the patient, including but not limited to:

(1) The nature of routine care expected;

(2) Who will deliver each aspect of care;

(3) How complications will be handled;

(4) The parameters which will determine when a patient is fully healed and may be released from further care, and how the release will be accomplished; and

(5) The means of communication between the two eye care providers, both routinely and in case of an emergency or serious complication.

8. Comanaging eye care providers shall communicate regularly and in a timely manner regarding the patient's care and progress throughout the duration of illness or until the patient is released from further care.

9. Any person who commits the following acts is in violation of this section:

(1) Entering into a surgical comanagement arrangement for the purpose of splitting a fee;

(2) Demanding to manage the postoperative care in return for making a surgical referral;

(3) Threatening to withhold referrals to a surgeon who does not agree to comanage a patient;

(4) Offering to comanage a patient in return for receiving a surgical referral;

(5) Intentionally referring a patient for surgery in such a manner and for no other legitimate purpose than to justify a surgical comanagement arrangement;

(6) Delegating postoperative care under a surgical comanagement arrangement when the patient otherwise would have been released from further care following surgery;

(7) Failing to fully inform the patient regarding all aspects of the surgical comanagement arrangement or failing to obtain a signed informed consent statement;

(8) Misleading a patient by informing such patient that surgical comanagement is a regular and routine practice or informing a patient or leading a patient to believe that he or she does not have the right to elect to receive all care from the operating surgeon;

(9) Failing to engage in regular and timely two-way communications with the comanaging eye care provider;

(10) Failing to establish written protocols for each patient who is comanaged; or

(11) Any other action that is not in the best interest of the patient.

10. If the board of healing arts determines that a violation of this section has occurred, the board shall notify the appropriate licensing board of the offending eye care provider or providers of the violation of this section and shall recommend that the licensing board take the appropriate disciplinary action. If the offending eye care provider is licensed in another state, the board of healing arts shall notify that state's appropriate licensing board of the offending eye care provider and shall recommend that the licensing board take the appropriate disciplinary action.

11. The board of healing arts may promulgate rules to implement the provisions of this section. No rule or portion of a rule promulgated pursuant to the authority of this section shall become effective unless it has been promulgated pursuant to chapter 536, RSMo.