

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 681

Short Title: HMO Solvency/Premium Tax.

(Public)

Sponsors: Representative Beard.

Referred to: Commerce.

March 16, 1989

A BILL TO BE ENTITLED

1 AN ACT TO IMPROVE THE SOLVENCY PROTECTION OF HEALTH
2 MAINTENANCE ORGANIZATIONS; TO PROVIDE FOR MORE PROTECTION
3 OF HMO ENROLLEES; TO LEVY A PREMIUM TAX ON HMO'S; AND TO
4 CREATE AND MAINTAIN A FUND TO PAY FOR THE COSTS OF
5 REHABILITATING OR LIQUIDATING INSOLVENT HMO'S.
6

7 The General Assembly of North Carolina enacts:

8 Section 1. G.S. 57B-2 is amended by adding new subsections to read:

9 "(k) 'Subscriber' means a person whose employment or other status, except family
10 dependency, is the basis for eligibility for enrollment in the health maintenance
11 organization, or in the case of an individual contract, the person in whose name the
12 contract is issued.

13 (l) 'Participating provider' means a provider of health care services who, under
14 an express or implied contract with the health maintenance organization has agreed to
15 provide health care services to enrollees with an expectation of receiving payment,
16 directly or indirectly, from the health maintenance organization, other than copayment.

17 (m) 'Insolvent' or 'insolvency' means that the organization has been declared
18 insolvent and is placed under a final order of liquidation by a court of competent
19 jurisdiction."

20 Sec. 2. G.S. 57B-15.2(b) reads as rewritten:

21 "(b) Each full service medical health maintenance organization shall maintain a
22 minimum net worth of not less than ~~seven hundred fifty thousand dollars (\$750,000)~~one
23 million dollars (\$1,000,000), which shall be increased by the amount of the contingency
24 reserves calculated annually in accordance with the provisions of G.S. 57B-6. If a

1 health maintenance organization fails to comply with the net worth requirement of this
2 subsection or subsections (c) or (d) of this section, the Commissioner is authorized to
3 take appropriate action to assure that the continued operation of the health maintenance
4 organization will not be hazardous to its enrollees."

5 Sec. 3. G.S. 57B-15.2(c) reads as rewritten:

6 "(c) The minimum net worth for a health maintenance organization authorized to
7 operate on July 17, 1987, and having a net worth of less than seven hundred fifty
8 thousand dollars (\$750,000) shall be as follows:

9 (1) \$150,000 by December 31, 1987

10 (2) \$300,000 by December 31, 1988

11 (3) \$450,000 by December 31, 1989

12 (4) ~~\$600,000~~-\$750,000 by December 31, 1990

13 (5) ~~\$750,000~~-\$1,000,000 by December 31, 1991

14 The net worth amounts required by this section shall be in addition to the contingency
15 reserves required by G.S. 57B-6."

16 Sec. 4. Chapter 57B of the General Statutes is amended by adding the
17 following new sections to read:

18 "**§ 57B-15.3. Hold harmless agreements.**

19 (a) Every contract between a health maintenance organization and a
20 participating provider of health care services shall be in writing and shall set forth that
21 in the event the health maintenance organization fails to pay for health care services as
22 set forth in the contract, the subscriber or enrollee shall not be liable to the provider for
23 any sums owed by the health maintenance organization.

24 (b) In the event that the participating provider contract has not been reduced
25 to writing as required by this section or that the contract fails to contain the required
26 prohibition, the participating provider shall not collect or attempt to collect from the
27 subscriber or enrollee sums owed by the health maintenance organization.

28 (c) No participating provider, or agent, trustee, or assignee thereof, may
29 maintain any action at law against a subscriber or enrollee to collect sums owed by the
30 health maintenance organization.

31 "**§ 57B-15.4. Enrollment period; replacement coverage.**

32 (a) In the event of an insolvency of a health maintenance organization, all
33 other carriers that participated in the enrollment process with the insolvent health
34 maintenance organization at a group's last regular enrollment period shall offer such
35 group's enrollees of the insolvent health maintenance organization a 30-day enrollment
36 period commencing upon the date of insolvency. Each carrier shall offer such enrollees
37 of the insolvent health maintenance organization the same coverages and rates that it
38 had offered to the enrollees of the group at its last regular enrollment period.

39 (b) If no other carrier had been offered to some groups enrolled in the
40 insolvent health maintenance organization, or if the Commissioner determines that the
41 other health benefit plan or plans lack sufficient health care delivery resources to assure
42 that health care services will be available and accessible to all of the group enrollees of
43 the insolvent health maintenance organization, then the Commissioner shall allocate
44 equitably the insolvent health maintenance organization's group contracts for such

1 groups among all health maintenance organizations which operate within a portion of
2 the insolvent health maintenance organization's service area, taking into consideration
3 the health care delivery resources of each health maintenance organization. Each health
4 maintenance organization to which a group or groups are so allocated shall offer such
5 group or groups the health maintenance organization's existing coverage that is most
6 similar to each group's coverage with the insolvent health maintenance organization at
7 rates determined in accordance with the successor health maintenance organization's
8 existing rating methodology.

9 (c) The Commissioner shall also allocate equitably the insolvent health
10 maintenance organization's nongroup enrollees who are unable to obtain other coverage
11 among all health maintenance organizations that operate within a portion of the
12 insolvent health maintenance organization's service area, taking into consideration the
13 health care delivery resources of each such health maintenance organization. Each
14 health maintenance organization to which nongroup enrollees are allocated shall offer
15 such nongroup enrollees the health maintenance organization's existing coverage for
16 individual or conversion coverage as determined by their types of coverage in the
17 insolvent health maintenance organization at rates determined in accordance with the
18 successor health maintenance organization's existing rating methodology. Successor
19 health maintenance organizations that do not offer direct nongroup enrollment may
20 aggregate all of the allocated nongroup enrollees into one group for rating and coverage
21 purposes.

22 **"§ 57B-15.5. Replacement coverage.**

23 (a) Any carrier providing replacement coverage with respect to group
24 hospital, medical, or surgical expense or service benefits within a period of 60 days
25 from the date of discontinuance of a prior health maintenance organization contract or
26 policy providing such hospital, medical, or surgical expense or service benefits shall
27 immediately cover all employees and dependents who were validly covered under the
28 previous health maintenance organization contract or policy at the date of
29 discontinuance and who would otherwise be eligible for coverage under the succeeding
30 carrier's contract, regardless of any provisions of the contract relating to active
31 employment or hospital confinement or pregnancy.

32 (b) Except to the extent benefits for the condition would have been reduced or
33 excluded under the prior carrier's contract or policy, no provision in a succeeding
34 carrier's contract of replacement coverage that would operate to reduce or exclude
35 benefits on the basis that the condition giving rise to benefits preexisted the effective
36 date of the succeeding carrier's contract shall be applied with respect to those employees
37 and dependents validly covered under the prior carrier's contract or policy on the date of
38 discontinuance.

39 **"§ 57B-15.6. Incurred but not reported claims.**

40 (a) Every health maintenance organization shall, when determining liability,
41 include an amount estimated in the aggregate to provide for any unearned premium and
42 for the payment of all claims for health care expenditures that have been incurred,
43 whether reported or unreported, that are unpaid and for which such organization is or

1 may be liable, and to provide for the expense of adjustment or settlement of such
2 claims.

3 (b) Such liabilities shall be computed in accordance with rules promulgated
4 by the Commissioner upon reasonable consideration of the ascertained experience and
5 character of the health maintenance organization."

6 Sec. 5. Chapter 57B of the General Statutes is amended by adding the
7 following new sections to read:

8 **"§ 57B-26. Taxation.**

9 For the purposes of raising revenues sufficient to defray the expenses of the
10 administration of this Chapter and to create and maintain the fund provided for in G.S.
11 57B-27, an annual franchise or privilege tax is hereby levied upon every health
12 maintenance organization subject to this Chapter at a rate of one-half of one percent (1/2
13 of 1%) of the gross annual premium collections from enrollees. The tax levied in this
14 section is in lieu of all other taxes upon health maintenance corporations except: fees
15 and licenses under this Chapter; any taxes imposed under Article 5 of Chapter 105 of
16 the General Statutes; and ad valorem taxes upon real and personal property owned in
17 this State.

18 **"§ 57B-27. Administration fund for rehabilitation, conservation, or liquidation.**

19 (a) There is created a special fund within the Department of Insurance to be
20 administered by the Commissioner. The purpose of the fund is to pay all expenses
21 incurred by the Commissioner or his deputies in any proceeding under Article 17A of
22 Chapter 58 of the General Statutes, or any successor law, in rehabilitating, conserving,
23 or liquidating a health maintenance organization.

24 (b) From the revenue generated by the tax provided for in G.S. 57B-26, the
25 fund shall receive five hundred thousand dollars (\$500,000) per year until the money in
26 the fund reaches the amount of one million dollars (\$1,000,000). Thereafter if the
27 amount of money in the fund falls below one million dollars (\$1,000,000), the fund
28 shall receive from such tax revenue amounts sufficient to maintain a fund balance of
29 one million dollars (\$1,000,000)."

30 Sec. 6. Section 5 of this act is effective for taxable years beginning January
31 1, 1989.

32 Sec. 7. This act is effective upon ratification.