

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 1455\*

Short Title: PSO Medicare Licensing.

(Public)

Sponsors: Representatives Cansler and Bowie.

Referred to: Insurance, if favorable, Finance.

May 25, 1998

A BILL TO BE ENTITLED

AN ACT TO CREATE MEDICARE PROVIDER SPONSORED ORGANIZATION LICENSING.

The General Assembly of North Carolina enacts:

Section 1. Chapter 131E of the General Statutes is amended by adding a new Article to read:

**“ARTICLE 17.**

**“PROVIDER SPONSORED ORGANIZATION LICENSING.**

**“§ 131E-275. General provisions.**

(a) The General Assembly acknowledges that section 1855, et seq., of the federal Social Security Act permits provider sponsored organizations that are organized and licensed under State law as risk-bearing entities, or that are otherwise certified as such by the federal government, to be eligible to offer health insurance or health benefits coverage in each State in which the provider sponsored organization offers a Medicare+Choice plan. The General Assembly declares that provider sponsored organizations are beneficial to North Carolina citizens who are Medicare beneficiaries and should be encouraged, subject to appropriate regulation by the Department of Health and Human Services, acting through the Medical Care Commission. The General Assembly further declares that, because provider sponsored organizations provide health care directly and assume responsibility for the provision of Health Care Services to

1 Medicare beneficiaries under the requirements of the federal Medicare program, they  
2 require different regulatory oversight to protect the public than health maintenance  
3 organizations and insurance companies. The General Assembly further declares that the  
4 organizers and operators of provider sponsored organizations which are licensed under  
5 the terms of this Article as risk-bearing entities authorized to contract directly with the  
6 federal Medicare+Choice program shall not be subject to Chapter 58 or the insurance  
7 laws of this State, unless otherwise specified in this Article.

8 (b) As set forth in this Article, the Department of Health and Human Services,  
9 acting through the Medical Care Commission, shall be the agency of the State authorized  
10 to license provider sponsored organizations to contract with Medicare to provide health  
11 care services to Medicare beneficiaries and to engage in the other related activities  
12 described in this Article.

13 (c) Each provider sponsored organization shall obtain a license from the  
14 Department or shall otherwise be certified by the federal government prior to  
15 establishing, maintaining, and operating a health care plan in this State for  
16 Medicare+Choice beneficiaries.

17 **"§ 131E-276. Definitions.**

18 As used in this Article, unless the context clearly implies otherwise, the following  
19 definitions apply:

- 20 (1) 'Beneficiary' or 'beneficiaries' means a beneficiary or beneficiaries of  
21 the Medicare+Choice program who are enrolled with the provider  
22 sponsored organization (PSO) under the terms of a contract between the  
23 PSO and the Medicare program.
- 24 (2) 'Commissioner' means the Commissioner of Insurance of North  
25 Carolina.
- 26 (3) 'Current assets' means cash, marketable securities, accounts receivable,  
27 and other current items that will be converted into cash within 12  
28 months.
- 29 (4) 'Current liabilities' means accounts payable and other accrued liabilities,  
30 including payroll, claims, and taxes that will need to be paid within 12  
31 months.
- 32 (5) 'Current ratio' means the ratio of current assets divided by current  
33 liabilities calculated at the end of any accounting period.
- 34 (6) 'Department' means the Department of Health and Human Services  
35 acting through the North Carolina Medical Care Commission.
- 36 (7) 'Emergency services' shall have the same meaning as for that term  
37 defined in G.S. 58-50-61(a)(5).
- 38 (8) 'Health Care Delivery Assets' means any tangible asset that is part of a  
39 PSO operation, including hospitals, medical facilities, and their ancillary  
40 equipment, and any property that may reasonably be required for the  
41 PSO's principal office or for any purposes that may be necessary in the  
42 transaction of the business of the PSO.

- 1           (9)    'Health plan contract' or 'Medicare contract' means a PSO's direct  
2           contract with the United States Department of Health and Human  
3           Services under section 1857 of the federal Social Security Act.
- 4           (10)   'Out-of-network services' means health care items or services that are  
5           covered services under a PSO's Medicare contract and that are provided  
6           to beneficiaries by health care providers that are not participating  
7           providers in the PSO's network of health care providers.
- 8           (11)   'Parent of a sponsoring provider' means the public or private entity that  
9           owns or controls a controlling interest in the sponsoring provider or that  
10          has the power to appoint a controlling number of the governing board of  
11          a sponsoring provider or that has the power to direct the management  
12          policy and decisions of the sponsoring provider.
- 13          (12)   'Provider' or 'health care provider' means: (i) any individual that is  
14          engaged in the delivery of health care services and that is required by  
15          North Carolina law or regulation to be licensed to engage in the delivery  
16          of these health care services and is so licensed; (ii) any entity that is  
17          engaged in the delivery of health care services and that is required by  
18          North Carolina law or regulation to be licensed to engage in the delivery  
19          of these health care services and is so licensed; or (iii) any entity that is  
20          owned or controlled entirely by individuals or entities described in  
21          subparts (i) or (ii) of this definition.
- 22          (13)   'Provider sponsored organization' or 'PSO' means a public or private  
23          entity domiciled in this State, including a business corporation, a  
24          nonprofit corporation, a partnership, a limited liability company, a  
25          professional limited liability company, a professional corporation, a sole  
26          proprietorship, a public hospital, a hospital authority, a hospital district,  
27          or a body politic: (i) that is established or organized by a health care  
28          provider or group of affiliated health care providers; (ii) in which  
29          physicians licensed pursuant to Article 1 of Chapter 90 of the General  
30          Statutes or to the laws of any state of the United States comprise no less  
31          than fifty percent (50%) of the governing board or body, unless  
32          otherwise prohibited by law; (iii) that provides a substantial proportion  
33          of the services under each Medicare contract directly through the  
34          provider or group of affiliated providers; and (iv) in which the provider  
35          or affiliated providers directly or indirectly share substantial financial  
36          risk and have at least a majority financial interest. The requirement in  
37          subpart (ii) of this definition shall not preclude a PSO that includes a  
38          tax-exempt hospital from adopting a bylaw provision that provides a  
39          veto for the tax-exempt hospital over actions of the PSO necessary to  
40          maintain the hospital's tax-exempt status. A PSO shall not be out of  
41          compliance with the requirement in subpart (ii) due to temporary  
42          vacancies on its governing board or body.

- 1           (14) 'Secretary' means the Secretary of the Department of Health and Human  
2           Services.
- 3           (15) 'Sponsoring providers' of a PSO means the health care provider  
4           domiciled in this State that assumes, or group of affiliated health care  
5           providers that directly or indirectly shares, substantial financial risk in  
6           the PSO and that has at least a majority financial interest in the PSO.
- 7           (16) 'Substantial proportion of the services', as that term is used in G.S.  
8           131E-276(n) and G.S. 131E-309(a), means at least seventy percent  
9           (70%), or sixty percent (60%) for PSOs whose beneficiaries reside  
10           primarily in rural areas, of the annual cost of health care services.
- 11          (17) A health care provider is affiliated with another provider if through  
12          contract, ownership, or otherwise, when: (i) one provider directly  
13          controls, is controlled by, or is under common control with the other  
14          provider; (ii) each provider participates in a lawful combination under  
15          which they share substantial financial risk for the organization's  
16          operation; (iii) both providers are part of a controlled group of  
17          corporations as defined under section 1563 of the Internal Revenue  
18          Code of 1986; or (iv) both providers are part of an affiliated service  
19          group under section 414 of this Code. Control is presumed if one party  
20          directly or indirectly owns, controls, or holds the power to vote, or  
21          proxies for, at least fifty-one percent (51%) of the voting or governance  
22          rights of another.

23 **"§ 131E-277. Direct or indirect sharing of substantial financial risk.**

24       In order for sponsoring providers to directly or indirectly share substantial financial  
25 risk in the PSO, the PSO shall do one or more of the following:

- 26           (1) Provide services under its Medicare contract at a capitated rate;  
27           (2) Provide designated services or classes of services under its Medicare  
28           contract for a predetermined percentage of premium or revenue from the  
29           Medicare program;  
30           (3) Use significant financial incentives for its sponsoring providers, as a  
31           group to achieve specified cost-containment goals either by:  
32           a. Withholding from all sponsoring providers a substantial amount  
33           of the compensation due to them, with distribution of that amount  
34           to the sponsoring providers based on performance of all  
35           sponsoring providers in meeting the cost-containment goals of  
36           the network as a whole; or  
37           b. Establishing overall cost or utilization targets for the PSO, with  
38           the sponsoring providers subject to subsequent substantial  
39           financial rewards or penalties based on group performance in  
40           meeting the targets; or  
41           (4) Agree to provide a complex or extended course of treatment that  
42           requires the substantial coordination of care by sponsoring providers in  
43           different specialties offering a complementary mix of services, for a

1 fixed, predetermined payment, when the costs of that course of  
2 treatment for any individual patient can vary greatly due to the  
3 individual patient's treatment or other factors; or

- 4 (5) Agree to any other arrangement that the Department determines to  
5 provide for the sharing of substantial financial risk by the sponsoring  
6 providers.

7 It is the intent of the General Assembly to encourage innovative methods by which  
8 sponsoring providers can directly or indirectly share substantial financial risk in the PSO  
9 in any lawful manner.

10 **"§ 131E-278. Applicability of other laws.**

11 (a) Unless otherwise required by federal law, provider sponsored organizations  
12 licensed pursuant to the terms of this Article are exempt from all regulation under  
13 Chapter 58 of the General Statutes. Plan contracts, provider contracts, and other  
14 arrangements related to the provision of covered services by these licensed networks or  
15 by health care providers of these PSOs when operating through these PSOs shall likewise  
16 be exempt from regulation under Chapter 58 of the General Statutes.

17 **"§ 131E-279. Approval.**

18 (a) Unless otherwise required by federal law, the Department shall be the agency  
19 of the State that shall license provider sponsored organizations that seek to contract with  
20 the federal government to provide health care services directly to Medicare beneficiaries  
21 under the Medicare+Choice program.

22 (b) Provider sponsored organizations which have been granted a waiver pursuant  
23 to 42 U.S.C. § 1395w-25(a)(2), or any successor thereof, and which otherwise meet the  
24 requirements of the PSO's Medicare contract shall be deemed by the State to be licensed  
25 under this Article for so long as the waiver or Medicare contract remains in effect. The  
26 foregoing shall not limit the Department's authority to regulate such PSOs and their  
27 respective sponsoring providers and affiliated providers as may be permitted in 42 U.S.C.  
28 § 1395w-25(a)(2)(G), or any successor thereof, or the PSO's Medicare contract.

29 (c) The Department shall license a PSO as a risk-bearing entity eligible to offer  
30 health benefits coverage in this State to Medicare beneficiaries if the PSO complies with  
31 the requirements of this Article. This license shall be granted or denied by the  
32 Department not longer than 90 days after the receipt of a substantially complete  
33 application for licensing. Within 45 days after the Department receives an application for  
34 licensing, the Department shall either notify the applicant that the application is  
35 substantially complete, or clearly and accurately specify in writing to the applicant all  
36 additional specific information required by the applicant to make the application a  
37 substantially completed application. This agency response shall set forth a date and time  
38 for a meeting within 30 days after it is sent to the applicant, at which a representative of  
39 the Department will explain with particularity the additional information required by the  
40 Department in the response to make the application substantially complete. The  
41 Department shall be bound by the response unless the Secretary determines that it must  
42 be modified in order to meet the purposes of this Article. The Secretary shall not  
43 delegate the authority to modify the response. If an applicant provides the additional

1 information set forth in the response, the application shall be considered substantially  
2 complete. If the Department has not acted on an application within 90 days after it is  
3 deemed substantially complete, the Department shall immediately issue a license to the  
4 applicant, and the applicant shall be considered to have been licensed by the Department.  
5 Any reapplication which corrects the deficiencies which were specified by the  
6 Department in the response shall be approved by the Department.

7 (d) For purposes of determining, under 42 U.S.C. § 1395w-25(a)(2)B, or any  
8 successor thereof, the date of receipt by the State of a substantially complete application,  
9 the date the Department receives the applicant's written response to the agency response  
10 or an earlier date considered by the Department shall be considered to be that date. The  
11 foregoing shall not limit the Department's authority to consider an application not  
12 substantially complete under subsection (c) of this section if the applicant's response to  
13 the response does not provide substantially the information specified in the response.

14 (e) The standards in G.S. 131E-279 through G.S. 131E-288 and in G.S. 131E-290  
15 through G.S. 131E-308 shall apply to PSOs, unless federal law specifies standards more  
16 favorable to PSOs or unless otherwise preempted by federal law.

17 (f) A license shall be denied only after the Department complies with the  
18 requirements of G.S. 131E-312.

19 **"§ 131E-280. Applicants for license.**

20 (a) Each application for licensing as a provider sponsored organization authorized  
21 to do business in North Carolina shall be certified by an officer or authorized  
22 representative of the applicant, shall be in a form prescribed by the Department, and shall  
23 be set forth or be accompanied by the following:

24 (1) A copy of the basic organizational document, if any, of the applicant  
25 and each sponsoring organization that holds greater than a five percent  
26 (5%) interest in the PSO, such as the articles of incorporation, articles of  
27 organization, partnership agreement, trust agreement, or other  
28 applicable documents, and all amendments thereto;

29 (2) A copy of the respective bylaws, rules and regulations, or similar  
30 documents, if any, regulating the conduct of the internal affairs of the  
31 applicant and each sponsoring provider which holds greater than a five  
32 percent (5%) interest in the PSO;

33 (3) Copies of the document evidencing the arrangements between the  
34 applicant and each sponsoring provider that create the relationships and  
35 obligations described in G.S. 131E-276(n);

36 (4) A list of the names, addresses, and official positions of persons who are  
37 to be responsible for the conduct of the affairs of the applicant and of  
38 each sponsoring provider that holds greater than a five percent (5%)  
39 interest in the PSO, respectively, including all members of the  
40 respective boards of directors, boards of trustees, executive committees,  
41 or other governing boards or committees, the principal officers in the  
42 case of a corporation, and the partners or members in the case of a  
43 partnership or association;

- 1           (5) A copy of any contract form made or to be made between any class of  
2 providers and the PSO and a copy of any contract form made or to be  
3 made between third-party administrators, marketing consultants, or  
4 persons listed in subdivision (3) of this subsection and the PSO;  
5           (6) A statement generally describing the provider sponsored organization,  
6 its sponsoring providers, its health care plan or plans, facilities, and  
7 personnel;  
8           (7) A copy of the hospital license of each sponsoring provider that is a  
9 hospital, a copy of the license to practice medicine of each sponsoring  
10 provider or owner of a sponsoring provider that is a licensed physician,  
11 and a copy of the health care service or facility license held by any other  
12 licensed sponsoring provider;  
13           (8) Financial statements showing the applicant's assets, liabilities, sources  
14 of financial support, and the financial statements of each sponsoring  
15 provider that holds greater than a five percent (5%) interest in the PSO  
16 showing the sponsoring provider's assets, liabilities, and sources of  
17 support. If the applicant's or any such sponsoring provider's financial  
18 affairs are audited by independent certified public accountants, a copy  
19 of the applicant's or sponsoring provider's most recent regular certified  
20 financial statement shall be considered to satisfy this requirement unless  
21 the Department directs that additional or more recent financial  
22 information is required for the proper administration of this Article;  
23           (9) If the applicant's obligations under G.S. 131E-282, 131E-283, 131E-  
24 297, 131E-298, or 131E-299 are guaranteed by one or more guarantors,  
25 financial statements showing each guarantor's assets, liabilities, and  
26 sources of financial support. If a guarantor's financial affairs are audited  
27 by independent certified public accountants, a copy of the guarantor's  
28 most recent regular audited financial statement shall be considered to  
29 satisfy this requirement unless the Department directs that additional or  
30 more recent financial information is required for the proper  
31 administration of this Article;  
32           (10) A financial plan, satisfactory to the Department, covering the first 12  
33 months of operation under the PSO's Medicare contract and which  
34 meets the requirements of G.S. 131E-283. If the financial plan projects  
35 losses, the financial plan must cover the period through 12 months  
36 beyond the projected breakeven;  
37           (11) A statement reasonably describing the geographic area or areas to be  
38 served;  
39           (12) A description of the procedures to be implemented to meet the  
40 protection against insolvency requirements of G.S. 131E-298; and  
41           (13) Any other information the Department may require to make the  
42 determinations required in G.S. 131E-282.

1       (b) The Department may adopt rules exempting from the filing requirements of  
2 subsection (a) of this section those items it considered unnecessary.

3 **"§ 131E-281. Additional Information.**

4       (a) In addition to the information filed under G.S. 131E-280(a), each application  
5 shall include a description of the following:

- 6       (1) The program to be used to evaluate whether the applicant's network of  
7 sponsoring providers and contracted providers is sufficient, in numbers  
8 and types of providers, to assure that all health care services will be  
9 accessible without unreasonable delay;
- 10       (2) The program used to evaluate whether the sponsoring providers  
11 providers provide a substantial portion of services under each Medicare  
12 contract of the PSO;
- 13       (3) The program to be used for verifying provider credentials;
- 14       (4) The utilization review program for the review and control of health care  
15 services provided or paid for by the applicant;
- 16       (5) The quality management program to assure quality of care and health  
17 care services managed and provided through the health care plan; and
- 18       (6) The applicant's network of sponsoring providers and contracted  
19 providers and evidence of the ability of that network to provide all  
20 health care services other than out-of-network services and emergency  
21 services to the applicant's prospective beneficiaries.

22       (b) The department may promulgate rules and regulations exempting from the  
23 filing requirements of subdivision (a) those items it deems unnecessary.

24 **"§ 131E-282. Issuance of license.**

25       (a) Before issuing any such license, the Department may make such an  
26 examination or investigation as it deems expedient. The Department shall issue a license  
27 after receipt of a substantially complete application, upon the payment of the application  
28 fee prescribed in G.S. 131E-307 and upon satisfaction of the following requirements:

- 29       (1) The applicant is duly organized as a provider sponsored organization as  
30 defined by the Article.
- 31       (2) That the PSO has initially a minimum net worth of one million five  
32 hundred thousand dollars (\$1,500,000). In the event the PSO submits a  
33 financial plan that demonstrates that the PSO does not have to create but  
34 has or has available to it an administrative infrastructure that shall  
35 reduce the PSO's start-up costs, the Department may lower the initial  
36 minimum net worth required to one million dollars (\$1,000,000) or to  
37 any lower amount as determined by the Department if the PSO operates  
38 primarily in rural areas.
- 39       (3) The PSO shall have at least seven hundred fifty thousand dollars  
40 (\$750,000) in cash or equivalents on its balance sheet, except that the  
41 Department may permit a PSO operating primarily in rural areas to have  
42 a lesser amount held in cash or equivalents on its balance sheets.



- 1           (4) The applicant submits a financial plan satisfactory to the Department  
2 which covers the first 12 months of operation of the PSO's Medicare  
3 contract and which meets the requirements of G.S. 131E-283. If the  
4 plan projects losses, the financial plan shall cover the period through 12  
5 months beyond projected break-even.
- 6           (5) The Department determines that the applicant has sufficient cash flow to  
7 meet its obligations as they become due. In making that determination,  
8 the Department shall consider the following:
- 9               a. The timeliness of payment;  
10              b. The extent to which the current ratio is maintained at one to one,  
11                or whether there is a change in the current ratio over a period of  
12                time; and  
13              c. The availability of outside financial resources.
- 14       (b) In calculating the net worth of a PSO, the Department shall admit the  
15 following:
- 16           (1) One hundred percent (100%) of the book value of health care delivery  
17 assets on the balance sheet of the applicant.
- 18           (2) One hundred percent (100%) of the value of cash and cash equivalents  
19 on the balance sheet of the applicant.
- 20           (3) If at least one million dollars (\$1,000,000) of the initial minimum net  
21 worth requirement is met by cash or cash equivalents, then one hundred  
22 percent (100%) of the book value of the PSO's intangible assets up to  
23 twenty percent (20%) of the minimum net worth amount required. If  
24 less than one million dollars (\$1,000,000) of the initial minimum net  
25 worth requirement is met by cash or cash equivalents or if the  
26 Department has used its discretion to reduce the initial net worth  
27 requirement below one million five hundred thousand dollars  
28 (\$1,500,000), then the Department shall admit one hundred percent  
29 (100%) of the book value of intangible assets of the PSO up to ten  
30 percent (10%) of the minimum net worth amount required.
- 31           (4) Standard accounting principles treatment shall be given to other assets  
32 of the PSO not used in the delivery of health care for the purposes of  
33 meeting the minimum net worth requirement.
- 34           (5) Deferred acquisition costs shall not be admitted.

35 **"§ 131E-283. Financial plan.**

- 36       (a) The financial plan shall include the following:
- 37           (1) A detailed marketing plan;  
38           (2) Statements of revenue and expense on an accrual basis;  
39           (3) Cash flow statements;  
40           (4) Balance sheets; and  
41           (5) The assumptions in support of the financial plan.
- 42       (b) In the financial plan, the PSO shall demonstrate that it has the resources  
43 available to meet the projected losses for the entire period to break even. Except for the

1 use of guaranties as provided in subsection (c) of this section, letters of credit as provided  
2 in subsection (d) of this section, and other means as provided in subsection (e) of this  
3 section, the resources must be assets on the balance sheet of the PSO in a form that is  
4 either cash or convertible to cash in a timely manner, pursuant to the financial plan.

5 (c) Guaranties shall be acceptable as a resource to meet projected losses, under the  
6 following conditions:

7 (1) For the first year of the PSO's operation of the PSO's Medicare contract,  
8 the guarantor must provide the PSO with cash or cash equivalents to  
9 fund the projected losses, as follows:

10 a. Prior to the beginning of the first quarter, in the amount of the  
11 projected losses for the first two quarters;

12 b. Prior to the beginning of the second quarter, in the amount of the  
13 projected losses through the end of the third quarter; and

14 c. Prior to the beginning of the third quarter, in the amount of the  
15 projected losses through the end of the fourth quarter.

16 (2) If the guarantor provides the cash or cash equivalents to the PSO in a  
17 timely manner on the above schedule, this funding shall be considered  
18 in compliance with the guarantor's commitment to the PSO. In the third  
19 quarter, the PSO shall notify the Department if the PSO intends to  
20 reduce the period of funding of projected losses. The Department shall  
21 notify the PSO within 60 days of receiving the PSO's notice if the  
22 reduction is not acceptable.

23 (3) If the above guaranty requirements are not met, the Department may  
24 take appropriate action, such as requiring funding of projected losses  
25 through means other than a guaranty. The Department retains discretion  
26 which shall be reasonably exercised to require other methods or timing  
27 of funding, considering factors such as the financial condition of the  
28 guarantor and the accuracy of the financial plan.

29 (d) The Department may modify the conditions in subsection (c) of this section in  
30 order to clarify the acceptability of guaranty arrangements.

31 (e) An irrevocable, clean, unconditional letter of credit may be used in place of  
32 cash or cash equivalents if satisfactory to the Department.

33 (f) If approved by the Department, based on appropriate standards promulgated by  
34 the Department, PSOs may use the following to fund projected losses for periods after the  
35 first year: lines of credit from regulated financial institutions, legally binding agreements  
36 for capital contributions, or other legally binding contracts of a similar level of reliability.

37 (g) The exceptions in subsections (c), (d), and (e) of this section may be used in an  
38 appropriate combination or sequence.

39 **§ 131E-284. Modifications.**

40 (a) A provider sponsored organization shall file a notice describing any significant  
41 change in the information required by the Department under G.S. 131E-280. Such notice  
42 shall be filed with the Department prior to the change. If the Department does not  
43 disapprove within 90 days after the filing, this modification shall be considered approved.

1 Changes subject to the terms of this section include expansion of service area, addition or  
2 deletion of sponsoring providers, changes in provider contract forms, and group contract  
3 forms when the distribution of risk is significantly changed, and any other changes that  
4 the Department describes in properly adopted rules. Every PSO shall report to the  
5 Department for the Department's information material changes in the network of  
6 sponsoring providers and affiliated providers of services to beneficiaries enrolled with the  
7 PSO, the addition or deletion of any Medicare contracts of the PSO or any other  
8 information the Department may require. This information shall be filed with the  
9 Department within 15 days after implementation of the reported changes. Every PSO  
10 shall file with the Department all subsequent changes in the information or forms that are  
11 required by this Article to be filed with the Department.

12 (b) The Department may adopt rules exempting from the filing requirements of  
13 subsection (a) of this section those items it considers unnecessary.

14 **"§ 131E-285. Deposits.**

15 (a) The Department shall require a deposit of one hundred thousand dollars  
16 (\$100,000) for all provider sponsored organizations. Said deposits shall be included in  
17 the calculations of a PSO's or applicant's net worth.

18 (b) All deposits required by this section shall be administered in accordance with  
19 procedures established by the Department.

20 **"§ 131E-286. Ongoing financial standards - net worth.**

21 (a) Beginning the first day of operation of the PSO and except as otherwise  
22 provided in subsection (d) of this section, every PSO shall maintain a minimum net worth  
23 equal to the greater of the following amounts:

24 (1) One million dollars (\$1,000,000);

25 (2) Two percent (2%) of annual premium revenues as reported on the most  
26 recent annual financial statement filed with the Department on the first  
27 one hundred fifty million dollars (\$150,000,000) of premium and one  
28 percent (1%) of annual premium on the premium in excess of one  
29 hundred fifty million dollars (\$150,000,000);

30 (3) An amount equal to the sum of three months uncovered health care  
31 expenditures as reported on the most recent financial statement filed  
32 with the Department;

33 (4) An amount equal to the sum of:

34 a. Eight percent (8%) of annual health care expenditures paid on a  
35 noncapitated basis to nonaffiliated providers as reported on the  
36 most recent financial statement filed with the Department; and

37 b. Four percent (4%) of annual health care expenditures paid on a  
38 capitated basis to nonaffiliated providers plus annual health care  
39 expenditures paid on a noncapitated basis to affiliated providers;  
40 and

41 c. Zero percent (0%) of annual health care expenditures paid on a  
42 capitated basis to affiliated providers regardless of downstream  
43 arrangements from the affiliated provider.

1       (b) In calculating net worth, liabilities shall not include fully subordinated debt or  
2 subordinated liabilities. For purposes of this provision, subordinated liabilities are claims  
3 liabilities otherwise due to providers that are retained by the PSO to meet net worth  
4 requirements and are fully subordinated to all creditors.

5       (c) In calculating net worth for purposes of this section, the items described in  
6 G.S. 131E-282(b) shall be admitted, except as follows:

7           (1) For intangible assets, if at least the greater of one million dollars  
8 (\$1,000,000) or sixty-seven percent (67%) of the ongoing minimum net  
9 worth requirement is met by cash or cash equivalents, then the  
10 Department shall admit the book value of intangible assets up to twenty  
11 percent (20%) of the minimum net worth amount required. If less than  
12 the greater of one million dollars (\$1,000,000) or sixty-seven percent  
13 (67%) of the ongoing minimum net worth requirement is met by cash or  
14 cash equivalents, then the Department shall admit the book value of  
15 intangible assets up to ten percent (10%) of the minimum net worth  
16 amount required; and

17           (2) Deferred acquisition costs shall not be admitted.

18       (d) The Department may lower the minimum ongoing net worth threshold for  
19 PSOs that operate primarily in rural areas.

20       (e) During the start-up phase of the PSO, the pre-break-even financial plan  
21 requirements shall apply. After the point of break-even, the financial plan requirement  
22 shall address cash needs and the financing required for the next three years.

23       (f) If a PSO, or the legal entity of which the PSO is a component, did not earn a  
24 net operating surplus during the most recent fiscal year, the PSO shall submit a financial  
25 plan, satisfactory to the Department, meeting all of the requirements established for the  
26 initial financial plan.

27 **"§ 131E-287. Reporting.**

28       The PSO shall file with the Department financial information relating to PSO  
29 solvency standards described in this Article, according to the following schedule:

30           (1) On a quarterly basis until break-even; and

31           (2) On an annual basis after break-even, if the PSO has a net operating  
32 surplus; or

33           (3) On a quarterly or monthly basis, as specified by the Department, after  
34 break-even, if the PSO does not have a net operating surplus.

35 **"§ 131E-288. Liquidity.**

36       (a) Each PSO shall have sufficient cash flow to meet its obligations as they  
37 become due. In determining the ability of a PSO to meet this requirement, the  
38 Department shall consider the following:

39           (1) The timeliness of payment;

40           (2) The extent to which the current ratio is maintained at one to one or  
41 whether there is a change in the current ratio over a period of time; and

42           (3) The availability of outside financial resources.

43       (b) The following corresponding remedies apply:

1           (1) If the PSO fails to pay obligations as they become due, the Department  
2 shall require the PSO to initiate corrective action to pay all overdue  
3 obligations.

4           (2) The Department may require the PSO to initiate corrective action if any  
5 of the following are evident: (i) the current ratio declines significantly;  
6 or (ii) a continued downward trend in the current ratio. The corrective  
7 action may include a change in the distribution of assets, a reduction of  
8 liabilities, or alternative arrangements to secure additional funding  
9 requirements to restore the current ratio to one to one.

10          (3) If there is a change in the availability of the outside resources, the  
11 Department shall require the PSO to obtain funding from alternative  
12 financial resources.

13          (c) Nothing in the foregoing liquidity requirements shall be interpreted to require  
14 the PSO to maintain a current ratio of one to one if the PSO can demonstrate to the  
15 Department that it is able to pay its obligations as they become due and the current ratio  
16 maintained by the PSO has neither declined significantly nor is on a continued downward  
17 trend.

18 **"§ 131E-289. Minimum of net worth that must be in cash or cash equivalents.**

19          (a) Except as otherwise provided in subsection (b) of this section, each PSO shall,  
20 on an ongoing basis, maintain a minimum net worth in cash or cash equivalents of the  
21 greater of:

22           (1) Seven hundred fifty thousand dollars (\$750,000) cash or cash  
23 equivalents; or

24           (2) Forty percent (40%) of the minimum net worth required.

25          (b) The Department may lower the threshold for minimum net worth held in cash  
26 or cash equivalents by PSOs that operate primarily in rural areas.

27          (c) Cash or cash equivalents held to meet the net worth requirement shall be  
28 current assets of the PSO.

29 **"§ 131E-290. Prohibited practice.**

30          (a) No provider sponsored organization or sponsoring provider, unless licensed as  
31 an insurer under Chapter 58 of the General Statutes may use in its name, contracts, or  
32 literature any of the words 'insurance', 'casualty', 'surety', 'mutual', or any other words  
33 descriptive of the insurance, casualty, or surety business or deceptively similar to the  
34 name or description of any insurance or surety corporation doing business in this State.

35          (b) No provider sponsored organization or sponsoring provider shall engage in any  
36 activity or conduct which is prohibited by the terms of the PSO's Medicare contract.

37 **"§ 131E-291. Collaboration with local health departments.**

38          A provider sponsored organization and a local health department shall collaborate and  
39 cooperate within available resources regarding health promotion and disease prevention  
40 efforts that are necessary to protect the public health.

41 **"§ 131E-292. Coverage.**

1 (a) Provider sponsored organizations subject to this Article shall provide coverage  
2 for the medically appropriate and necessary services specified under the PSO's Medicare  
3 contract.

4 (b) In the event a PSO's Medicare contract or federal law, regulations, or rules  
5 governing coverage by the PSO of items or services to Medicare beneficiaries permits a  
6 PSO, sponsoring provider, or participating provider to object on moral or religious  
7 grounds to providing an item or service to Medicare beneficiaries, it is the policy of this  
8 State to permit this objection and allow the participating provider to refuse to provide the  
9 item or service.

10 **"§ 131E-293. Rates.**

11 Rates charged by provider sponsored organizations to the Medicare program and  
12 charges by PSOs and sponsoring providers for items or services to beneficiaries shall be  
13 governed by the terms of the PSO's Medicare contract.

14 **"§ 131E-294. Consumer protection and quality standards.**

15 (a) Unless otherwise preempted by federal law or mandated by the Medicare  
16 program, the Department shall apply to provider sponsored organizations the same  
17 standards and requirements that the Department of Insurance applies to health  
18 maintenance organizations under Chapter 58 of the General Statutes with respect to the  
19 following consumer protection and quality matters:

- 20 (1) Quality management programs;
- 21 (2) Utilization review procedures;
- 22 (3) Unfair or deceptive trade practices;
- 23 (4) Antidiscrimination;
- 24 (5) Provider accessibility and availability; and
- 25 (6) Network provider credentialing.

26 **"§ 131E-295. Powers of insurers and medical service corporations.**

27 Notwithstanding any provision of the insurance and hospital or medical service  
28 corporation laws contained in Articles 1 through 66 of Chapter 58 of the General  
29 Statutes, an insurer or a hospital or medical service corporation may contract with a  
30 provider sponsored organization to provide insurance or similar protection against the  
31 cost of care provided through provider sponsored organizations and their sponsoring  
32 providers to beneficiaries and to provide coverage in the event of the failure of the  
33 provider sponsored organization or its sponsoring providers to meet its obligations under  
34 the PSO's Medicare contract. The beneficiaries of a provider sponsored organization  
35 constitute a permissible group under these laws. Among other things, under these  
36 contracts, the insurer or hospital or medical service corporation may make benefit  
37 payments to provider sponsored organizations for health care services rendered by  
38 providers pursuant to the health care plan.

39 **"§ 131E-296. Examinations.**

40 The Department may make an examination of the affairs of any provider sponsored  
41 organization and the contracts, agreements, or other arrangements pursuant to its health  
42 care plan as often as the Department considers necessary for the protection of the  
43 interests of the people of this State but not less frequently than once every three years.

1 **"§ 131E-297. Hazardous financial condition.**

2 (a) Whenever the financial condition of any provider sponsored organization  
3 indicates a condition such that the continued operation of the provider sponsored  
4 organization might be hazardous to its beneficiaries, creditors, or the general public, then  
5 the Department may order the provider sponsored organization to take any action that  
6 may be reasonably necessary to rectify the existing condition, including one or more of  
7 the following steps:

8 (1) To reduce the total amount of present and potential liability for benefits  
9 by reinsurance;

10 (2) To reduce the volume of new business being accepted;

11 (3) To reduce the expenses by specified methods;

12 (4) To suspend or limit the writing of new business for a period of time;

13 (5) To require an increase to the provider sponsored organization's net  
14 worth by contribution;

15 (6) To add or delete sponsoring providers;

16 (7) To increase the amount of payments from the PSO which sponsoring  
17 providers agree to forego; or

18 (8) To require additional guaranties from sponsoring providers or from  
19 parents of sponsoring providers.

20 (b) If the Department determines that the liquidity standards in G.S. 131E-286,  
21 131E-288, and 131E-289 do not provide sufficient early warning that the continued  
22 operation of any provider sponsored organization might be hazardous to its beneficiaries,  
23 creditors, or the general public, the Department may adopt rules to set uniform standards  
24 and criteria for such an early warning and to set standards for evaluating the financial  
25 condition of any provider sponsored organization, which standards shall be consistent  
26 with the purposes expressed in subsection (a) of this section.

27 **"§ 131E-298. Protection against insolvency.**

28 (a) The Department shall require deposits in accordance with the provisions of  
29 G.S. 131E-285.

30 (b) If a provider sponsored organization fails to comply with the net worth  
31 requirements of G.S. 131E-286, the Department may take appropriate action to assure  
32 that the continued operation of the provider sponsored organization will not be hazardous  
33 to the beneficiaries enrolled with the PSO.

34 (c) Every provider sponsored organization shall have and maintain at all times an  
35 adequate plan for protection against insolvency acceptable to the Department. In  
36 determining the adequacy of such a plan, the Department shall consider:

37 (1) A reinsurance agreement preapproved by the Department covering  
38 excess loss, stop-loss, or catastrophies. The agreement shall provide  
39 that the Department will be notified no less than 60 days prior to  
40 cancellation or reduction of coverage;

41 (2) A conversion policy or policies that will be offered by an insurer to the  
42 beneficiaries in the event of the provider sponsored organization's  
43 insolvency;

- 1           (3) Legally binding unconditional guaranties by adequately capitalized  
2 sponsoring provider or adequately capitalized sponsoring corporations  
3 of sponsoring providers;  
4           (4) Legally binding obligations of sponsoring providers to forego payment  
5 for items or services provided by the sponsoring provider in order to  
6 avoid the financial insolvency of the PSO;  
7           (5) Legally binding obligations of sponsoring providers or parents of  
8 sponsoring providers to make capital infusions to the PSO; and  
9           (6) Any other arrangements offering protection against insolvency that the  
10 Department may require.

11 **"§ 131E-299. Hold harmless agreements or special deposit.**

12           (a) Unless the PSO maintains a special deposit in accordance with subsection (b)  
13 of this section, each contract between every PSO and a participating provider of health  
14 care services shall be in writing and shall set forth that in the event the PSO fails to pay  
15 for health care services as set forth in the contract, the Medicare subscriber or beneficiary  
16 shall not be liable to the provider for any sums owed by the PSO. No other provisions of  
17 such contracts shall, under any circumstances, change the effect of such a provision. No  
18 participating provider or agent, trustee, or assignee thereof may maintain any action at  
19 law against a subscriber or beneficiary to collect sums owed by the PSO.

20           (b) In the event that the participating provider contract has not been reduced to  
21 writing or that the contract fails to contain the required prohibition, the PSO shall  
22 maintain a special deposit in cash or cash equivalent as follows:

23           (1) If at any time uncovered expenditures exceed ten percent (10%) of total  
24 health care expenditures the PSO shall either:

25           a. Place an uncovered expenditures insolvency deposit with the  
26 Department, or with any organization or trustee acceptable to the  
27 Department through which a custodial or controlled account is  
28 maintained, cash or securities that are acceptable to the  
29 Department. This deposit shall at all times have a fair market  
30 value in an amount of one hundred twenty percent (120%) of the  
31 PSO's outstanding liability for uncovered expenditures for  
32 enrollees, including incurred but not reported claims, and shall be  
33 calculated as of the first day of the month and maintained for the  
34 remainder of the month. If a PSO is not otherwise required to  
35 file a quarterly report, it shall file a report within 45 days of the  
36 end of the calendar quarter with information sufficient to  
37 demonstrate compliance with this section; or

38           b. Maintain adequate insurance or a guaranty arrangement approved  
39 in writing by the Department, to pay for any loss to beneficiaries  
40 claiming reimbursement due to the insolvency of the PSO. The  
41 Department shall approve a guaranty arrangement if the  
42 guarantying organization is a sponsoring provider, has been  
43 operating for at least 10 years and has a net worth, including



1           organization-related land, buildings, and equipment of at least  
2           fifty million dollars (\$50,000,000), unless the Department finds  
3           that the approval of this guaranty may be financially hazardous to  
4           beneficiaries.

5           (2) The deposit required under sub-subdivision a. of subdivision (1) of this  
6           section is an admitted asset of the PSO in the determination of net  
7           worth. All income from such deposits or trust accounts shall be assets  
8           of the PSO and may be withdrawn from such deposit or account  
9           quarterly with the approval of the Department;

10          (3) A PSO that has made a deposit may withdraw that deposit or any part of  
11          the deposit if (i) a substitute deposit of cash or securities of equal  
12          amount and value is made, (ii) the fair market value exceeds the amount  
13          of the required deposit, or (iii) the required deposit under this subsection  
14          is reduced or eliminated. Deposits, substitutions, or withdrawals may  
15          be made only with the prior written approval of the Department;

16          (4) The deposit required under sub-subdivision a. of subdivision (1) of this  
17          section is in trust and may be used only as provided under this section.  
18          The Department may use the deposit of an insolvent PSO for  
19          administrative costs associated with administering the deposit and  
20          payment of claims of enrollees of the PSO.

21          (c) Whenever the reimbursements described in this section exceed \_\_\_\_\_  
22          percent ( %) of the PSO's total costs for health care services over the immediately  
23          preceding six months, the PSO shall file a written report with the Department containing  
24          the information necessary to determine compliance with sub-division a. of subdivision (1)  
25          of this section no later than 30 business days from the first day of the month. Upon an  
26          adequate showing by the PSO that the requirements of this section should be waived or  
27          reduced, the Department may waive or reduce these requirements to such an amount as it  
28          deems sufficient to protect beneficiaries of the PSO consistent with the intent and  
29          purpose of this Article.

30          **"§ 131E-300. Continuation of benefits.**

31          The Department shall require that each PSO have a plan for handling insolvency,  
32          which plan allows for continuation of benefits for the duration of the contract period for  
33          which premiums have been paid and continuation of benefits to beneficiaries who are  
34          confined in an inpatient facility until their discharge or expiration of benefits. In  
35          considering such a plan, the Department may require:

36               (1) Insurance to cover the expenses to be paid for benefits after an  
37               insolvency;

38               (2) Provisions in provider contracts that obligate the provider to provide  
39               services for the duration of the period after the PSO's insolvency for  
40               which premium payment has been made and until the beneficiaries'  
41               discharge from inpatient facilities;

42               (3) Insolvency reserves as the Department may require;

43               (4) Letters of credit acceptable to the Department;

- 1           (5) Additional guaranties from a sponsoring provider of the PSO or from  
2           the parent of a sponsoring provider;  
3           (6) Legally binding obligations of sponsoring providers to forego payment  
4           from the PSO for services provided to beneficiaries in order to avoid the  
5           insolvency of the PSO; and  
6           (7) Any other arrangements to assure that benefits are continued as  
7           specified.

8 **"§ 131E-301. Insolvency.**

9           (a) In the event of an insolvency of a PSO upon order of the Department, all  
10 providers that were sponsoring providers of the PSO within the previous 12 months from  
11 the order of the Department shall, for 30 days after the order, offer all beneficiaries  
12 enrolled with the insolvent PSO covered services without charge other than for any  
13 applicable co-payments, deductibles, or coinsurance permitted to be charged to  
14 beneficiaries under the PSO's Medicare contract.

15           (b) If the Department determines that the sponsoring providers lack sufficient  
16 health care delivery resources to assure that health care services will be available and  
17 accessible to all of the beneficiaries of the insolvent PSO, then, in the event the Health  
18 Care Financing Administration of the United States Department of Health and Human  
19 Services fails to make such allocations in a timely manner, the Department shall allocate  
20 the insolvent PSO's contracts for these groups among all other PSOs that operate within a  
21 portion of the insolvent PSO's service area, taking into consideration the health care  
22 delivery resources of each PSO. Each PSO to which beneficiaries are so allocated by the  
23 Department shall offer such group or groups that PSO's existing coverage that is most  
24 similar to each beneficiary's coverage with the insolvent PSO at rates determined in  
25 accordance with the successor PSO's existing rating methodology.

26           (c) Taking into consideration the health care delivery resources of each such PSO,  
27 then in the event the Health Care Financing Administration of the U.S. Department of  
28 Health and Human Services fails to make such allocations in a timely manner, the  
29 Department shall also allocate among all PSOs that operate within a portion of the  
30 insolvent PSO's service area the insolvent PSO's beneficiaries who are unable to obtain  
31 other coverage. Each PSO to which beneficiaries are so allocated by the Department  
32 shall offer such beneficiaries that PSO's existing coverage for individual or conversion  
33 coverage as determined by his type of coverage in the insolvent PSO at rates determined  
34 in accordance with the successor PSO's Medicare contract.

35 **"§ 131E-302. Replacement coverage.**

36           (a) Any carrier providing replacement coverage with respect to hospital, medical,  
37 or surgical expense or service benefits, within a period of 60 days from the date of  
38 discontinuance of a prior PSO contract or policy providing these hospital, medical, or  
39 surgical expense or service benefits, shall immediately cover all beneficiaries who were  
40 validly covered under the previous PSO contract or policy at the date of discontinuance  
41 and who would otherwise be eligible for coverage under the succeeding carrier's contract,  
42 regardless of any provisions of the contract relating to hospital confinement or  
43 pregnancy.

1 (b) Except to the extent benefits for the condition would have been reduced or  
2 excluded under the prior carrier's contract or policy, no provision in a succeeding carrier's  
3 contract of replacement coverage that would operate to reduce or exclude benefits on the  
4 basis that the condition giving rise to benefits preceded the effective date of the  
5 succeeding carrier's contract shall be applied with respect to those beneficiaries validly  
6 covered under the prior carrier's contract on the date of discontinuance.

7 **"§ 131E-303. Incurred but not reported claims.**

8 (a) Every PSO shall, when determining liability, include an amount estimated in  
9 the aggregate to provide for any unearned premium and for the payment of all claims for  
10 health care expenditures that have been incurred, whether reported or unreported, that are  
11 unpaid and for which such PSO is or may be liable; and to provide for the expense of  
12 adjustment or settlement of such claims.

13 (b) Such liabilities shall be computed in accordance with rules adopted by the  
14 Department upon reasonable consideration of the ascertained experience and character of  
15 the PSO.

16 **"§ 131E-304. Suspension or revocation of license.**

17 (a) The Department may suspend, revoke, or refuse to renew a PSO license if the  
18 Department finds that the PSO:

- 19 (1) Is operating significantly in contravention of its basic organizational  
20 document, or in a manner contrary to that described in and reasonably  
21 inferred from any other information submitted under G.S. 131E-280,  
22 unless amendments to these submissions have been filed with and  
23 approved by the Department;
- 24 (2) Issues evidences of coverage or uses a schedule of premiums for health  
25 care services that do not comply with Medicare or Medicaid program  
26 requirements as applicable;
- 27 (3) No longer maintains the financial reserve specified in G.S. 131E-286 or  
28 is no longer financially responsible and may reasonably be expected to  
29 be unable to meet its obligations to beneficiaries or prospective  
30 beneficiaries;
- 31 (4) Knowingly or repeatedly fails or refuses to comply with any law or rule  
32 applicable to the PSO or with any order issued by the Department after  
33 notice and opportunity for a hearing;
- 34 (5) Has knowingly made to the Department any false statement or report;
- 35 (6) Has sponsoring providers that fail to provide a substantial proportion of  
36 the services under any health plan during any 12-month period;
- 37 (7) Has itself or through any person on its behalf advertised or  
38 merchandised its items or services in an untrue, misrepresentative,  
39 misleading, or unfair manner;
- 40 (8) If continuing to operate would be hazardous to beneficiaries; or
- 41 (9) Has otherwise substantially failed to comply with this Article.

42 (b) A license shall be suspended or revoked only after compliance with G.S. 131E-  
43 305.

1 (c) When a PSO license is suspended, the PSO shall not, during the suspension,  
2 enroll any additional beneficiaries except newborn children or other newly acquired  
3 dependents of existing beneficiaries and shall not engage in any advertising or  
4 solicitation.

5 (d) When a PSO license is revoked, the PSO shall proceed, immediately following  
6 the effective date of the order of revocation, to wind up its affairs and shall conduct no  
7 further business except as may be essential to the orderly conclusion of the affairs of the  
8 PSO. The PSO shall engage in no advertising or solicitation. The Department may, by  
9 written order, permit any further operation of the PSO that the Department may find to be  
10 in the best interest of beneficiaries, to the end that beneficiaries will be afforded the  
11 greatest practical opportunity to obtain continuing health care coverage.

12 **"§ 131E-305. Administrative procedures.**

13 (a) When the Department has cause to believe that grounds for the denial of an  
14 application for a license exist, or that grounds for the suspension or revocation of a  
15 license exist, it shall notify the provider sponsored organization in writing specifically  
16 stating the grounds for denial, suspension, or revocation and fixing a time of at least 30  
17 days thereafter for a hearing on the matter.

18 (b) After this hearing, or upon the failure of the provider sponsored organization to  
19 appear at this hearing, the Department shall take the action it considers advisable or make  
20 written findings that shall be mailed to the provider sponsored organization. The action  
21 of the Department shall be subject to review by the Superior Court of Wake County. The  
22 court may, in disposing of the issue before it, modify, affirm, or reverse the order of the  
23 Department in whole or in part.

24 (c) The provisions of Chapter 150B of the General Statutes apply to proceedings  
25 under this section to the extent that they are not in conflict with subsections (a) and (b) of  
26 this section.

27 **"§ 131E-306. Department of Insurance.**

28 At the request of the Department, the Department of Insurance shall evaluate a PSO's  
29 compliance with any or all of the solvency requirements set forth in this Article. Upon  
30 this request, the Department of Insurance shall undertake the evaluation in accordance  
31 with this Article and regulations adopted pursuant to it and shall report its evaluation to  
32 the Department in a timely manner. The Department of Insurance may collect from the  
33 applicant or PSO subject to the evaluation a fee not to exceed the fee that the Department  
34 of Insurance would be entitled to impose on a health maintenance organization for  
35 undergoing a similar evaluation. Nothing in this section limits the Department's final  
36 authority to license PSOs in accordance with this Article.

37 **"§ 131E-307. Fees.**

38 Every provider sponsored organization subject to this Article shall pay to the  
39 Department the following fees:

- 40 (1) For filing an application for a license, two hundred fifty dollars  
41 (\$250.00); for each renewal thereof, five hundred dollars (\$500.00); and  
42 (2) For filing each quarterly report, one hundred dollars (\$100.00).

43 **"§ 131E-308. Penalties and enforcement.**

1 (a) The provisions of G.S. 58-2-70, modified to replace the word 'Commissioner'  
2 by the word 'Department', applies to this Article. The Department may, in addition to or  
3 in lieu of suspending or revoking a license under G.S. 131E-304, proceed under G.S. 58-  
4 2-70, as so modified, provided that the provider sponsored organization has a reasonable  
5 time within which to remedy the defect in its operations that gave rise to the procedure  
6 under G.S. 58-2-70.

7 (b) Any person who violates this Article shall be guilty of a Class 1 misdemeanor.

8 (c) If the Department shall for any reason have cause to believe that any violation  
9 of this Article has occurred or is threatened, the Department may give notice to the  
10 provider sponsored organization and to the representatives or other persons who appear to  
11 be involved in such suspected violation to arrange a conference with the alleged violators  
12 or their authorized representatives for the purpose of attempting to ascertain the facts  
13 relating to such suspected violation, and, in the event it appears that any violation has  
14 occurred or is threatened, to arrive at an adequate and effective means of correcting or  
15 preventing such violation.

16 Proceedings under this subsection shall not be governed by any formal procedural  
17 requirements and may be conducted in such manner as the Department may deem  
18 appropriate under the circumstances.

19 (d) The Department may issue an order directing a provider sponsored  
20 organization or a representative of a provider sponsored organization to cease and desist  
21 from engaging in any act or practice in violation of the provisions of this Article.

22 Within 30 days after service of the order of cease and desist, the respondent may  
23 request a hearing on the question of whether acts or practices in violation of this Article  
24 have occurred. These hearings shall be conducted pursuant to Chapter 150B of the  
25 General Statutes, and judicial review shall be available as provided by this Chapter.

26 (e) In the case of any violation of the provisions of this Article, if the Department  
27 elects not to issue a cease and desist order, or in the event of noncompliance with a cease  
28 and desist order issued pursuant to subsection (d) of this section, the Department may  
29 institute a proceeding to obtain injunctive relief, or seeking other appropriate relief, in the  
30 Superior Court of Wake County.

31 **"§ 131E-309. Statutory construction and relationship to other laws.**

32 (a) Except as otherwise provided in this Article, provisions of the insurance laws  
33 and provisions of hospital or medical service corporation laws shall not be applicable to  
34 any provider sponsored organization granted a license under this Article or to its  
35 sponsoring providers when operating under such a license. This provision shall not apply  
36 to an insurer or hospital or medical service corporation licensed and regulated pursuant to  
37 the insurance laws or the hospital or medical service corporation laws of this State except  
38 with respect to its provider sponsored organization activities authorized and regulated  
39 pursuant to this Article.

40 (b) Solicitation of beneficiaries by a provider sponsored organization granted a  
41 license, or its representatives, shall not be construed to violate any provision of law  
42 relating to solicitation or advertising by health professionals or health care providers.

1 (c) Any provider sponsored organization licensed under this Article shall not be  
2 considered to be a provider of medicine or dentistry and shall be exempt from the  
3 provisions of Chapter 90 of the General Statutes relating to the practice of medicine and  
4 dentistry; provided, however, that this exemption does not apply to individual providers  
5 under contract with or employed by the provider sponsored organization or sponsoring  
6 providers or to the sponsoring providers.

7 **"§ 131E-310. Filings and reports as public documents.**

8 Except for information that constitutes a bona fide trade secret, proprietary  
9 information or competitively sensitive information of a sponsoring provider or parent of a  
10 sponsoring provider, all applications, filings, and reports required under this Article shall  
11 be treated as public documents.

12 **"§ 131E-311. Confidentiality of medical information.**

13 Any data or information pertaining to the diagnosis, treatment, or health of any  
14 beneficiary or applicant obtained from the person or from any provider by any provider  
15 sponsored organization or by any provider acting pursuant to its provider contract with a  
16 provider sponsored organization shall be held in confidence and shall not be disclosed to  
17 any person except to the extent that it may be necessary to carry out the purposes of this  
18 Article; or upon the express consent of the beneficiary or applicant; or pursuant to statute  
19 or court order for the production of evidence or the discovery thereof; or in the event of  
20 claim or litigation between such person and the provider sponsored organization wherein  
21 such data or information is pertinent. A provider sponsored organization shall be entitled  
22 to claim any statutory privileges against such disclosure which the provider who  
23 furnished such information to the provider sponsored organization is entitled to claim.

24 **"§ 131E-312. Conflicts; severability.**

25 To the extent that the provisions of this Article may be in conflict with any other  
26 provision of this Chapter, the provisions of this Article shall prevail and apply with  
27 respect to provider sponsored organizations. Notwithstanding the absence of adopted  
28 rules, the Department shall continue to process applications for provider sponsored  
29 organization licenses as described in this Article. If any section, term, or provision of this  
30 Article shall be adjudged invalid for any reason, these judgments shall not affect, impair,  
31 or invalidate any other section, term, or provision of this Article, but the remaining  
32 sections, terms, and provisions shall be and remain in full force and effect.

33 **"§ 131E-313. Regulations.**

34 This Article shall be self-implementing. No later than six months after the date of  
35 enactment of this Article, the Department may adopt rules consistent with this Article to  
36 authorize and regulate provider sponsored organizations to contract directly with the  
37 federal Medicare program to provide health care services to the beneficiaries of such  
38 programs. The Department shall issue permanent rules and, may issue temporary rules,  
39 to the extent these rules may be necessary. The Department shall limit its regulation of  
40 provider sponsored organizations to the licensing and regulating of these organizations as  
41 risk bearing entities contracting directly with the Medicare program and to the consumer  
42 protection and quality standards as provided in G.S. 131E-294, and shall not regulate any  
43 matters described in 42 U.S.C. § 1395W-26(b)(3), or any successor thereof."

1 Section 2. G.S. 58-67-10(b) reads as rewritten:

2 "(b) (1) It is specifically the intention of this section to permit such  
3 persons as were providing health services on a prepaid basis on July 1,  
4 1977, or receiving federal funds under Section 254(c) of Title 42, U.S.  
5 Code, as a community health center, to continue to operate in the  
6 manner which they have heretofore operated.

7 (2) Notwithstanding anything contained in this Article to the contrary, any  
8 person can provide health services on a fee for service basis to  
9 individuals who are not enrollees of the organization, and to enrollees  
10 for services not covered by the contract, provided that the volume of  
11 services in this manner shall not be such as to affect the ability of the  
12 health maintenance organization to provide on an adequate and timely  
13 basis those services to its enrolled members which it has contracted to  
14 furnish under the enrollment contract.

15 (3) This Article shall not apply to any employee benefit plan to the extent  
16 that the Federal Employee Retirement Income Security Act of 1974  
17 preempts State regulation thereof.

18 (3a) This Article does not apply to any prepaid health service or capitation  
19 arrangement implemented or administered by the Department of Health  
20 and Human Services or its representatives, pursuant to 42 U.S.C. §  
21 1396n or Chapter 108A of the General Statutes, a provider sponsored  
22 organization or other organization certified, qualified, or otherwise  
23 approved by the Department of Health and Human Services pursuant to  
24 Article 17 of Chapter 131E of the General Statutes, or to any provider of  
25 health care services participating in such a prepaid health service or  
26 capitation arrangement. Article; provided, however, that to the extent  
27 this Article applies to any such person acting as a subcontractor to a  
28 Health Maintenance Organization licensed in this State, that person  
29 shall be considered a single service Health Maintenance Organization  
30 for the purpose of G.S. 58-67-20(4), G.S. 58-67-25, and G.S. 58-67-  
31 110.

32 (4) Except as provided in paragraphs (1), (2), (3), and (3a) of this  
33 subsection, the persons to whom these paragraphs are applicable shall  
34 be required to comply with all provisions contained in this Article."

35 Section 3. There is appropriated from the General Fund to the Department of  
36 Health and Human Services the sum of — for the 1998-99 fiscal year to implement this  
37 act.

38 Section 4. This act is effective when it becomes law.