

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 1133

Short Title: Health Ins./Liability.

(Public)

Sponsors: Representatives Hackney; and Luebke.

Referred to: Judiciary I.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT AN INSURER PROVIDING A HEALTH BENEFIT PLAN IS LIABLE FOR DAMAGES FOR HARM TO ITS INSUREDS OR ENROLLEES CAUSED BY THE INSURER'S FAILURE TO EXERCISE ORDINARY CARE.

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 58 of the General Statutes is amended by designating G.S. 58-3-1 through G.S. 58-3-215 as "Part 1, General Regulations for Insurance."

Section 2. Article 3 of Chapter 58 of the General Statutes is amended by adding the following new Part to read:

"PART 2. HEALTH CARE LIABILITY.

"§ 58-3-300. Definitions.

As used in this Part, unless the context clearly indicates otherwise, the term:

- (1) 'Health benefit plan' means an accident and health insurance policy or certificate; a nonprofit hospital or medical service corporation contract; a health maintenance organization subscriber contract; a plan provided by a multiple employer welfare arrangement; or a plan provided by another benefit arrangement, to the extent permitted by the Employee Retirement Income Security Act of 1974, as amended, or by any waiver

1 of or other exception to that Act provided under federal law or
2 regulation. 'Health benefit plan' does not mean any plan implemented or
3 administered through the Department of Health and Human Services or
4 its representatives. 'Health benefit plan' also does not mean any of the
5 following kinds of insurance:

- 6 a. Accident;
- 7 b. Credit;
- 8 c. Disability income;
- 9 d. Long-term or nursing home care;
- 10 e. Medicare supplement;
- 11 f. Specified disease;
- 12 g. Dental or vision;
- 13 h. Coverage issued as a supplement to liability insurance;
- 14 i. Workers' compensation;
- 15 j. Medical payments under automobile or homeowners;
- 16 k. Insurance under which benefits are payable with or without
17 regard to fault and that are statutorily required to be contained in
18 any liability policy or equivalent self-insurance; and
- 19 l. Hospital income or indemnity.

20 (2) 'Health care provider' means:

- 21 a. An individual who is licensed, certified, or otherwise authorized
22 under Chapter 90 of the General Statutes to provide health care
23 services in the ordinary course of business or practice of a
24 profession or in an approved education or training program; or
- 25 b. A health care facility, licensed under Chapters 131E or 122C of
26 the General Statutes, where health care services are provided to
27 patients, including:
 - 28 1. A health maintenance organization;
 - 29 2. An outpatient clinic; and
 - 30 3. A medical laboratory.

31 'Health care provider' includes:

- 32 1. An agent or employee of a health care facility that is
33 licensed, certified, or otherwise authorized to provide
34 health care services;
- 35 2. The officers and directors of a health care facility; and
- 36 3. An agent or employee of a health care provider who is
37 licensed, certified, or otherwise authorized to provide
38 health care services.

39 (4) 'Health care service' means a health or medical procedure or service
40 rendered by a health care provider that:

- 41 a. Provides testing, diagnosis, or treatment of a human disease or
42 dysfunction; or

1 b. Dispenses drugs, medical devices, medical appliances, or
2 medical goods for the treatment of a human disease or
3 dysfunction.

4 (5) 'Health care treatment decision' means a determination made when
5 health care services are actually provided by an insurer or managed care
6 entity under a health benefit plan that affects the quality of the
7 diagnosis, care, or treatment provided to an enrollee or insured of the
8 health benefit plan.

9 (6) 'Insured or enrollee' means a person that is insured by or enrolled in a
10 health benefit plan under a policy, plan, certificate, or contract issued or
11 delivered in this State by an insurer.

12 (7) 'Insurer' means an entity that writes a health benefit plan and that is an
13 insurance company subject to this Chapter, a service corporation
14 organized under Article 65 of this Chapter, a health maintenance
15 organization organized under Article 67 of this Chapter, or a multiple
16 employer welfare arrangement subject to Article 49 of this Chapter.

17 (8) 'Managed care entity' means an entity that:

18 a. Delivers, administers, or assumes risk for the delivery of health
19 care services; and

20 b. Has a system or technique to control or influence the quality,
21 accessibility, utilization, or costs and prices of health care
22 services delivered or to be delivered to a defined enrollee
23 population.

24 'Managed care entity' does not include: (i) an employer purchasing
25 coverage or acting on behalf of its employees or the employees of one
26 or more subsidiaries or affiliated corporations of the employer, or (ii) a
27 pharmacy that is issued a permit by the North Carolina State Board of
28 Pharmacy under Chapter 90 of the General Statutes.

29 (9) 'Ordinary care' means:

30 a. For an insurer or managed care entity, that degree of care that an
31 insurer or managed care entity of ordinary prudence would use
32 under the same or similar circumstances; or

33 b. For a person that is an agent or employee of an insurer or
34 managed care entity, that degree of care that a person of ordinary
35 prudence in the same profession, specialty, or area of practice as
36 the person would use in the same or similar circumstances.

37 (10) 'Physician' means:

38 a. An individual licensed to practice medicine in this State;

39 b. A professional association or corporation organized under
40 Chapter 55B of the General Statutes; or

41 c. A person or entity wholly owned by physicians.

42 **"§ 58-3-301. Duty to exercise ordinary care; liability for damages for harm.**

1 (a) Each insurer or managed care entity for a health benefit plan has the duty to
2 exercise ordinary care when making health care treatment decisions and is liable for
3 damages for harm to an insured or enrollee proximately caused by its failure to exercise
4 ordinary care.

5 (b) In addition to the duty imposed under subsection (a) of this section, each
6 insurer or managed care entity for a health benefit plan is liable for damages for harm to
7 an insured or enrollee proximately caused by the health care treatment decisions made
8 by:

9 (1) Its agents or employees; or

10 (2) Representatives that are acting on its behalf and over whom it has the
11 right to exercise influence or control or has actually exercised influence
12 or control which result in the failure to exercise ordinary care.

13 (c) It shall be a defense to any action brought under this section against an insurer
14 or managed care entity for a health benefit plan that:

15 (1) Neither the insurer or managed care entity nor an agent or employee for
16 whom the insurer or managed care entity is liable under subsection (b)
17 of this section controlled, influenced, or participated in the health care
18 treatment decision; and

19 (2) The insurer or other managed care entity did not deny or delay payment
20 for any health care service or treatment prescribed or recommended by a
21 physician or health care provider to the insured or enrolled.

22 (d) An action brought under this Part against an insurer or managed care entity, a
23 finding that a physician or health care provider is an agent or employee of the insurer or
24 managed care entity may not be based solely on proof that the physician or health care
25 provider appears in a listing of approved physicians or health care providers made
26 available to insureds or enrollees under the insurer's or managed care entity's health
27 benefit plan.

28 (e) In any action brought under this Part against an insurer or managed care entity,
29 any law that prohibits the corporate practice of medicine may not be used as a defense by
30 the insurer or managed care entity.

31 (f) Nothing in this Part shall be construed to create an obligation on the part of an
32 insurer or managed care entity to provide to an insured or enrollee a health care service or
33 treatment that is not covered under its health benefit plan.

34 **"§ 58-3-302. No liability under this Part on the part of an employer or employer**
35 **group organization that purchases coverage or assumes risk on behalf of**
36 **its employees or a pharmacy.**

37 This Part does not create any liability on the part of an employer or employer group
38 purchasing organization that purchases health care coverage or assumes risk on behalf of
39 its employees or a pharmacy issued a permit by the North Carolina Board of Pharmacy
40 under Chapter 90 of the General Statutes.

41 **"§ 58-3-303. Separate trial required.**

1 Upon motion of any party in an action brought pursuant to this Part involving an
2 insurer, the court shall order a separate trial of any claim, cross claim, counterclaim, or
3 third party claim against any physician or other health care provider."

4 Section 3. G.S. 1A-1, Rule 42, reads as rewritten:

5 "Rule 42. Consolidation; separate trials.

6 (a) Consolidation. ~~—When~~ Except as provided in subsection (b)(2) of this section,
7 when actions involving a common question of law or fact are pending in one division of
8 the court, the judge may order a joint hearing or trial of any or all the matters in issue in
9 the actions; he may order all the actions consolidated; and he may make such orders
10 concerning proceedings therein as may tend to avoid unnecessary costs or delay. When
11 actions involving a common question of law or fact are pending in both the superior and
12 the district court of the same county, a judge of the superior court in which the action is
13 pending may order all the actions consolidated, and he may make such orders concerning
14 proceedings therein as may tend to avoid unnecessary costs or delay.

15 (b) Separate trials. —

16 (1) The court may in furtherance of convenience or to avoid prejudice and
17 shall for considerations of venue upon timely motion order a separate
18 trial of any claim, crossclaim, counterclaim, or third-party claim, or of
19 any separate issue or of any number of claims, crossclaims,
20 counterclaims, third-party claims, or issues.

21 (2) Upon motion of any party in an action instituted pursuant to Part 2 of
22 Article 3 of Chapter 58 of the General Statutes involving an insurer, as
23 defined in G.S. 58-3-300, the court shall order a separate trial of any
24 claim, cross claim, counterclaim, or third party claim against a physician
25 or other medical provider."

26 Section 4. This act is effective when it becomes law and applies to causes of
27 action arising on and after July 1, 1999.