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HOUSE BILL 1133
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Short Title: Health Ins./Liability.

(Public)

Sponsors:

Referred to:

April 15, 1999

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE THAT A MANAGED CARE ENTITY PROVIDING A
3 HEALTH BENEFIT PLAN IS LIABLE FOR DAMAGES FOR HARM TO ITS
4 INSUREDS OR ENROLLEES CAUSED BY THE MANAGED CARE ENTITY'S
5 FAILURE TO EXERCISE ORDINARY CARE.

6 The General Assembly of North Carolina enacts:

7 Section 1. Chapter 90 of the General Statutes is amended by adding a new
8 Article to read:

9 **“ARTICLE LG.**
10 **“HEALTH CARE LIABILITY.**

11 **“§ 90-21.50. Definitions.**

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

- 13 (1) ‘Health benefit plan’ means an accident and health insurance policy or
14 certificate; a nonprofit hospital or medical service corporation contract;
15 a health maintenance organization subscriber contract; a plan provided
16 by a multiple employer welfare arrangement. ‘Health benefit plan’ does
17 not mean any plan implemented or administered through the

1 Department of Health and Human Services or its representatives.
2 'Health benefit plan' also does not mean any of the following kinds of
3 insurance:

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

18 (2) 'Health care provider' means:

- 19 a. An individual who is licensed, certified, or otherwise authorized
20 under this Chapter to provide health care services in the ordinary
21 course of business or practice of a profession or in an approved
22 education or training program; or
- 23 b. A health care facility, licensed under Chapters 131E or 122C of
24 the General Statutes, where health care services are provided to
25 patients;

26 'Health care provider' includes:

- 27 1. An agent or employee of a health care facility that is
28 licensed, certified, or otherwise authorized to provide
29 health care services;
- 30 2. The officers and directors of a health care facility; and
- 31 3. An agent or employee of a health care provider who is
32 licensed, certified, or otherwise authorized to provide
33 health care services.

34 (3) 'Health care service' means a health or medical procedure or service
35 rendered by a health care provider that:

- 36 a. Provides testing, diagnosis, or treatment of a human disease or
37 dysfunction; or
- 38 b. Dispenses drugs, medical devices, medical appliances, or
39 medical goods for the treatment of a human disease or
40 dysfunction.

41 (4) 'Health care treatment decision' means a determination that:

- 42 a. Is made by a managed care entity;

- 1 b. Governs the extent to which health care services are provided for,
2 arranged for, paid for, or reimbursed under a health benefit plan;
3 and
4 c. Affects the quality of the diagnosis, care, or treatment provided
5 under the health benefit plan to an enrollee or insured of the
6 health benefit plan.

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

10 (6) 'Insurer' means an entity that writes a health benefit plan and that is an
11 insurance company subject to Chapter 58 of the General Statutes, a
12 service corporation organized under Article 65 of Chapter 58 of the
13 General Statutes, a health maintenance organization organized under
14 Article 67 of Chapter 58 of the General Statutes, or a multiple employer
15 welfare arrangement subject to Article 49 of Chapter 58 of the General
16 Statutes.

17 (7) 'Managed care entity' means an insurer that:

18 a. Delivers, administers, or undertakes to provide for, arrange for,
19 or reimburse for health care services, or assumes the risk for the
20 delivery of health care services; and

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

25 'Managed care entity' does not include: (i) an employer purchasing
26 coverage or acting on behalf of its employees or the employees of one
27 or more subsidiaries or affiliated corporations of the employer, or (ii) a
28 health care provider.

29 (8) 'Ordinary care' means that degree of care that a managed care entity of
30 ordinary prudence situated in the same or similar communities at the
31 time of the alleged act giving rise to the cause of action would use under
32 the same or similar circumstances.

33 (9) 'Physician' means:

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

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

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

38 **"§ 90-21.51. Duty to exercise ordinary care; liability for damages for harm.**

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

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

4 **(1)** Its agents or employees; or

5 **(2)** Representatives that are acting on its behalf and over whom it has the
6 right to exercise influence or significant control with respect to the
7 actual care and treatment of the insured or enrollee which results in the
8 failure to exercise ordinary care.

9 **(c)** It shall be a defense to any action brought under this section against a managed
10 care entity for a health benefit plan that:

11 **(1)** Neither the managed care entity nor an agent or employee or
12 representative for whom the managed care entity is liable under
13 subsection (b) of this section controlled, influenced, or participated in
14 the health care treatment decision; and

15 **(2)** The managed care entity did not deny or delay payment for any health
16 care service or treatment prescribed or recommended by a physician or
17 health care provider to the insured or enrollee.

18 **(d)** In an action brought under this Article against a managed care entity, a finding
19 that a physician or health care provider is an agent or employee of the managed care
20 entity may not be based solely on proof that the physician or health care provider appears
21 in a listing of approved physicians or health care providers made available to insureds or
22 enrollees under the managed care entity's health benefit plan.

23 **(e)** An action brought under this Article is not a medical malpractice action as
24 defined in Article 1B of this Chapter. A managed care entity may not use as a defense in
25 an action brought under this Article any law that prohibits the corporate practice of
26 medicine.

27 **(f)** A managed care entity shall not be liable for the independent actions of a
28 health care provider, who is not an agent or employee of the managed care entity, when
29 that health care provider fails to exercise the standard of care required by G.S. 90-21.12.
30 A health care provider shall not be liable for the independent actions of a managed care
31 entity when the managed care entity fails to exercise the standard of care required by this
32 Article.

33 **(g)** Nothing in this Article shall be construed to create an obligation on the part of
34 a managed care entity to provide to an insured or enrollee a health care service or
35 treatment that is not covered under its health benefit plan.

36 **(h)** A managed care entity may not enter into a contract with a health care
37 provider, or with an employer or employer group organization, that includes an
38 indemnification or hold harmless clause for the acts or conduct of the managed care
39 entity. Any such indemnification or hold harmless clause is void and unenforceable to
40 the extent of the restriction.

41 **"§ 90-21.52. No liability under this Article on the part of an employer or employer**
42 **group organization that purchases coverage or assumes risk on behalf of**
43 **its employees or a physician or health care provider.**

1 (a) This Article does not create any liability on the part of an employer or
2 employer group purchasing organization that purchases health care coverage or assumes
3 risk on behalf of its employees.

4 (b) This Article does not create any liability on the part of a physician or health
5 care provider in addition to that otherwise imposed under existing law. No managed care
6 entity held liable under this Article shall be entitled to contribution under Chapter 1B of
7 the General Statutes from a physician or health care provider.

8 **"§ 90-21.53. Separate trial required.**

9 Upon motion of any party in an action that includes a claim brought pursuant to this
10 Article involving a managed care entity, the court shall order separate discovery and a
11 separate trial of any claim, cross-claim, counterclaim, or third-party claim against any
12 physician or other health care provider.

13 **"§ 90-21.54. Punitive damages; exhaustion of administrative remedies and appeals.**

14 (a) An action brought under this Article is subject to the provisions and limitations
15 of Chapter 1D of the General Statutes for recovery of punitive damages.

16 (b) No action may be commenced under this Article until the plaintiff has
17 exhausted all administrative remedies and appeals."

18 Section 2. G.S. 1A-1, Rule 42, reads as rewritten:
19 "Rule 42. Consolidation; separate trials.

20 (a) Consolidation. ~~When~~ Except as provided in subdivision (b)(2) of this section,
21 when actions involving a common question of law or fact are pending in one division of
22 the court, the judge may order a joint hearing or trial of any or all the matters in issue in
23 the actions; he may order all the actions consolidated; and he may make such orders
24 concerning proceedings therein as may tend to avoid unnecessary costs or delay. When
25 actions involving a common question of law or fact are pending in both the superior and
26 the district court of the same county, a judge of the superior court in which the action is
27 pending may order all the actions consolidated, and he may make such orders concerning
28 proceedings therein as may tend to avoid unnecessary costs or delay.

29 (b) Separate trials. –

30 (1) The court may in furtherance of convenience or to avoid prejudice and
31 shall for considerations of venue upon timely motion order a separate
32 trial of any claim, ~~cross-claim,~~ cross-claim, counterclaim, or third-party
33 claim, or of any separate issue or of any number of claims, ~~cross-claims,~~
34 cross-claims, counterclaims, third-party claims, or issues.

35 (2) Upon motion of any party in an action that includes a claim commenced
36 under Article 1G of Chapter 90 of the General Statutes involving a
37 managed care entity as defined in G.S. 90-21.50, the court shall order
38 separate discovery and a separate trial of any claim, cross-claim,
39 counterclaim, or third-party claim against a physician or other medical
40 provider."

41 Section 3. This act becomes effective October 1, 1999, and applies to causes of
42 action arising on and after that date.