

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 774

Short Title: HMO Directors Liability.

(Public)

Sponsors: Senator Ezzell.

Referred to: Judiciary III.

April 5, 1989

A BILL TO BE ENTITLED

AN ACT TO LIMIT THE LIABILITY OF A DIRECTOR OF A MEDICAL SERVICES CORPORATION OR AN HMO.

The General Assembly of North Carolina enacts:

Section 1. G.S. 57-2.1 reads as rewritten:

**"§ 57-2.1. Members of governing boards; indemnification; limited liability.**

(a) For the purpose of this section the words 'board of directors' includes the board of directors, trustees, or other governing board.

(b) The board of directors of each hospital service corporation subject to the provisions of this Article shall include persons who are representative of its subscribers and the general public. Less than one half of the directors of any such corporation shall be persons who are licensed to practice medicine in this State or who are paid directors or employees of a corporation organized for hospital purposes.

(c) Subject to any restrictions in its charter, a corporation may provide, by bylaw, agreement or vote of the board of directors for indemnification of any member of the board or director or officer or former director or officer of the corporation or any person who may have served at its request as a director or officer of another corporation, partnership, joint venture, trust, or other enterprise against liabilities and reasonable litigation expenses, including attorneys' fees, incurred by him in connection with any action, suit, or proceeding in which he is made or threatened to be made a party by reason of being or having been such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit, proceeding to have acted in bad faith or to have been liable or guilty by reason of willful misconduct in the performance of

1 duty. The indemnification authorized by this statute shall be in addition to that  
2 permitted by any other law.

3 (d) A corporation shall have the power to purchase and maintain insurance on  
4 behalf of any person who is or was a member of the board of directors, an officer, an  
5 employee, or an agent of the corporation, or is or was serving at the request of the  
6 corporation as a director, officer, employee, or agent of another corporation,  
7 partnership, joint venture, trust, or other enterprise against any liability asserted against  
8 him and incurred by him in such capacity, or arising out of his status as such, whether or  
9 not the corporation would have the power to indemnify him against such liability.

10 (e) Expense incurred by a member of the board of directors, an officer, an  
11 employee, or an agent in defending a civil or criminal action, suit, or proceeding may be  
12 paid by the corporation in advance of the final disposition of such action, suit, or  
13 proceeding as authorized by the board of directors in the specific case upon receipt of an  
14 undertaking by or on behalf of the director, officer, employee, or agent to repay such  
15 amount unless it shall be ultimately determined that he is entitled to be indemnified by  
16 the corporation under any other law or as authorized in any bylaw, agreement, vote of  
17 board of directors, or members, or other arrangement permitted by this section.

18 (f) A person serving as a member of the board of directors or as an officer shall  
19 be immune individually from civil liability for monetary damages for any act or failure  
20 to act arising out of this service, except where the person:

- 21 (1) Is compensated for his services beyond reimbursement for expenses;
- 22 (2) Was not acting within the scope of his official duties;
- 23 (3) Was not acting in good faith;
- 24 (4) Committed gross negligence or willful or wanton misconduct that  
25 resulted in the damage or injury;
- 26 (5) Derived an improper personal financial benefit from the transaction;
- 27 (6) Incurred the liability from the operation of a motor vehicle; or
- 28 (7) Is defendant in an action brought under G.S. 55A-28.1 or G.S. 55A-  
29 28.2.

30 (g) The immunity in subsection (f) of this section is personal to the directors,  
31 trustees, and officers, and does not immunize the corporation for liability for the acts or  
32 omissions of the directors, trustees, or officers."

33 Sec. 2. G.S. 57B-7 reads as rewritten:

34 **"§ 57B-7. Fiduciary responsibilities; indemnification; limited liability.**

35 (a) Any director, officer or partner of a health maintenance organization who  
36 receives, collects, disburses, or invests funds in connection with the activities of such  
37 organization shall be responsible for such funds in a fiduciary relationship to the  
38 enrollees.

39 (b) A health maintenance organization may provide for indemnification of any  
40 director, officer, or partner, former director, officer, or partner of the health maintenance  
41 organization or any person who may have served at its request as a director or officer of  
42 another corporation, partnership, joint venture, trust, or other enterprise against  
43 liabilities and reasonable litigation expenses, including attorneys' fees, incurred by him  
44 in connection with any action, suit, or proceeding in which he is made or threatened to

1 be made a party by reason of being or having been such director or officer, except in  
2 relation to matters as to which he shall be adjudged in such action, suit, proceeding to  
3 have acted in bad faith or to have been liable or guilty by reason of willful misconduct  
4 in the performance of duty. The indemnification authorized by this statute shall be in  
5 addition to that permitted by any other law.

6 (c) A health maintenance organization shall have the power to purchase and  
7 maintain insurance on behalf of any person who is or was a member of the board of  
8 directors, an officer, an employee, or an agent of the health maintenance organization,  
9 or is or was serving at the request of the health maintenance organization as a director,  
10 officer, employee, or agent of another corporation, partnership, joint venture, trust, or  
11 other enterprise against any liability asserted against him and incurred by him in such  
12 capacity, or arising out of his status as such, whether or not the corporation would have  
13 the power to indemnify him against such liability.

14 (d) Expense incurred by a director, a partner, an officer, an employee, or an  
15 agent in defending a civil or criminal action, suit, or proceeding may be paid by the  
16 health maintenance organization in advance of the final disposition of such action, suit,  
17 or proceeding as authorized by the health maintenance organization in the specific case  
18 upon receipt of an undertaking by or on behalf of the director, partner, officer,  
19 employee, or agent to repay such amount unless it shall be ultimately determined that he  
20 is entitled to be indemnified.

21 (e) A person serving as a director, partner, or officer of a health maintenance  
22 organization shall be immune individually from civil liability for monetary damages for  
23 any act or failure to act arising out of this service, except where the person:

- 24 (1) Is compensated for his services beyond reimbursement for expenses;
- 25 (2) Was not acting within the scope of his official duties;
- 26 (3) Was not acting in good faith;
- 27 (4) Committed gross negligence or willful or wanton misconduct that  
28 resulted in the damage or injury;
- 29 (5) Derived an improper personal financial benefit from the transaction;
- 30 (6) Incurred the liability from the operation of a motor vehicle; or
- 31 (7) Is defendant in an action brought under G.S. 55A-28.1 or G.S. 55A-  
32 28.2.

33 (g) The immunity in subsection (e) of this section is personal to the directors,  
34 partners, and officers, and does not immunize the health maintenance organization for  
35 liability for the acts or omissions of the directors, partners, or officers."

36 Sec. 3. This act shall become effective October 1, 1989, and shall apply only  
37 to causes of action arising on or after that date.