

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 1133  
Committee Substitute Favorable 4/23/99

Short Title: Health Ins./Liability.

(Public)

Sponsors:

Referred to:

April 15, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROVIDE THAT AN INSURER PROVIDING A HEALTH BENEFIT  
3 PLAN IS LIABLE FOR DAMAGES FOR HARM TO ITS INSURED OR  
4 ENROLLEES CAUSED BY THE INSURER'S FAILURE TO EXERCISE  
5 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; or a plan provided by  
17 another benefit arrangement, to the extent permitted by the Employee  
18 Retirement Income Security Act of 1974, as amended, or by any waiver  
19 of or other exception to that Act provided under federal law or

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

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

19 (2) 'Health care provider' means:

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

27 'Health care provider' includes:

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

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

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

42 (4) 'Health care treatment decision' means a determination made when  
43 health care services are provided for, arranged for, paid for, or

1 reimbursed by an insurer or managed care entity under a health benefit  
2 plan that affects the quality of the diagnosis, care, or treatment provided  
3 to an enrollee or insured of the health benefit plan.

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

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

14 (7) 'Managed care entity' means an entity that:

- 15 a. Delivers, administers, or undertakes to provide for, arrange for,  
16 or reimburse for health care services, or assumes the risk for the  
17 delivery of health care services; and  
18 b. Has a system or technique to control or influence the quality,  
19 accessibility, utilization, or costs and prices of health care  
20 services delivered or to be delivered to a defined enrollee  
21 population.

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

27 (8) 'Ordinary care' means:

- 28 a. For an insurer or managed care entity, that degree of care that an  
29 insurer or managed care entity of ordinary prudence would use  
30 under the same or similar circumstances; or  
31 b. For a person that is an agent or employee of an insurer or  
32 managed care entity, that degree of care that a person of ordinary  
33 prudence in the same profession, specialty, or area of practice as  
34 the person would use in the same or similar circumstances.

35 (9) 'Physician' means:

- 36 a. An individual licensed to practice medicine in this State;  
37 b. A professional association or corporation organized under  
38 Chapter 55B of the General Statutes; or  
39 c. A person or entity wholly owned by physicians.

40 **"§ 90-21.51. Duty to exercise ordinary care; liability for damages for harm.**

41 (a) Each insurer or managed care entity for a health benefit plan has the duty to  
42 exercise ordinary care when making health care treatment decisions and is liable for

1 damages for harm to an insured or enrollee proximately caused by its failure to exercise  
2 ordinary care.

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

7 (1) Its agents or employees; or

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

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

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

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

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

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

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

36 (g) Nothing in this Article imposes liability on a physician or health care provider  
37 in addition to that otherwise imposed under existing law. No insurer or managed care  
38 entity held liable under this Article shall be entitled to contribution under Chapter 1B of  
39 the General Statutes from a physician or health care provider, except where there is joint  
40 and several liability.

41 (h) Nothing in this Article shall be construed to create an obligation on the part of  
42 an insurer or managed care entity to provide to an insured or enrollee a health care  
43 service or treatment that is not covered under its health benefit plan.

1 (i) A health insurer or managed care entity may not enter into a contract with a  
2 physician, hospital, or other health care provider, or with an employer or employer group  
3 organization, that includes an indemnification or hold harmless clause for the acts or  
4 conduct of the health insurer or managed care entity. Any such indemnification or hold  
5 harmless clause is void and unenforceable to the extent of the restriction.

6 **"§ 90-21.52. No liability under this Article on the part of an employer or employer**  
7 **group organization that purchases coverage or assumes risk on behalf of**  
8 **its employees or a pharmacy.**

9 This Article does not create any liability on the part of an employer or employer  
10 group purchasing organization that purchases health care coverage or assumes risk on  
11 behalf of its employees or a pharmacy issued a permit by the North Carolina Board of  
12 Pharmacy under this Chapter.

13 **"§ 90-21.53. Separate trial required.**

14 Upon motion of any party in an action brought pursuant to this Article involving an  
15 insurer or managed care entity, the court shall order a separate trial of any claim, cross-  
16 claim, counterclaim, or third-party claim against any physician or other health care  
17 provider."

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 instituted pursuant to Article 1G  
36 of Chapter 90 of the General Statutes involving an insurer, as defined in  
37 G.S. 90-21.50, the court shall order a separate trial of any claim, cross-  
38 claim, counterclaim, or third-party claim against a physician or other  
39 medical provider."

40 Section 3. This act is effective when it becomes law and applies to causes of  
41 action arising on and after July 1, 1999.