

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 1999

SENATE BILL 432  
RATIFIED BILL

AN ACT TO PROVIDE FOR NON-CONTRIBUTORY HEALTH PLAN PREMIUMS FOR ALL RETIRED STATE EMPLOYEES UNDER THE TEACHERS' AND STATE EMPLOYEES' COMPREHENSIVE MAJOR MEDICAL PLAN, AND TO AMEND THE PHYSICIAN AND OPTOMETRIST LICENSURE LAWS TO PROVIDE IMMUNITY AND EXPAND DISCIPLINE OPTIONS, AND TO PROVIDE THAT THE TEACHERS' AND STATE EMPLOYEES' COMPREHENSIVE MAJOR MEDICAL PLAN SHALL COVER THE COST OF ONE ANNUAL PAP SMEAR FOR ANY COVERED FEMALE UNDER THE PLAN'S WELLNESS BENEFIT, AND TO ALLOW INDIVIDUALS EXCLUDED FROM MEMBERSHIP IN THE TEACHERS' AND STATE EMPLOYEES' COMPREHENSIVE MAJOR MEDICAL PLAN FOR FILING FRAUDULENT CLAIMS TO BE CONSIDERED FOR REINSTATEMENT IN THE PLAN.

The General Assembly of North Carolina enacts:

Section 1.(a) G.S. 135-40.2(a)(2) reads as rewritten:

"(a) The following persons are eligible for coverage under the Plan, on a noncontributory basis, subject to the provisions of G.S. 135-40.3:

(2) Retired teachers, State employees, members of the General Assembly, and retired State law enforcement officers who retired under the Law Enforcement Officers' Retirement System prior to January 1, 1985. ~~For employees first hired on and after October 1, 1995, and members of the General Assembly first taking office on and after October 1, 1995, future coverage as retired employees and retired members of the General Assembly is subject to a requirement that the future retiree have 20 or more years of retirement service credit in order to be covered by the provisions of this subdivision.~~

Section 1.(b) G.S. 135-40.2(a1) and G.S. 135-40.2(b)(11) are repealed.

Section 2. G.S. 135-40.5(e) reads as rewritten:

"(e) Routine Diagnostic Examinations. – The Plan will pay one hundred percent (100%) of allowable charges for routine diagnostic examinations and tests, including ~~Pap smears~~, breast, colon, rectal, and prostate exams, X rays, mammograms, blood and blood pressure checks, urine tests, tuberculosis tests, and general health checkups that are medically necessary for the maintenance and improvement of individual health but no more often than once every three years for covered individuals to age 40 years, once every two years for covered individuals to age 50 years, and once a year for covered individuals age 50 years and older, unless a more frequent occurrence is warranted by a medical condition when such charges are incurred in a medically supervised facility. Routine diagnostic examinations and tests covered under this subsection also include one Pap smear per year for any covered female. Provided, however, that charges for such examinations and tests are not covered by the Plan when they are incurred to obtain or continue employment, to secure insurance coverage, to comply with legal proceedings, to attend schools or camps, to meet travel requirements, to participate in athletic and related activities, or to comply with governmental licensing requirements.

The maximum amount payable under this subsection for a covered individual is one hundred fifty dollars (\$150.00) per fiscal year."

Section 3. G.S. 135-40.2(h) reads as rewritten:

"(h) No person shall be eligible for coverage as an employee or retired employee or as a dependent of an employee or retired employee upon a finding by the Executive Administrator or Board of Trustees or by a court of competent jurisdiction that the employee or dependent knowingly and willfully made or caused to be made a false statement or false representation of a material fact in a claim for reimbursement of medical services under the Plan. The Executive Administrator and Board of Trustees may make an exception to the provisions of this subsection when persons subject to this subsection have had a cessation of coverage for a period of five years and have made a full and complete restitution to the Plan for all fraudulent claim amounts. Nothing in this subsection shall be construed to obligate the Executive Administrator and Board of Trustees to make an exception as allowed for under this subsection."

Section 4. G.S. 135-40.11(a)(6) reads as rewritten:

"(6) The last day of the month in which a covered individual is found to have knowingly and willfully made or caused to be made a false statement or false representation of a material fact in a claim for reimbursement of medical services under the Plan. The Executive Administrator and Board of Trustees may make an exception to the provisions of this subdivision when persons subject to this subdivision have had a cessation of coverage for a period of five years and have made a full and complete restitution to the Plan for all fraudulent claim amounts. Nothing in this subdivision shall be construed to obligate the Executive Administrator and Board of Trustees to make an exception as allowed for under this subdivision."

Section 5. G.S. 90-14 is amended by adding a new subsection to read:

"(f) A person, partnership, firm, corporation, association, authority, or other entity acting in good faith without fraud or malice shall be immune from civil liability for (i) reporting or investigating the acts or omissions of a licensee or applicant that violate the provisions of subsection (a) of this section or any other provision of law relating to the fitness of a licensee or applicant to practice medicine and (ii) initiating or conducting proceedings against a licensee or applicant if a complaint is made or action is taken in good faith without fraud or malice. A person shall not be held liable in any civil proceeding for testifying before the Board in good faith and without fraud or malice in any proceeding involving a violation of subsection (a) of this section or any other law relating to the fitness of an applicant or licensee to practice medicine, or for making a recommendation to the Board in the nature of peer review, in good faith and without fraud and malice."

Section 6. G.S. 90-121.2 reads as rewritten:

**"§ 90-121.2. Rules and regulations; discipline, suspension, revocation and regrant of certificate.**

(a) The Board shall have the power to make, adopt, and promulgate such rules and regulations, including rules of ethics, as may be necessary and proper for the regulation of the practice of the profession of optometry and for the performance of its duties. The Board shall have jurisdiction and power to hear and determine all complaints, allegations, charges of malpractice, corrupt or unprofessional conduct, and of the violation of the rules and regulations, including rules of ethics, made against any optometrist licensed to practice in North Carolina. The Board shall also have the power and authority to: (i) refuse to issue a license to practice optometry; (ii) refuse to issue a certificate of renewal of a license to practice optometry; (iii) revoke or suspend a license to practice optometry; and (iv) invoke such other disciplinary measures, censure, or probative terms against a licensee as it deems fit and proper; in any instance or instances in which the Board is satisfied that such applicant or licensee:

- (1) Has engaged in any act or acts of fraud, deceit or misrepresentation in obtaining or attempting to obtain a license or the renewal thereof;
- (2) Is a chronic or persistent user of intoxicants, drugs or narcotics to the extent that the same impairs his ability to practice optometry;
- (3) Has been convicted of any of the criminal provisions of this Article or has entered a plea of guilty or nolo contendere to any charge or charges arising therefrom;
- (4) Has been convicted of or entered a plea of guilty or nolo contendere to any felony charge or to any misdemeanor charge involving moral turpitude;
- (5) Has been convicted of or entered a plea of guilty or nolo contendere to any charge of violation of any State or federal narcotic or barbiturate law;
- (6) Has engaged in any act or practice violative of any of the provisions of this Article or violative of any of the rules and regulations promulgated and adopted by the Board, or has aided, abetted or assisted any other person or entity in the violation of the same;
- (7) Is mentally, emotionally, or physically unfit to practice optometry or is afflicted with such a physical or mental disability as to be deemed dangerous to the health and welfare of his patients. An adjudication of mental incompetency in a court of competent jurisdiction or a determination thereof by other lawful means shall be conclusive proof of unfitness to practice optometry unless or until such person shall have been subsequently lawfully declared to be mentally competent;
- (8) Repealed by Session Laws 1981, c. 496, s. 12.
- (9) Has permitted the use of his name, diploma or license by another person either in the illegal practice of optometry or in attempting to fraudulently obtain a license to practice optometry;
- (10) Has engaged in such immoral conduct as to discredit the optometry profession;
- (11) Has obtained or collected or attempted to obtain or collect any fee through fraud, misrepresentation, or deceit;
- (12) Has been negligent in the practice of optometry;
- (13) Has employed a person not licensed in this State to do or perform any act of service, or has aided, abetted or assisted any such unlicensed person to do or perform any act or service which under this Article can lawfully be done or performed only by an optometrist licensed in this State;
- (14) Is incompetent in the practice of optometry;
- (15) Has practiced any fraud, deceit or misrepresentation upon the public or upon any individual in an effort to acquire or retain any patient or patients, including false or misleading advertising;
- (16) Has made fraudulent or misleading statements pertaining to his skill, knowledge, or method of treatment or practice;
- (17) Has committed any fraudulent or misleading acts in the practice of optometry;
- (18) Repealed by Session Laws 1981, c. 496, s. 12.
- (19) Has, in the practice of optometry, committed an act or acts constituting malpractice;
- (20) Repealed by Session Laws 1981, c. 496, s. 12.
- (21) Has permitted an optometric assistant in his employ or under his supervision to do or perform any act or acts violative to this Article or of the rules and regulations promulgated by the Board;

- (22) Has wrongfully or fraudulently or falsely held himself out to be or represented himself to be qualified as a specialist in any branch of optometry;
- (23) Has persistently maintained, in the practice of optometry, unsanitary offices, practices, or techniques;
- (24) Is a menace to the public health by reason of having a serious communicable disease;
- (25) Has engaged in any unprofessional conduct as the same may be from time to time defined by the rules and regulations of the Board.

In addition to and in conjunction with the actions described above, the Board may make a finding adverse to a licensee or applicant but withhold imposition of judgment and penalty or it may impose judgment and penalty but suspend enforcement thereof and place the licensee on probation, which probation may be vacated upon noncompliance with such reasonable terms as the Board may impose. The Board may administer a public or private reprimand or a private letter of concern, and the private reprimand and private letter of concern shall not require a hearing in accordance with G.S. 90-121.3 and shall not be disclosed to any person except the licensee. The Board may require a licensee to: (i) make specific redress or monetary redress; (ii) provide free public or charity service; (iii) complete educational, remedial training, or treatment programs; (iv) pay a fine; and (v) reimburse the Board for disciplinary costs.

(b) If any person engages in or attempts to engage in the practice of optometry while his license is suspended, his license to practice optometry in the State of North Carolina may be permanently revoked.

(c) The Board may, on its own motion, initiate the appropriate legal proceedings against any person, firm or corporation when it is made to appear to the Board that such person, firm or corporation has violated any of the provisions of this Article.

(d) The Board may appoint, employ or retain an investigator or investigators for the purpose of examining or inquiring into any practices committed in this State that might violate any of the provisions of this Article or any of the rules and regulations promulgated by the Board.

(e) The Board may employ or retain legal counsel for such matters and purposes as may seem fit and proper to said Board.

(f) As used in this section the term 'licensee' includes licensees, provisional licensees and holders of intern permits, and the term 'license' includes license, provisional license and intern permit.

(g) A person, partnership, firm, corporation, association, authority, or other entity acting in good faith without fraud or malice shall be immune from civil liability for (i) reporting or investigating the acts or omissions of a licensee or applicant that violate the provisions of subsection (a) of this section or any other provision of law relating to the fitness of a licensee or applicant to practice optometry and (ii) initiating or conducting proceedings against a licensee or applicant if a complaint is made or action is taken in good faith without fraud or malice. A person shall not be held liable in any civil proceeding for testifying before the Board in good faith and without fraud or malice in any proceeding involving a violation of subsection (a) of this section or any other law relating to the fitness of an applicant or licensee to practice optometry, or for making a recommendation to the Board in the nature of peer review, in good faith and without fraud and malice."

Section 7. Sections 1, 2, 3, and 4 of this act become effective August 1, 2000. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 13th day of July, 2000.

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Marc Basnight

President Pro Tempore of the Senate

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James B. Black  
Speaker of the House of Representatives

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James B. Hunt, Jr.  
Governor

Approved \_\_\_\_\_ .m. this \_\_\_\_\_ day of \_\_\_\_\_ , 2000