

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 41

Short Title: Health Care Cost Control.

(Public)

Sponsors: Senators Kincaid; and Carpenter.

Referred to: Children and Human Resources.

February 3, 1993

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR VOLUNTARY BINDING ARBITRATION IN MEDICAL MALPRACTICE CASES, TO ESTABLISH THE HEALTH CARE COST CONTROL OVERSIGHT COMMISSION, AND TO IMPLEMENT OTHER HEALTH CARE COST CONTROL MEASURES.

The General Assembly of North Carolina enacts:

Section 1. Effective October 1, 1993, The title of Article 1B of Chapter 90 of the General Statutes reads as rewritten:

"ARTICLE 1B.

~~"Medical Malpractice Actions: Medical Malpractice Actions and Arbitration."~~

Sec. 2. Effective October 1, 1993, G.S. 90-21.11 through G.S. 90-21.14 of Article 1B of Chapter 90 of the General Statutes are redesignated as "Part 1, 'Medical Malpractice Actions.'"

Sec. 3. Article 1B of Chapter 90 of the General Statutes is amended by adding the following new Part to read:

"PART 2. ARBITRATION OF MEDICAL MALPRACTICE ACTION.

"§ 90-21.15. Voluntary binding arbitration of medical malpractice actions authorized; settlement not precluded.

(a) The parties to a civil action alleging medical malpractice may elect to have the matters in controversy submitted to an arbitration panel for determination of the merits of the action or the award of damages, or both. Such election may be initiated by either party by serving upon the opposing party a request for voluntary binding arbitration. Service of the request shall be made within 90 days after service upon the defendant that a civil action alleging medical malpractice has been filed by the claimant.

1 (b) Upon receipt of a party's request for voluntary binding arbitration, the
2 opposing party may accept the offer of arbitration within 30 days of such receipt.
3 However, in no event shall the defendant in the action be required to respond to the
4 request for arbitration sooner than 90 days after service of the notice that a civil action
5 alleging medical malpractice has been filed. Acceptance of the offer within the time
6 period provided by this section shall constitute a binding commitment to comply with
7 the decision of the arbitration panel. The liability of any insurer shall be subject to
8 applicable insurance policy limits.

9 (c) Within 10 days of the execution of a binding commitment to arbitrate, the
10 parties shall so notify the Office of Administrative Hearings.

11 (d) This Part shall not preclude settlement at any time by mutual agreement of
12 the parties.

13 **"§ 90-21.16. Arbitration panel; composition; independence; compensation;**
14 **decisions; immunity.**

15 (a) Within 30 days of receipt of notice from the parties that a binding
16 commitment to arbitrate has been executed under this Part, the Office of Administrative
17 Hearings shall begin proceedings for the appointment of an arbitration panel to hear the
18 issues to be arbitrated.

19 (b) The arbitration panel shall be composed of three arbitrators. One arbitrator
20 shall be selected by the claimant, one shall be selected by the defendant, and one shall
21 be an administrative law judge appointed by the Chief Administrative Law Judge of the
22 Office of Administrative Hearings, who shall serve as the chief arbitrator. In the event
23 of multiple claimants or multiple defendants, the arbitrator selected by the side with
24 multiple parties shall be the choice of those parties. If the multiple parties cannot reach
25 agreement as to their arbitrator, each of the multiple parties shall submit a nominee, and
26 the Chief Administrative Law Judge of the Office of Administrative Hearings shall
27 appoint the arbitrator from among the nominees.

28 (c) The arbitrators shall be independent of all parties, witnesses, and legal
29 counsel, and no officer, director, affiliate, subsidiary, or employee of a party, witness, or
30 legal counsel may serve as an arbitrator in the proceeding.

31 (d) The rate of compensation for medical malpractice action arbitrators, other
32 than the administrative law judge serving as chief arbitrator, shall be set by the chief
33 judge of the court in which the medical malpractice action was filed. The chief judge
34 shall set the compensation by schedule, taking into consideration the prevailing rates
35 charged for the delivery of professional services in the community.

36 (e) The hearing shall be conducted by all of the arbitrators, but a majority may
37 determine any question of fact and render a final decision. The chief arbitrator shall
38 decide all evidentiary matters.

39 (f) Arbitrators shall have the same immunity as judges from civil liability for
40 their official conduct.

41 **"§ 90-21.17. Arbitration the exclusive remedy; limitation on damages.**

42 Arbitration pursuant to this Part shall preclude recourse to any other remedy by the
43 claimant against any participating defendant, and shall be undertaken with the
44 agreement and understanding that:

- 1 (1) Net economic damages shall be awardable, including, but not limited
2 to, past and future medical expenses and eighty percent (80%) of wage
3 loss and loss of earning capacity, offset by any collateral source
4 payments;
- 5 (2) Noneconomic damages shall be limited to a maximum of two hundred
6 fifty thousand dollars (\$250,000) per incident, and shall be calculated
7 on a percentage basis with respect to capacity to enjoy life, so that a
8 finding that the claimant's injuries resulted in a fifty percent (50%)
9 reduction in claimant's capacity to enjoy life would warrant an award
10 of not more than one hundred twenty-five thousand dollars (\$125,000)
11 noneconomic damages;
- 12 (3) Damages for future economic losses may be awarded to be paid in
13 periodic payments, as established by the arbitration panel, and shall be
14 offset by future collateral source payments; and
- 15 (4) Punitive damages shall not be awarded.

16 **"§ 90-21.18. Defendant's liability for costs, fees, and interest on damages.**

17 (a) The defendant shall pay all costs of the arbitration proceeding and the fees of
18 all the arbitrators other than the chief arbitrator.

19 (b) The defendant shall pay the claimant's reasonable attorneys' fees and costs, as
20 determined by the arbitration panel, but in no event more than fifteen percent (15%) of
21 the award, reduced to present value.

22 (c) The defendant shall be responsible for the payment of interest on all accrued
23 damages with respect to which interest would be awarded at trial.

24 (d) The defendant's obligation to pay the claimant's damages and costs shall be
25 for the purposes of arbitration under this Part only.

26 **"§ 90-21.19. Evidence of arbitration not admissible; offer applies to all parties.**

27 (a) A defendant's or claimant's offer to arbitrate shall not be used in evidence or
28 in argument during any subsequent litigation of the action following rejection of the
29 offer to arbitrate.

30 (b) The fact of making or accepting an offer to arbitrate shall not be admissible as
31 evidence of liability in any collateral or subsequent proceeding in the action.

32 (c) Any offer by a claimant to arbitrate must be made to each defendant against
33 whom the claimant has made a claim. Any offer by a defendant to arbitrate must be
34 made to each claimant who has joined in the notice that a civil action alleging medical
35 malpractice has been filed. A defendant who rejects a claimant's offer to arbitrate shall
36 be subject to G.S. 90-19C(c). A claimant who rejects a defendant's offer to arbitrate
37 shall be subject to G.S. 90-19C(d).

38 **"§ 90-21.19A. Defense of action; rules by Office of Administrative Hearings;**
39 **evidence.**

40 (a) Any issue between the defendant and the defendant's insurer or self-insurer as
41 to who shall control the defense of the action and any responsibility for payment of an
42 arbitration award shall be determined under existing principles of law; however, the
43 insurer or self-insurer shall not offer to arbitrate or accept a claimant's offer to arbitrate
44 without the written consent of the defendant.

1 (b) The Office of Administrative Hearings shall adopt rules to carry out the
2 orderly and efficient processing of arbitration procedures under this Part.

3 (c) The evidentiary standards for voluntary binding arbitration of medical
4 malpractice actions shall be as provided in Article 3 of Chapter 150B of the General
5 Statutes.

6 **"§ 90-21.19B. Arbitration of financial responsibility among multiple defendants.**

7 (a) This section shall apply when more than one defendant to an action has
8 participated in voluntary binding arbitration pursuant to this Part.

9 (b) Within 20 days after the determination of damages by the arbitration panel in
10 the first arbitration proceeding, those defendants who have agreed to voluntary binding
11 arbitration shall submit any dispute among them regarding the apportionment of
12 financial responsibility to a separate binding arbitration proceeding. Such proceeding
13 shall be with an allocation panel of three arbitrators. The chief arbitrator of the first
14 arbitration proceeding shall serve as chief arbitrator on the allocation panel. The other
15 allocation panel members shall be two medical practitioners appointed by the
16 defendants, except that if a hospital licensed under Article 5 of Chapter 131E of the
17 General Statutes is involved in the arbitration proceeding, one arbitrator appointed by
18 the defendants shall be a certified hospital risk manager. In the event the defendants
19 cannot agree on their selection of arbitrators within 20 days after the determination of
20 damages by the arbitration panel in the first arbitration proceeding, a list of not more
21 than five nominees shall be submitted by each defendant to the Chief Administrative
22 Law Judge of the Office of Administrative Hearings, who shall select the other
23 arbitrators but shall not select more than one from the list of nominees of any defendant.
24 Except for the chief arbitrator, an arbitrator who served on the panel in the first
25 arbitration proceeding may not serve on the allocation panel.

26 (c) Within 65 days after the determination of damages by the arbitration panel in
27 the first arbitration proceeding, the chief arbitrator shall convene the allocation panel for
28 the purpose of determining allocation of responsibility among multiple defendants.

29 (d) The allocation panel shall allocate financial responsibility among all
30 defendants named in the notice that a civil action alleging medical malpractice has been
31 filed, regardless of whether the defendant has submitted to arbitration. The defendants
32 in the arbitration proceeding shall pay their proportionate share of the economic and
33 noneconomic damages awarded by the arbitration panel. The determination of the
34 percentage of fault of any defendant not in the arbitration case shall not be binding
35 against that defendant, nor shall it be admissible in any subsequent legal proceeding.

36 (e) Payment by the defendants of the damages awarded by the arbitration panel
37 in the first arbitration proceeding shall extinguish those defendants' liability to the
38 claimant and shall also extinguish those defendants' liability for contribution to any
39 defendants who did not participate in arbitration.

40 (f) Any defendant paying damages assessed pursuant to this section or to G.S.
41 90-21.15 shall have an action for contribution against any nonarbitrating person whose
42 negligence contributed to the injury.

43 **"§ 90-21.19C. Effects of failure to offer or accept voluntary binding arbitration.**

1 (a) A proceeding for voluntary binding arbitration is an alternative to jury trial
2 and shall not supersede the right of any party to a jury trial.

3 (b) If neither party requests or agrees to voluntary binding arbitration, the action
4 shall proceed to trial or to any available legal alternative such as offer of and demand
5 for judgment, or offer of settlement.

6 (c) If the defendant refuses a claimant's offer of voluntary binding arbitration,
7 then:

8 (1) The action shall proceed to trial without limitation on damages, and
9 the claimant, upon proving medical negligence with respect to the
10 standard of health care required under G.S. 90-21.12, shall be entitled
11 to recover prejudgment interest, and reasonable attorneys' fees up to
12 twenty-five percent (25%) of the award, reduced to present value.

13 (2) The claimant's award at trial shall be reduced by any damages
14 recovered by the claimant from arbitrating codefendants following
15 arbitration.

16 (d) If the claimant rejects a defendant's offer to enter voluntary binding
17 arbitration, then:

18 (1) The damages awardable at trial shall be limited to net economic
19 damages, plus noneconomic damages not to exceed three hundred fifty
20 thousand dollars (\$350,000) per incident. The General Assembly
21 expressly finds that such conditional limit on noneconomic damages is
22 warranted by the claimant's refusal to accept arbitration, and represents
23 an appropriate balance between the interests of all patients who
24 ultimately pay for medical malpractice losses and the interests of those
25 patients who are injured as a result of medical malpractice.

26 (2) Net economic damages reduced to present value shall be awardable,
27 including, but not limited to, past and future medical expenses and
28 eighty percent (80%) of wage loss and loss of earning capacity, offset
29 by any collateral source payments.

30 (3) Damages for future economic losses shall be awarded to be paid by
31 periodic payments and shall be offset by future collateral source
32 payments.

33 **"§ 90-21.19D. Misarbitration.**

34 (a) At any time during the course of voluntary binding arbitration of a medical
35 malpractice action pursuant to this Part, the chief arbitrator on the arbitration panel,
36 upon determining that agreement cannot be reached, may dissolve the arbitration panel
37 and request the Chief Administrative Law Judge of the Office of Administrative
38 Hearings to appoint two new arbitrators from lists of three to five names provided in a
39 timely manner by each party to the arbitration. Not more than one arbitrator may be
40 appointed from the list provided by any party, unless only one list is filed.

41 (b) Upon appointment of the new arbitrators, arbitration shall proceed at the
42 direction of the chief arbitrator in accordance with the provisions of this Part.

43 (c) At any time after the allocation arbitration hearing under G.S. 90-21.19B has
44 concluded, the chief arbitrator on the allocation panel may, upon determining that

1 agreement among the arbitrators cannot be reached, dissolve the allocation panel and
2 declare the proceedings concluded.

3 **"§ 90-21.19E. Decision of arbitration panel.**

4 Except as provided in G.S. 90-21.19D, within 20 days of the conclusion of the
5 hearing of all issues in controversy, the arbitration panel shall render its decision in
6 writing to the parties.

7 **"§ 90-21.19F. Payment of arbitration award; interest.**

8 Within 20 days after the determination of damages by the arbitration panel pursuant
9 to G.S. 90-21.15, the defendant shall:

- 10 (1) Pay the arbitration award, including interest at the legal rate, to the
11 claimant; or
12 (2) Submit any dispute among multiple defendants to arbitration pursuant
13 to G.S. 90-21.19B.

14 **"§ 90-21.19G. Appeal of arbitration awards and allocation of financial**
15 **responsibility.**

16 (a) An arbitration award and an allocation of financial responsibility are final
17 agency action for purposes of judicial review of the panel's decision. Any person
18 seeking review under this section must file, within 30 days of the final action, a petition
19 in the superior court of the county in which the civil action that is the subject of the
20 arbitration was filed, and shall be limited to review of the record. The amount of an
21 arbitration award or an order allocating financial responsibility, the evidence in support
22 of either, and the procedure by which either is determined are subject to judicial
23 scrutiny only in a proceeding instituted pursuant to this section.

24 (b) No appeal shall operate to stay an arbitration award; nor shall any arbitration
25 panel, arbitration panel member, or court stay an arbitration award. The superior court
26 may order a stay to prevent manifest injustice, but no court shall abrogate the provisions
27 of G.S. 90-21.19F.

28 (c) Any party to an arbitration proceeding may enforce an arbitration award or an
29 allocation of financial responsibility by filing a petition in the superior court in the
30 county in which the civil action that is the subject of arbitration was filed. A petition
31 may not be granted unless the time for appeal has expired. If an appeal has been taken,
32 a petition may not be granted with respect to an arbitration award or an allocation of
33 financial responsibility that has been stayed.

34 (d) If the petitioner establishes the authenticity of the arbitration award or of the
35 allocation of financial responsibility, shows that the time for appeal has expired, and
36 demonstrates that no stay is in place, the court shall enter such orders and judgments as
37 are required to carry out the terms of the arbitration award or allocation of financial
38 responsibility. Such orders are enforceable by the contempt powers of the court; and
39 execution will issue, upon the request of a party, for such judgments."

40 Sec. 4. Effective October 1, 1993, G.S. 1-567.2 reads as rewritten:

41 **"§ 1-567.2. Arbitration agreements made valid, irrevocable and enforceable;**
42 **scope.**

43 (a) Two or more parties may agree in writing to submit to arbitration any
44 controversy existing between them at the time of the agreement, or they may include in

1 a written contract a provision for the settlement by arbitration of any controversy
2 thereafter arising between them relating to such contract or the failure or refusal to
3 perform the whole or any part thereof. Such agreement or provision shall be valid,
4 enforceable, and irrevocable except with the consent of all the parties, without regard to
5 the justiciable character of the controversy.

6 (b) This Article shall not apply to:

7 (1) Any agreement or provision to arbitrate in which it is stipulated that
8 this Article shall not apply or to any arbitration or award thereunder;

9 (2) Arbitration agreements between employers and employees or between
10 their respective representatives, unless the agreement provides that this
11 Article shall apply.

12 (3) Agreements to voluntary binding arbitration of medical malpractice
13 actions executed pursuant to the provisions of Part 2 of Article 1B of
14 Chapter 90 of the General Statutes."

15 Sec. 5. Chapter 143 of the General Statutes is amended by adding the
16 following new Article to read:

17 **"ARTICLE 64.**

18 **"HEALTH CARE COST CONTROL OVERSIGHT COMMISSION.**

19 **"§ 143-595. Commission established; purpose; members; terms; compensation;**
20 **administrative support.**

21 (a) There is established a Health Care Cost Control Oversight Commission. The
22 purpose of the Commission is to maintain regular oversight and review of the health
23 care system in North Carolina and to make recommendations to the Governor and the
24 General Assembly on ways to make the system more cost efficient, effective, and
25 suitable to the needs of the citizens of North Carolina.

26 (b) The Commission shall be comprised of seven members. Four of the members
27 shall be public members appointed by the General Assembly, two upon
28 recommendation of the Speaker of the House of Representatives, and two upon
29 recommendation of the President Pro Tempore of the Senate. Of the remaining
30 members, one shall be the Commissioner of Insurance, one shall be the Secretary of
31 Human Resources, and one shall be a representative of the health insurance industry
32 appointed by the Governor upon the recommendation of the North Carolina Life
33 Underwriters Association. The four members appointed initially by the General
34 Assembly shall each serve a three-year initial term. The member appointed initially by
35 the Governor shall serve a two-year initial term. Thereafter, all appointments shall be
36 for two-year terms. Appointments to fill unexpired terms shall be made by the authority
37 that made the initial appointment.

38 (c) Members of the Commission shall not receive a salary for service on the
39 Commission, but shall receive per diem and necessary travel and subsistence expenses
40 incurred in the course of conducting the Commission's business, and in accordance with
41 G.S. 138-5.

42 (d) The Commission shall be a commission within the Department of Insurance
43 for organizational, budgetary, and administrative purposes only. The Department of

1 Insurance shall provide office space, furniture, stationery, staff support, and other
2 supplies necessary for the Commission to carry out its duties.

3 (e) The expenses of the Commission shall be audited and paid out of the State
4 treasury, in the manner prescribed for similar expenses in other departments or branches
5 of State service. To defray such expenses, a sufficient appropriation shall be made
6 under the Current Operations Appropriations Act in the same manner as made to other
7 departments, commissions, and agencies of State government.

8 **"§ 143-596. Powers and Duties of the Commission.**

9 (a) The Commission shall have the following powers and duties:

- 10 (1) Not less frequently than once every two years, review the deductibles
11 required under health and accident insurance policies to determine if
12 they are adequate to achieve cost efficiency;
13 (2) Study rates charged by hospitals and determine if such rates are
14 charged on the basis of whether and to what extent the service is
15 covered by the patient's health or accident insurance;
16 (3) Study pricing practices of pharmaceutical manufacturing companies
17 doing business in North Carolina to determine if such companies
18 charge lower prices to the overseas market than to the North Carolina
19 market;
20 (4) Study hospital and insurance company administrative costs to
21 determine whether such costs are excessive under the circumstances;
22 (5) Study the feasibility of coordination of benefits under health,
23 automobile, and accident insurance to avoid duplication of
24 reimbursements for the same service;
25 (6) Other issues identified by the Commission to be relevant to health care
26 access and cost control.

27 **"§ 143-597. Commission reporting.**

28 Not later than May 1 of each calendar year the Commission shall report to the
29 Governor, the General Assembly, and the Fiscal Research Division of the Legislative
30 Services Office, its findings and recommendations pertaining to its duties and to the
31 overall effectiveness and efficiency of the health care system in North Carolina."

32 Sec. 6. The Health Care Cost Control Oversight Commission shall make its
33 first report to the Governor, the General Assembly, and the Fiscal Research Division of
34 the Legislative Services Office not later than May 1, 1994.

35 Sec. 7. There is appropriated from the General Fund to the Department of
36 Insurance the sum of fifteen thousand dollars (\$15,000) for the 1993-94 fiscal year and
37 the sum of fifteen thousand dollars (\$15,000) for the 1994-95 fiscal year for allocation
38 to the Health Care Cost Control Oversight Commission to carry out the purposes of the
39 Commission established under Section 5 of this act.

40 Sec. 8. Chapter 90 of the General Statutes is amended by adding the
41 following new Article to read:

42 **"ARTICLE 28.**

43 **"HEALTH CARE PROVIDER DISCLOSURE OF SELF-REFERRALS.**

44 **"§ 90-405. Definition.**

1 As used in this Article, a health care provider is any person who, pursuant to this
2 Chapter, is licensed, or is otherwise registered or certified to engage in the practice of
3 any of the following: medicine, surgery, dentistry, osteopathy, podiatry, chiropractic,
4 anesthesiology, psychiatry; or any person acting at the direction or under the
5 supervision of a health care provider.

6 **"§ 90-406. Duty to disclose ownership interest.**

7 (a) Health care providers are free to enter lawful contractual relationships,
8 including the acquisition of ownership interests in health facilities or equipment or
9 pharmaceuticals, but such ownership can create potential conflicts of interest. The
10 potential conflict of interest shall be addressed by the following:

- 11 (1) The health care provider has a duty to disclose to the patient or
12 referring colleagues the provider's ownership interest in the facility or
13 therapy at the time of referral and prior to utilization;
- 14 (2) The health care provider shall not exploit the patient in any way, as by
15 inappropriate or unnecessary utilization of treatments or procedures;
- 16 (3) The health care provider's activities shall be in strict conformity with
17 the law;
- 18 (4) The patient shall have free choice either to use the provider's
19 proprietary facility or therapy or to seek the needed medical services
20 elsewhere; and
- 21 (5) When a health care provider's commercial interest conflicts so greatly
22 with the patient's interest as to be incompatible, the provider shall
23 make alternative arrangements for the care of the patient.

24 (b) The State-established licensing board that has authority over the license or
25 certificate of health care providers covered under this section may adopt rules to carry
26 out the provisions of this Article.

27 **"§ 90-406. Sanctions.**

28 Violation of G.S. 90-405 shall be grounds for the State-established licensing board
29 that has authority over the license or certificate of the offending health care provider to
30 suspend, revoke, or refuse to renew the provider's license or certificate, or to take any
31 other disciplinary action authorized by law."

32 Sec. 9. G.S. 58-50-10 reads as rewritten:

33 **"§ 58-50-10. Claim forms.**

34 All forms used by policyholders, beneficiaries, hospitals and physicians to report
35 information relative to the nature and extent of loss or disability for which claim is
36 being made under any type of accident or health policy must conform to certain
37 standard language approved by the Commissioner.—The Commissioner shall prescribe,
38 and all insurers providing any type of accident or health policy in this State shall accept,
39 a standard form for claims, for applications, and for endorsements. To the extent
40 possible, each form shall be a single-page form and shall be designed to provide all of
41 the information necessary for the appropriate action to be taken by the insurer as soon as
42 possible upon receipt of the completed form. Information requested under an accident
43 or health policy that is in addition to that contained on the standard form shall be subject

1 to rules adopted by the Department. This section applies to the submission of
2 applications, claims, and endorsements in writing and by electronic means."

3 Sec. 10. Section 3 of this act becomes effective October 1, 1993, and applies
4 to civil actions filed on or after that date. Sections 5, 6, and 7 of this act become
5 effective July 1, 1993. Section 8 of this act becomes effective October 1, 1993, and
6 applies to referrals made on or after that date. Section 9 of this act becomes effective
7 October 1, 1993, and applies to applications, claims, and endorsements filed on or after
8 that date. The remainder of this act is effective upon ratification.