

April 15, 1999

**H 1133. HEALTH INS./LIABILITY.** *TO PROVIDE THAT AN INSURER PROVIDING A HEALTH BENEFIT PLAN IS LIABLE FOR DAMAGES FOR HARM TO ITS INSUREDS OR ENROLLEES CAUSED BY THE INSURER'S FAILURE TO EXERCISE ORDINARY CARE.* Enacts new GS 58-3-300 through 58-3-303, providing that each insurer or managed care entity for a health benefit plan has the duty to exercise ordinary care when making health care treatment decisions and is liable for damages for harm to an insured or enrollee proximately caused by its failure to do so. Provides detailed definitions of relevant terms. Also makes insurer or managed care entity liable for damages for harm proximately caused by health care treatment decisions made by its (1) agents or employees or (2) representatives over whom it has the right to exercise influence or control or has actually exercised influence or control that result in the failure to exercise ordinary care. Gives insurer or managed care entity a defense if (1) neither it nor an agent or employee for whom it is liable (as described above) controlled, influenced or participated in the health care treatment decision and (2) it did not deny or delay payment for any health care service or treatment prescribed or recommended by a physician or health care provider to the insured or enrolled person. Does not create liability on the part of an employer or employer group purchasing organization that purchases health care coverage or assumes risk on behalf of its employees or a pharmacy issued a permit by the NC Board of Pharmacy under GS Ch. 90. In an action under these provisions involving an insurer, on motion of any party the court must order a separate trial of any claim, cross claim, counterclaim, or third party claim against any physician or other health care provider. Makes conforming amendment to GS 1A-1, Rule 42. Act is effective when it becomes law and applies to causes of action arising on and after July 1, 1999.

**Intro. by Hackney.**

Ref. to Judiciary I

GS 58, 1A

April 23, 1999

**H 1133. HEALTH INS./LIABILITY.** Intro. 4/15/99. House committee substitute makes the following changes to 1st edition. Transfers substantive provisions of bill from GS 58 to GS 90 and makes conforming changes. Clarifies that an insurer or managed care entity is not liable for independent actions of a health care provider, and that a health care provider is not liable for independent actions of an insurer or managed care entity. Clarifies that no additional liability is imposed by act on physicians, and that an insurer or managed care entity is not entitled to contribution from a physician or health care provider unless it is a case of joint and several liability. Makes void and unenforceable any indemnity or hold harmless agreement between health insurers or managed care entities and a health care provider or employers for acts or conduct of the health insurer or managed care entity.

July 14, 1999

**H 1133. HEALTH INS./LIABILITY.** Intro. 4/15/99. House committee substitute makes the following changes to 2nd edition. Changes title to AN ACT TO PROVIDE THAT A MANAGED CARE ENTITY PROVIDING A HEALTH BENEFIT PLAN IS LIABLE FOR DAMAGES FOR HARM TO ITS INSUREDS OR ENROLLEES CAUSED BY THE MANAGED CARE ENTITY'S FAILURE TO EXERCISE ORDINARY CARE, and deletes various references in bill to "insurer" or "health insurer," usually leaving only a reference to "managed care entity." Defines "managed care entity" as a type of "insurer" (also defined) (was, an "entity" with same definition); revises definition of such an entity to specify that it does not include health care providers (was, did not include pharmacies), among others. Deletes reference to "plan provided by another benefit arrangement, to the extent permitted by another benefit arrangement, to the extent permitted by the Employee Retirement Income Security Act of 1974, as amended" in definition of "health benefit plan." Makes other technical and conforming changes.

Redefines "ordinary care" as that degree of care that a managed care entity of ordinary prudence situated in the same or similar communities at the time of the alleged act giving rise to the cause of action would use under the same or similar circumstances. Deletes standard for

agents or employees of insurers or managed care entities. Revises definition of “health care treatment decision” to mean a determination that is made by a managed care entity; governs the extent to which health care services are provided for, arranged for, paid for, or reimbursed under a health benefit plan; and affects the quality of the diagnosis, care, or treatment provided under the plan to a plan enrollee or insured. Specifies that an action brought under new article created by act is not a medical malpractice action as defined in GS Ch. 90, Art. 1B.

Deletes provision specifying that new article created by act does not create any liability on the part of a pharmacy issued a permit by the NC Board of Pharmacy under GS Ch. 90. Deletes provision entitling an insurer or managed care entity held liable under new article to contribution under GS Ch. 1B from a physician or health care provider where there is joint and several liability (underlined words deleted, along with reference to insurer).

Specifies that upon motion of any party in an action that includes a claim brought pursuant to new article, (was, action brought pursuant to article), court is to order separate discovery (new provision) as well as separate trial. Makes conforming change in Rule 42 of Rules of Civil Procedure. Changes effective date to Oct. 1, 1999; applies to causes of action arising on and after that date.

July 19, 1999

**H 1133. HEALTH INS./LIABILITY.** Intro. 4/15/99. House amendments make the following changes to 3rd edition. Add new section specifying that an action brought under new GS Ch. 90, Art. 1G is subject to the provisions and limitations of GS Ch. 1D, for the recovery of punitive damages, and that no action may be commenced under Art 1G until the plaintiff has exhausted all administrative remedies and appeals. Adds to coverage of section concerning managed care entity's defenses under new GS 90-21.51(c)(1), entity's representative for whom it is liable (section already included entity or an agent or employee for whom it is liable).