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SENATE BILL DRS35320-MRfz-11* (03/04)

Short Title: Prepaid Health Plans Licensing by DOI. (Public)

Sponsors: Senator Hise (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE PREPAID HEALTH PLANS TO OBTAIN A LICENSE FROM THE
3 DEPARTMENT OF INSURANCE AND TO ENSURE SOLVENCY OF ALL PREPAID
4 HEALTH PLAN PROVIDERS UNDER THE MEDICAID PROGRAM, AS PROVIDED BY
5 THE DEPARTMENT OF INSURANCE AND AS RECOMMENDED BY THE JOINT
6 LEGISLATIVE OVERSIGHT COMMITTEE ON MEDICAID AND NC HEALTH CHOICE.
7 The General Assembly of North Carolina enacts:

8 SECTION 1. Chapter 58 of the General Statutes is amended by adding a new Article
9 to read:

10 "Article 93.

11 "Prepaid Health Plan Licensing Act.

12 "**§ 58-93-1. Short title.**

13 This Article may be cited as the Prepaid Health Plan Licensing Act.

14 "**§ 58-93-5. Definitions.**

15 The following definitions apply in this Article:

- 16 (1) Enrollee. – An individual who is covered by and receives Medicaid health care
17 services through a Prepaid Health Plan.
- 18 (2) Health care services. – Services provided by a Prepaid Health Plan under a
19 capitated contract with the North Carolina Department of Health and Human
20 Services, through the Division of Health Benefits.
- 21 (3) Insolvent or Insolvency. – A circumstance that occurs when a Prepaid Health
22 Plan has been declared insolvent and is placed under an order of liquidation by
23 a court of competent jurisdiction.
- 24 (4) Person. – As defined in G.S. 58-1-5(9).
- 25 (5) Prepaid Health Plan or PHP. – A person that has entered into a capitated
26 contract with the North Carolina Department of Health and Human Services,
27 through the Division of Health Benefits, to deliver Medicaid or NC Health
28 Choice health care services.
- 29 (6) Working capital. – The excess of current assets over current liabilities. The only
30 borrowed funds that may be included in working capital must be funds that are
31 repayable only from net earned income and must be repayable only with the
32 advance permission of the Commissioner.

33 "**§ 58-93-10. Licensing.**

34 (a) Notwithstanding any law of this State to the contrary, only those persons authorized by
35 the Department of Health and Human Services, through the Division of Health Benefits, may
36 apply to the Commissioner for a license to operate a PHP in compliance with this Article.



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1 (b) Any person that is already a licensed health organization in this State under this
2 Chapter shall not be subject to this Article, provided that the solvency requirements for such
3 organization are equal to or greater than the requirements of this Article.

4 (c) Each license application shall be verified by an officer or authorized representative of
5 the applicant, shall be in a form prescribed by the Commissioner, and shall be set forth or be
6 accompanied by all of the following:

7 (1) A copy of the organizational documents, if any, of the applicant, such as the
8 articles of incorporation, articles of association, partnership agreement, trust
9 agreement, or other applicable documents, and all amendments.

10 (2) A copy of the bylaws, rules and regulations, or similar documents, if any,
11 regulating the conduct of the internal affairs of the applicant.

12 (3) A list of the names, addresses, official positions, and biographical affidavit of
13 the persons who are to be responsible for the conduct of the affairs of the
14 applicant, including all members of the board of directors, board of trustees,
15 executive committee, or other governing board or committee, the principal
16 officers in the case of a corporation, or the partners or members in the case of a
17 partnership or association. This list shall be accompanied by a completed
18 release of information for each of these individuals on forms acceptable to the
19 Commissioner.

20 (4) A disclosure identifying all affiliates, including a description of any
21 management, service, or cost-sharing arrangements.

22 (5) The name and address of the registered agent.

23 (6) A detailed plan of operation.

24 (7) The names and addresses of the applicant's qualified actuary and external
25 auditors.

26 (8) Financial statements showing the applicant's assets, liabilities, and sources of
27 financial support. If the applicant's financial affairs are audited by independent
28 certified public accountants, a copy of the applicant's most recent regular
29 certified financial statement shall satisfy this requirement unless the
30 Commissioner directs that additional or more recent financial information is
31 required for the proper administration of this Article.

32 (9) A financial feasibility study that includes (i) detailed enrollment projections, (ii)
33 a projection of balance sheets, (iii) cash flow statements that show any capital
34 expenditures, purchases and sales of investments, and deposits with the State,
35 (iv) anticipated income and anticipated expense statements covering the start of
36 operations through the period in which the PHP is anticipated to have had net
37 income for at least one year, and (v) a statement as to the sources of working
38 capital as well as any other sources of funding.

39 (10) If not domiciled in this State, a power of attorney duly executed by the
40 applicant appointing the Commissioner, the Commissioner's successors in
41 office, and duly authorized deputies as the true and lawful attorney of the
42 applicant in and for this State upon whom all lawful process in any legal action
43 or proceeding against the PHP on a cause of action arising in this State may be
44 served.

45 (11) A description of the procedures to be implemented to meet the protection
46 against insolvency requirements of G.S. 58-93-110.

47 (12) Other information as the Commissioner may require in order to make the
48 determinations required in G.S. 58-93-20.

49 (d) A PHP shall file a notice describing any significant modification of the operation set
50 out in the information required by subsection (b) of this section. This notice shall be filed with the
51 Commissioner prior to the modification. If the Commissioner does not disapprove within 90 days

1 after the filing, the modification shall be deemed to be approved. Every PHP shall file with the
2 Commissioner all subsequent changes in the information or forms that are required by this Article
3 to be filed with the Commissioner.

4 **"§ 58-93-15. Commissioner use of consultants and other professionals.**

5 (a) The Commissioner may contract with consultants and other professionals to expedite
6 and complete the application process, examinations, and other regulatory activities required under
7 this Article. Costs of contracts entered into under this section shall be reimbursed by the applicant
8 or licensee.

9 (b) Contracts under this section for financial, legal, examination, and other services shall
10 not be subject to any of the following:

11 (1) G.S. 114-2.3.

12 (2) G.S. 147-17.

13 (3) Articles 3, 3C, and 8 of Chapter 143 of the General Statutes and any rules and
14 procedures adopted under those Articles concerning procurement, contracting,
15 and contract review.

16 **"§ 58-93-20. Issuance and continuation of license.**

17 (a) Before issuing or continuing any PHP license, the Commissioner of Insurance may
18 make any examination as the Commissioner deems expedient. The Commissioner of Insurance
19 shall issue a license upon the payment of the application fee prescribed in G.S. 58-93-160 and
20 upon being satisfied on all of the following points:

21 (1) The applicant, other than acquiring a license under this Article, has been
22 approved by the North Carolina Department of Health and Human Services,
23 through the Division of Health Benefits, to enter into a capitated contract for
24 the delivery of Medicaid and NC Health Choice services.

25 (2) The applicant has a minimum capital and surplus equal to or greater than that
26 required by G.S. 58-93-110(b).

27 (3) The amounts provided as working capital are repayable only out of earned
28 income in excess of amounts paid and payable for operating expenses and
29 expenses of providing services and such reserve as the Department of Insurance
30 deems adequate.

31 (4) The amount of money actually available for working capital is sufficient to
32 carry all acquisition costs and operating expenses for a reasonable period of
33 time from the date of the issuance of the license and that the PHP is financially
34 responsible and may reasonably be expected to meet its obligations to enrollees
35 and prospective enrollees. Such working capital shall initially be a minimum of
36 one million five hundred thousand dollars (\$1,500,000) or a higher amount as
37 the Commissioner shall determine to be adequate.

38 (5) The person or persons who will manage the PHP have adequate expertise,
39 experience, and character.

40 (b) A license shall be denied only after compliance with the requirements of
41 G.S. 58-93-155.

42 **"§ 58-93-25. Deposits.**

43 (a) The Commissioner shall require a minimum deposit of five hundred thousand dollars
44 (\$500,000) or such higher amount as the Commissioner determines to be necessary for the
45 protection of enrollees.

46 (b) All deposits required by this section shall be administered in accordance with the
47 provisions of Article 5 of this Chapter.

48 **"§ 58-93-30. Management and exclusive agreements; custodial agreements.**

49 (a) No PHP shall enter into an exclusive management or custodial agreement unless the
50 agreement is first filed with the Commissioner and approved under this section within (i) 45 days

1 after filing or (ii) a reasonable extended period as specified by notice from the Commissioner
2 given within a 45-day period after filing.

3 (b) The Commissioner shall disapprove an agreement submitted under subsection (a) of
4 this section if the Commissioner determines that the agreement does any of the following:

- 5 (1) Subjects the PHP to excessive charges.
- 6 (2) Extends for an unreasonable period of time.
- 7 (3) Does not contain fair and adequate standards of performance.
- 8 (4) Enables persons under the contract to manage the PHP who are not sufficiently
9 trustworthy, competent, experienced, and free from conflict of interest to
10 manage the PHP with due regard for the interests of its enrollees, creditors, or
11 the public.
- 12 (5) Contains provisions that impair the interests of the PHP's enrollees, creditors, or
13 the public.

14 **"§ 58-93-45. Fiduciary responsibilities.**

15 Any director, officer, or partner of a PHP who receives, collects, disburses, or invests funds in
16 connection with the activities of the PHP shall be responsible for those funds in a fiduciary
17 relationship to the enrollees.

18 **"§ 58-93-55. Statements filed with Commissioner.**

19 Every PHP subject to this Article is subject to G.S. 58-2-165.

20 **"§ 58-93-60. Investments.**

21 (a) With the exception of investments made in accordance with subsection (b) of this
22 section, the funds of a PHP shall be invested or maintained only in securities, other investments, or
23 other assets permitted by the laws of this State for the investment of assets constituting the legal
24 reserves of life insurance companies or such other securities or investments as the Commissioner
25 may permit.

26 (b) A PHP may, with the Commissioner's prior approval, do any of the following:

- 27 (1) Invest its funds to purchase, lease, construct, renovate, operate, or maintain
28 hospitals, medical facilities, or both, and their ancillary equipment, and such
29 property as may reasonably be required for its principal office or for other
30 purposes as may be necessary in the transaction of the business of the PHP.
- 31 (2) Make loans to a medical group under contract with the PHP in furtherance of
32 the PHP's program or the making of loans to a corporation or corporations
33 under the PHP's control for the purpose of acquiring or constructing medical
34 facilities and hospitals or in furtherance of a program providing health care
35 services to enrollees.

36 (c) The Commissioner shall not allow any investment if the Commissioner determines the
37 investment would substantially and adversely affect the financial soundness of the PHP and
38 endanger its ability to meet its obligations.

39 **"§ 58-93-100. Examinations.**

40 The Commissioner may make an examination of the affairs of any PHP as often as the
41 Commissioner determines it to be necessary for the protection of the interests of the people of this
42 State but not less frequently than once every five years. Examinations shall otherwise be
43 conducted under G.S. 58-2-131 through G.S. 58-2-134.

44 **"§ 58-93-105. Hazardous financial condition.**

45 (a) Whenever the financial condition of any PHP indicates a condition such that the
46 continued operation of the PHP might be hazardous to its enrollees, creditors, or the general
47 public, the Commissioner may order the PHP to take action as may be reasonably necessary to
48 rectify the existing condition, including one or more of the following steps:

- 49 (1) Reduce the total amount of present and potential liability for benefits by
50 reinsurance.
- 51 (2) Reduce the volume of new business being accepted.

1 (3) Reduce the expenses by specified methods.

2 (4) Suspend or limit the writing of new business for a specified period of time.

3 (5) Require an increase to the PHP's capital and surplus by contribution.

4 (b) The Commissioner may consider any or all of the standards in G.S. 58-30-60(b) when
5 determining whether the continued operation of a PHP is hazardous to its enrollees, creditors, or
6 the general public.

7 (c) The remedies under subsection (a) of this section are in addition to, and not in lieu of,
8 the remedies and measures available to the Commissioner under the provisions of Article 30 of
9 this Chapter.

10 (d) The Commissioner shall notify the Division of Health Benefits of the North Carolina
11 Department of Health and Human Services prior to taking any action against a PHP under this
12 section.

13 **"§ 58-93-110. Protection against insolvency.**

14 (a) The Commissioner shall require deposits in accordance with the provisions of
15 G.S. 58-93-25.

16 (b) Each PHP shall maintain a minimum capital and surplus equal to the greater of one
17 million dollars (\$1,000,000) or the amount required pursuant to the risk-based capital provisions
18 of Article 12 of this Chapter.

19 (c) Every PHP shall have and maintain at all times an adequate plan for protection against
20 insolvency acceptable to the Commissioner. In determining the adequacy of such a plan, the
21 Commissioner may consider all of the following:

22 (1) A reinsurance agreement preapproved by the Commissioner covering excess
23 loss, stop loss, or catastrophes. The agreement must provide that the
24 Commissioner will be notified no less than 60 days prior to cancellation or
25 reduction of coverage.

26 (2) Any other arrangements offering protection against insolvency that the
27 Commissioner may require.

28 **"§ 58-93-120. Continuation of benefits.**

29 (a) The Commissioner shall require that each PHP have a plan for handling insolvency.
30 The plan must allow for continuation of benefits for the duration of the contract period for which
31 premiums have been paid and continuation of benefits to enrollees who are confined in an
32 inpatient facility until discharge or expiration of benefits. In considering the plan, the
33 Commissioner may require any of the following:

34 (1) Insurance to cover the expenses to be paid for benefits after an insolvency.

35 (2) Provisions in provider contracts that obligate the provider to provide services
36 for the duration of the period after the PHP's insolvency for which premium
37 payment has been made and until the enrollees' discharge from inpatient
38 facilities.

39 (3) Insolvency reserves.

40 (4) Letters of credit acceptable to the Commissioner.

41 (5) Any other arrangements to assure that benefits are continued as specified in this
42 section.

43 **"§ 58-93-135. Incurred but not reported claims.**

44 (a) Every PHP shall, when determining liability, include an amount estimated in the
45 aggregate to provide for (i) any unearned premium, (ii) the payment of all claims for health care
46 expenditures that have been incurred, whether reported or unreported, that are unpaid and for
47 which the PHP is or may be liable, and (iii) the expense of adjustment or settlement of these
48 claims.

49 (b) Liabilities shall be computed in accordance with rules adopted by the Commissioner
50 for HMOs upon reasonable consideration of the ascertained experience and character of the PHP.

51 **"§ 58-93-140. Suspension or revocation of license.**

1 (a) The Commissioner may suspend or revoke a PHP license if the Commissioner finds
2 that the PHP meets any of the following:

3 (1) Is operating significantly in contravention of its organizational document, or in
4 a manner contrary to that described in and reasonably inferred from any other
5 information submitted under G.S. 58-93-10, unless amendments to such
6 submissions have been filed with and approved by the Commissioner.

7 (2) Is no longer financially responsible and may reasonably be expected to be
8 unable to meet its obligations to enrollees or prospective enrollees.

9 (3) Is operating in a manner that would be hazardous to its enrollees.

10 (4) Knowingly or repeatedly fails or refuses to comply with any law or rule
11 applicable to the PHP or with any order issued by the Commissioner after
12 notice and opportunity for a hearing.

13 (5) Has knowingly published or made to the Department or to the public any false
14 statement or report.

15 (b) A license shall be suspended or revoked only after compliance with G.S. 58-93-155.

16 (c) When a PHP license is suspended, the PHP shall not, during the suspension, enroll any
17 additional enrollees, except newborn children or other newly acquired dependents of existing
18 enrollees, and shall not engage in any advertising or solicitation.

19 (d) When a PHP license is revoked, the PHP shall proceed, immediately following the
20 effective date of the order of revocation, to wind up its affairs and shall conduct no further
21 business except as may be essential to the orderly conclusion of the affairs of the PHP. The PHP
22 shall engage in no advertising or solicitation. The Commissioner may, by written order, permit
23 such further operation of the PHP as the Commissioner may find to be in the best interest of
24 enrollees and the State of North Carolina.

25 (e) The Commissioner shall notify the Division of Health Benefits of the North Carolina
26 Department of Health and Human Services prior to taking any action against a PHP under this
27 section.

28 **"§ 58-93-145. Rehabilitation or liquidation of PHP.**

29 Any rehabilitation or liquidation of a PHP shall be deemed to be the rehabilitation or
30 liquidation of an insurance company and shall be conducted under the supervision of the
31 Commissioner pursuant to Article 30 of this Chapter. The Commissioner may apply for an order
32 directing the Commissioner to rehabilitate or liquidate a PHP upon one or more grounds set out in
33 Article 30 of this Chapter or when it is the opinion of the Commissioner that the continued
34 operation of the PHP would be hazardous either to the enrollees or to the people of this State.
35 Priority shall be given to the North Carolina Department of Health and Human Services over all
36 other claims in G.S. 58-30-220 except for claims in G.S. 58-30-220(1).

37 **"§ 58-93-150. Regulations.**

38 The Commissioner may adopt rules to carry out the provisions of this Article. Rules shall be
39 subject to review in accordance with G.S. 58-93-155.

40 **"§ 58-93-155. Administrative procedures.**

41 (a) When the Commissioner has cause to believe that grounds for the denial of an
42 application for a license exist, or that grounds for the suspension or revocation of a license exist,
43 notification shall be given to the PHP in writing. This notice shall specifically state the grounds for
44 denial, suspension, or revocation and shall set a date for a hearing on the matter at least 30 days
45 after notice is given.

46 (b) After such hearing, or upon the failure of the PHP to appear at such hearing, the
47 Commissioner shall take action as is deemed advisable and issue written findings which shall be
48 mailed to the PHP. The action of the Commissioner shall be subject to review by the Superior
49 Court of Wake County. The court may, in disposing of the issue before it, modify, affirm, or
50 reverse the order of the Commissioner in whole or in part.

1 (c) The provisions of Chapter 150B of the General Statutes of this State shall apply to
2 proceedings under this section to the extent that they are not in conflict with subsections (a) and
3 (b) of this section.

4 **"§ 58-93-160. Fees.**

5 Every PHP subject to this Article shall pay to the Commissioner a fee for filing an application
6 for a license and an annual license continuation fee for each license. The license shall continue in
7 full force and effect, subject to timely payment of the annual license continuation fee in
8 accordance with G.S. 58-6-7 and subject to any other applicable provisions of the insurance laws
9 of this State.

10 **"§ 58-93-165. Penalties and enforcement.**

11 (a) The Commissioner may, in addition to or in lieu of suspending or revoking a license
12 under G.S. 58-93-140, proceed under G.S. 58-2-70, provided that the PHP has reasonable time to
13 remedy the defect in its operations that gave rise to the procedure under G.S. 58-2-70.

14 (b) Violation of this Article or any other provision of this Chapter that expressly applies to
15 PHPs is a Class 1 misdemeanor.

16 (c) If the Commissioner shall for any reason have cause to believe that any violation of
17 this Article or any other provision of this Chapter that expressly applies to PHPs has occurred or is
18 threatened, the Commissioner may give notice to the PHP and to the representatives or other
19 persons who appear to be involved in such suspected violation to arrange a conference with the
20 alleged violators or their authorized representatives for the purpose of attempting to ascertain the
21 facts relating to the suspected violation and, in the event it appears that any violation has occurred
22 or is threatened, to arrive at an adequate and effective means of correcting or preventing the
23 violation.

24 Proceedings under this subsection shall not be governed by any formal procedural
25 requirements and may be conducted in such manner as the Commissioner may deem appropriate
26 under the circumstances.

27 (d) The Commissioner may issue an order directing a PHP or a representative of a PHP to
28 cease and desist from engaging in any act or practice in violation of the provisions of this Article
29 or any other provision of this Chapter that expressly applies to PHPs.

30 Within 30 days after service of the cease and desist order, the respondent may request a
31 hearing on the question of whether acts or practices have occurred that are in violation of this
32 Article or any other provision of this Chapter that expressly applies to PHPs. The hearing shall be
33 conducted under Article 3A of Chapter 150B of the General Statutes, and judicial review shall be
34 available as provided by Article 4 of Chapter 150B of the General Statutes.

35 (e) In the case of any violation of the provisions of this Article or any other provision of
36 this Chapter that expressly applies to PHPs, if the Commissioner elects not to issue a cease and
37 desist order, or in the event of noncompliance with a cease and desist order issued under
38 subsection (d) of this section, the Commissioner may institute a proceeding to obtain injunctive
39 relief, or seek other appropriate relief, in the Superior Court of Wake County.

40 **"§ 58-93-175. Filings and reports as public documents.**

41 All applications, filings, and reports required under this Article shall be treated as public
42 documents.

43 **"§ 58-93-185. Severability.**

44 If any provision of this act or its application is held invalid, the invalidity does not affect other
45 provisions or applications of this act that can be given effect without the invalid provisions or
46 application, and to this end the provisions of this act are severable."

47 **SECTION 2.** This act is effective when it becomes law.