

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

H

1

HOUSE BILL 941

Short Title: Health Provider Cooperation Act.

(Public)

---

Sponsors: Representatives Gamble, Green; Alexander, Cummings, Dickson, Gottovi, and Russell.

---

Referred to: Health and Human Services.

---

April 14, 1993

1 A BILL TO BE ENTITLED  
2 AN ACT TO ENCOURAGE REGULATED ARRANGEMENTS AMONG HEALTH  
3 CARE PROVIDERS WHEN THE ARRANGEMENT WILL HELP CONTROL  
4 COSTS, IMPROVE ACCESS, IMPROVE QUALITY, OR IMPLEMENT  
5 MANDATED HEALTH CARE REFORMS.

6 The General Assembly of North Carolina enacts:

7 Section 1. Chapter 90 of the General Statutes is amended by adding the  
8 following new Article to read:

9 **"ARTICLE 1E.**

10 **"REGULATED HEALTH CARE PROVIDER ARRANGEMENTS.**

11 **"§ 90-21.24. Findings and intent.**

12 The General Assembly finds that health care reform efforts will require cooperative  
13 relationships among providers to achieve the reforms' objectives. In particular, the  
14 formation of cooperative provider networks for the purpose of generating more efficient  
15 ways of delivering high quality provider services and medical care will be essential to  
16 health system reform. The goals of controlling health care costs, improving the quality  
17 of medical care, and expanding access to health care services will be significantly  
18 enhanced by some cooperative arrangements that would be prohibited by State and  
19 federal antitrust laws if undertaken without governmental oversight. The purpose of  
20 this Article is to create an opportunity for the State to review proposed cooperative  
21 arrangements among providers and to substitute regulation for competition when an  
22 arrangement is likely to result in lower costs, greater economic efficiencies, higher  
23 access to or quality of health care, or better implementation of the reforms of this act.

1 than would otherwise occur given the requirements of the antitrust laws. This act is not  
2 intended to prohibit any provider arrangements that are permissible under the antitrust  
3 laws. The act intends that the process set forth in this Article shall be considered State  
4 action for purposes of application of the federal antitrust laws.

5 **"§ 90-21.25. Definitions.**

6 As used in this Article, unless the context clearly requires otherwise, the term:

7 (1) 'Provider' means, without limitation, any person who pursuant to the  
8 provisions of this Chapter is licensed, or is otherwise registered or  
9 certified to engage in the practice of or otherwise perform the duties  
10 associated with medicine and the allied occupations.

11 (2) 'Department' means the Department of Human Resources.

12 **"§ 90-21.26. Review and approval of provider arrangements.**

13 The Department, in consultation with the Office of the Attorney General, shall  
14 establish criteria and procedures to review and authorize contracts, business or financial  
15 arrangements, or other activities, practices, or arrangements involving providers that  
16 might be construed to be violations of State or federal antitrust laws but which further  
17 the goals enumerated in this Article. The Department shall not approve any application  
18 unless the Department finds that the proposed cooperative arrangement is likely to:

- 19 (1) Result in lower health care costs, or  
20 (2) Result in greater economic efficiencies, or  
21 (3) Result in higher access to or quality of health care, or  
22 (4) Otherwise better implement mandated health reforms.

23 The Department may condition approval on a modification of all or part of the  
24 arrangement to eliminate any restrictions on competition that are not reasonably related  
25 to the goals of controlling costs, achieving efficiencies, improving access or quality, or  
26 otherwise facilitating the implementation of mandated reforms. The Department shall  
27 also establish conditions and criteria for approval that are reasonably necessary to  
28 protect against any abuses of private economic power and to ensure that the  
29 arrangement has sufficient oversight by the State. These conditions may include annual  
30 reports by the participants in the arrangements, periodic review by the Department, and  
31 a process for hearing complaints by any parties aggrieved by the activities of an  
32 approved cooperative arrangement. The Department may revoke its approval upon a  
33 finding that the arrangement is not in substantial compliance with the terms of the  
34 application or the conditions of approval.

35 **"§ 90-21.27. Applications for approval of provider arrangements.**

36 Applications for approval under this section shall be filed with the Department and  
37 shall include the following:

- 38 (1) A detailed description of the proposed cooperative arrangement in  
39 detail;  
40 (2) Identification of all the participants;  
41 (3) The purpose or intent of the arrangement;  
42 (4) The expected effects of the arrangement; and  
43 (5) An explanation of how the arrangement will help control costs or  
44 achieve economic efficiencies, or improve access or quality, or

1 otherwise facilitate the implementation of mandated health care  
2 reforms.

3 The Department may request the Office of the Attorney General to comment on an  
4 application, but the application and any information obtained by the Department under  
5 this section is not admissible in any proceeding brought by the State based on antitrust  
6 violations.

7 **"§ 90-21.28. Provider networks.**

8 The Department shall establish criteria and conditions designed to facilitate and  
9 encourage the formation of provider networks that can negotiate with health plans, and  
10 permit provider input into the administration, coverage, prepayment policies, and other  
11 operational policy decisions of health plans. The applications of provider networks that  
12 meet the criteria and conditions established by the Department shall be approved  
13 pursuant to the applications process. The Department shall have discretion over what  
14 criteria and conditions to develop, but must develop criteria and conditions for at least  
15 the following:

16 (1) Provider networks designed to collectively develop and present  
17 position statements to health plans. Such position statements may  
18 include:

- 19 a. Cost data in support of a request to modify a health plan's fee  
20 schedule;  
21 b. Suggestions as to specific proposed reimbursement levels; and  
22 c. Proposals regarding payment procedures, utilization review,  
23 administrative requirements, coverage issues, and other aspects  
24 of the operation of the health plan.

25 (2) Providers may select an agent (such as a consultant, attorney, medical  
26 society, or other person or entity) for the purposes of developing and  
27 presenting the position statements. Providers who participate in a  
28 provider network must be subject to the following restrictions:

- 29 a. Any individual provider in the network shall be permitted to  
30 negotiate and enter into individual arrangements with any  
31 health plan (including the health plan to which a position  
32 statement is submitted);  
33 b. Any individual provider in the network shall be permitted to  
34 enter into arrangements with other provider networks for  
35 purposes of negotiating arrangements with any health plan;  
36 c. The providers shall not exchange information among  
37 independently practicing providers in the network concerning  
38 their usual charges, except on an aggregate or composite basis  
39 that does not reveal the charges of any individual provider; and  
40 d. The providers may not boycott or threaten a boycott of health  
41 plans that do not accept the proposals made by the providers.

42 **"§ 90-21.29. State antitrust laws.**

43 Notwithstanding the trade regulation laws of this State, contracts, business or  
44 financial arrangements, or other activities, practices, or arrangements involving

1 providers or purchasers that are approved by the Department under this Article do not  
2 constitute an unlawful contract, combination, or conspiracy in unreasonable restraint of  
3 trade or commerce under North Carolina law. Approval by the Department is an  
4 absolute defense against any action under State law."

5           Sec. 2. The Department of Human Resources shall, not later than February 1,  
6 1994, adopt permanent rules to implement this Article.

7           Sec. 3. This act is effective upon ratification and applies only to arrangements  
8 duly approved by the Department pursuant to this Article and rules adopted thereunder.