

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

4

HOUSE BILL 1340  
Committee Substitute Favorable 6/23/99  
Senate Health Care Committee Substitute Adopted 6/15/00  
Senate Finance Committee Substitute No. 2 Adopted 6/29/00

Short Title: Respiratory Care Practice Act.

(Public)

Sponsors:

Referred to:

April 26, 1999

A BILL TO BE ENTITLED  
AN ACT TO ESTABLISH THE RESPIRATORY CARE PRACTICE ACT, TO  
PROVIDE FOR THE PROMPT PAYMENT OF CLAIMS UNDER HEALTH  
BENEFIT PLANS, AND TO MAKE CONFORMING AMENDMENTS TO  
RELATED CLAIM PAYMENT LAWS.

The General Assembly of North Carolina enacts:

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

**“ARTICLE 38.**

**“RESPIRATORY CARE PRACTICE ACT.**

**“§ 90-646. Short title.**

This Article may be cited as the ‘Respiratory Care Practice Act’.

**“§ 90-647. Purpose.**

The General Assembly finds that the practice of respiratory care in the State of North Carolina affects the public health, safety, and welfare and that the mandatory licensure of persons who engage in respiratory care is necessary to ensure a minimum standard of competency. It is the purpose and intent of this Article to protect the public from the

1 unqualified practice of respiratory care and from unprofessional conduct by persons  
2 licensed pursuant to this Article.

3 **"§ 90-648. Definitions.**

4 The following definitions apply in this Article:

- 5 (1) Board. – The North Carolina Respiratory Care Board.  
6 (2) Diagnostic testing. – Cardiopulmonary procedures and tests performed  
7 on the written order of a physician licensed under Article 1 of this  
8 Chapter that provide information to the physician to formulate a  
9 diagnosis of the patient's condition. The tests and procedures may  
10 include pulmonary function testing, electrocardiograph testing, cardiac  
11 stress testing, and sleep related testing.  
12 (3) Direct supervision. – The authority and responsibility to direct the  
13 performance of activities as established by policies and procedures for  
14 safe and appropriate completion of services.  
15 (4) Individual. – A human being.  
16 (5) License. – A certificate issued by the Board recognizing the person  
17 named therein as having met the requirements to practice respiratory  
18 care as defined in this Article.  
19 (6) Licensee. – A person who has been issued a license under this Article.  
20 (7) Medical director. – An appointed physician who is licensed under  
21 Article 1 of this Chapter and a member of the entity's medical staff, and  
22 who is granted the authority and responsibility for assuring and  
23 establishing policies and procedures and that the provision of such is  
24 provided to the quality, safety, and appropriateness standards as  
25 recognized within the defined scope of practice for the entity.  
26 (8) Person. – An individual, corporation, partnership, association, unit of  
27 government, or other legal entity.  
28 (9) Physician. – A doctor of medicine licensed by the State of North  
29 Carolina in accordance with Article 1 of this Chapter.  
30 (10) Practice of respiratory care. – As defined by the written order of a  
31 physician licensed under Article 1 of this Chapter, the observing and  
32 monitoring of signs and symptoms, general behavior, and general  
33 physical response to respiratory care treatment and diagnostic testing,  
34 including the determination of whether such signs, symptoms, reactions,  
35 behavior, or general response exhibit abnormal characteristics, and the  
36 performance of diagnostic testing and therapeutic application of:  
37 a. Medical gases, humidity, and aerosols including the maintenance  
38 of associated apparatus, except for the purpose of anesthesia.  
39 b. Pharmacologic agents related to respiratory care procedures,  
40 including those agents necessary to perform hemodynamic  
41 monitoring.  
42 c. Mechanical or physiological ventilatory support.

1           d.     Cardiopulmonary resuscitation and maintenance of natural  
2           airways, the insertion and maintenance of artificial airways under  
3           the direct supervision of a recognized medical director in a health  
4           care environment which identifies these services within the scope  
5           of practice by the facility's governing board.

6           e.     Hyperbaric oxygen therapy.

7           f.     New and innovative respiratory care and related support  
8           activities in appropriately identified environments and under the  
9           training and practice guidelines established by the American  
10           Association of Respiratory Care.

11           The term also means the interpretation and implementation of a  
12           physician's written or verbal order pertaining to the acts described in  
13           this subdivision.

14           (11) Respiratory care. – As defined by the written order of a physician  
15           licensed under Article 1 of Chapter 90, the treatment, management,  
16           diagnostic testing, and care of patients with deficiencies and  
17           abnormalities associated with the cardiopulmonary system.

18           (12) Respiratory care practitioner. – A person who has been licensed by the  
19           Board to engage in the practice of respiratory care.

20           (13) Support activities. – Procedures that do not require formal academic  
21           training, including the delivery, setup, and maintenance of apparatus.  
22           The term also includes giving instructions on the use, fitting, and  
23           application of apparatus, but does not include therapeutic evaluation and  
24           assessment.

25           **§ 90-649. North Carolina Respiratory Care Board; creation.**

26           (a)     The North Carolina Respiratory Care Board is created. The Board shall consist  
27           of 10 members as follows:

28           (1)     Two members shall be respiratory care practitioners.

29           (2)     Four members shall be physicians licensed to practice in North  
30           Carolina, and whose primary practice is Pulmonology, Anesthesiology,  
31           Critical Care Medicine, or whose specialty is Cardiothoracic Disorders.

32           (3)     One member shall represent the NCHA.

33           (4)     One member shall represent the North Carolina Association of Medical  
34           Equipment Services.

35           (5)     Two members shall represent the public at large.

36           (b)     Members of the Board shall be citizens of the United States and residents of  
37           this State. The respiratory care practitioner members shall have practiced respiratory  
38           care for at least five years and shall be licensed under this Article. The public members  
39           shall not be: (i) a respiratory care practitioner, (ii) an agent or employee of a person  
40           engaged in the profession of respiratory care, (iii) a health care professional licensed  
41           under this Chapter or a person enrolled in a program to become a licensed health care  
42           professional, (iv) an agent or employee of a health care institution, a health care insurer,  
43           or a health care professional school, (v) a member of an allied health profession or a

1 person enrolled in a program to become a member of an allied health profession, or (vi) a  
2 spouse of an individual who may not serve as a public member of the Board.

3 **"§ 90-650. Appointments and removal of Board members; terms and compensation.**

4 (a) The members of the Board shall be appointed as follows:

5 (1) The Governor shall appoint the public members described in G.S. 90-  
6 649(a)(5).

7 (2) The General Assembly, upon the recommendation of the Speaker of the  
8 House of Representatives, shall appoint one of the respiratory care  
9 practitioner members described in G.S. 90-649(a)(1) and one of the  
10 physician members described in G.S. 90-649(a)(2) in accordance with  
11 G.S. 120-121.

12 (3) The General Assembly, upon the recommendation of the President Pro  
13 Tempore of the Senate, shall appoint one of the respiratory care  
14 practitioner members described in G.S. 90-649(a)(1) and one of the  
15 physician members described in G.S. 90-649(a)(2) in accordance with  
16 G.S. 120-121.

17 (4) The North Carolina Medical Society shall appoint one of the physician  
18 members described in G.S. 90-649(a)(2).

19 (5) The Old North State Medical Society shall appoint one of the physician  
20 members described in G.S. 96-649(a)(2).

21 (6) The North Carolina Hospital Association shall appoint the member  
22 described in G.S. 90-649(a)(3).

23 (7) The North Carolina Association of Medical Equipment Services shall  
24 appoint the member described in G.S. 90-649(a)(4).

25 (b) Members of the Board shall take office on the first day of November  
26 immediately following the expired term of that office and shall serve for a term of three  
27 years and until their successors are appointed and qualified. No member shall serve on  
28 the Board for more than two consecutive terms.

29 (c) The Governor may remove members of the Board, after notice and an  
30 opportunity for hearing, for incompetence, neglect of duty, unprofessional conduct,  
31 conviction of any felony, failure to meet the qualifications of this Article, or committing  
32 any act prohibited by this Article.

33 (d) Any vacancy shall be filled by the authority originally filling that position,  
34 except that any vacancy in appointments by the General Assembly shall be filled in  
35 accordance with G.S. 120-122. Appointees to fill vacancies shall serve the remainder of  
36 the unexpired term and until their successors have been duly appointed and qualified.

37 (e) Members of the Board shall receive no compensation for their services but  
38 shall be entitled to travel, per diem, and other expenses authorized by G.S. 93B-5.

39 (f) Individual members shall be immune from civil liability arising from activities  
40 performed within the scope of their official duties.

41 **"§ 90-651. Election of officers; meetings of the Board.**

42 (a) The Board shall elect a chair and a vice-chair who shall hold office according  
43 to rules adopted pursuant to this Article, except that all officers shall be elected annually

1 by the Board for one-year terms and shall serve until their successors are elected and  
2 qualified.

3 (b) The Board shall hold at least two regular meetings each year as provided by  
4 rules adopted pursuant to this Article. The Board may hold additional meetings upon the  
5 call of the chair or any two Board members. A majority of the Board membership shall  
6 constitute a quorum.

7 **"§ 90-652. Powers and duties of the Board.**

8 The Board shall have the power and duty to:

- 9 (1) Determine the qualifications and fitness of applicants for licensure,  
10 renewal of licensure, and reciprocal licensure.
- 11 (2) Establish and adopt rules necessary to conduct its business, carry out its  
12 duties, and administer this Article.
- 13 (3) Adopt and publish a code of ethics.
- 14 (4) Deny, issue, suspend, revoke, and renew licenses in accordance with  
15 this Article.
- 16 (5) Conduct investigations, subpoena individuals and records, and do all  
17 other things necessary and proper to discipline persons licensed under  
18 this Article and to enforce this Article.
- 19 (6) Employ professional, clerical, investigative, or special personnel  
20 necessary to carry out the provisions of this Article and purchase or rent  
21 office space, equipment, and supplies.
- 22 (7) Adopt a seal by which it shall authenticate its proceedings, official  
23 records, and licenses.
- 24 (8) Conduct administrative hearings in accordance with Article 3A of  
25 Chapter 150B of the General Statutes.
- 26 (9) Establish certain reasonable fees as authorized by this Article for  
27 applications for examination, licensure, provisional licensure, renewal  
28 of licensure, and other services provided by the Board.
- 29 (10) Submit an annual report to the North Carolina Medical Board, the North  
30 Carolina Hospital Association, the North Carolina Society of  
31 Respiratory Care, the Governor, and the General Assembly of all the  
32 Board's official actions during the preceding year, together with any  
33 recommendations and findings regarding improvements of the practice  
34 of respiratory care.
- 35 (11) Publish and make available upon request the licensure standards  
36 prescribed under this Article and all rules adopted pursuant to this  
37 Article.
- 38 (12) Request and receive the assistance of State educational institutions or  
39 other State agencies.
- 40 (13) Establish and approve continuing education requirements for persons  
41 seeking licensure under this Article.

42 **"§ 90-653. Licensure requirements; examination.**

1       (a) Each applicant for licensure under this Article shall meet the following  
2 requirements:

3           (1) Submit a completed application as required by the Board.

4           (2) Submit any fees required by the Board.

5           (3) Submit to the Board written evidence, verified by oath, that the  
6 applicant has successfully completed the minimal requirements of a  
7 respiratory care education program as approved by the Commission for  
8 Accreditation of Allied Health Educational Programs.

9           (4) Submit to the Board written evidence, verified by oath, that the  
10 applicant has successfully completed the minimal requirements for  
11 Basic Cardiac Life Support as recognized by the American Heart  
12 Association.

13           (5) Pass the entry-level examination given by the National Board for  
14 Respiratory Care, Inc.

15       (b) At least three times each year, the Board shall cause the examination required  
16 in subdivision (5) of subsection (a) of this section to be given to applicants at a time and  
17 place to be announced by the Board. Any applicant who fails to pass the first  
18 examination may take additional examinations in accordance with rules adopted pursuant  
19 to this Article.

20 **"§ 90-654. Exemption from certain requirements.**

21       (a) The Board may issue a license to an applicant who, as of October 1, 2000, has  
22 passed the entry-level examination given by the National Board for Respiratory Care, Inc.  
23 An applicant applying for licensure under this subsection shall submit his or her  
24 application to the Board before October 1, 2002.

25       (b) The Board may grant a temporary license to an applicant who, as of October 1,  
26 2000, does not meet the qualifications of G.S. 90-653 but, through written evidence  
27 verified by oath, demonstrates that he or she is performing the duties of a respiratory care  
28 practitioner within the State. The temporary license is valid until October 1, 2002, within  
29 which time the applicant shall be required to complete the requirements of G.S. 90-  
30 653(a)(5). A license granted under this subsection shall contain an endorsement  
31 indicating that the license is temporary and shall state the date the license was granted  
32 and the date it expires.

33 **"§ 90-655. Licensure by reciprocity.**

34       The Board may grant, upon application and the payment of proper fees, a license to a  
35 person who, at the time of application holds a valid license, certificate, or registration as a  
36 respiratory care practitioner issued by another state or a political territory or jurisdiction  
37 acceptable to the Board if, in the Board's determination, the requirements for that license,  
38 certificate, or registration are substantially the same as the requirements for licensure  
39 under this Article.

40 **"§ 90-656. Provisional license.**

41       The Board may grant a provisional license for a period not exceeding 12 months to  
42 any applicant who has successfully completed the education requirements under G.S. 90-  
43 653(a)(3) and has made application to take the examination required under G.S. 90-

1 653(a)(5). A provisional license allows the individual to practice respiratory care under  
2 the supervision of a respiratory care practitioner and in accordance with rules adopted  
3 pursuant to this Article. A license granted under this section shall contain an  
4 endorsement indicating that the license is provisional and stating the terms and conditions  
5 of its use by the licensee and shall state the date the license was granted and the date it  
6 expires.

7 **"§ 90-657. Notification of applicant following evaluation of application.**

8 After evaluation of the application and of any other evidence required from the  
9 applicant by the Board, the Board shall notify each applicant that the application and  
10 evidence submitted are satisfactory and accepted or unsatisfactory and rejected. If the  
11 application and evidence is rejected, the notice shall state the reasons for the rejection.

12 **"§ 90-658. License as property of the Board; display requirement; renewal; inactive**  
13 **status.**

14 (a) A license issued by the Board is the property of the Board and shall be  
15 surrendered by the licensee to the Board on demand.

16 (b) The licensee shall display the license in the manner prescribed by the Board.

17 (c) The licensee shall inform the Board of any change of the licensee's address.

18 (d) The license shall be renewed by the Board annually upon the payment of a  
19 renewal fee if, at the time of application for renewal, the applicant is not in violation of  
20 this Article and has fulfilled the current requirements regarding continuing education as  
21 established by rules adopted pursuant to this Article.

22 (e) The Board shall notify a licensee at least 30 days in advance of the expiration  
23 of his or her license. Each licensee is responsible for renewing his or her license before  
24 the expiration date. Licenses that are not renewed automatically lapse.

25 (f) The Board may provide for the late renewal of an automatically lapsed license  
26 upon the payment of a late fee. No late fee renewal may be granted more than five years  
27 after a license expires.

28 (g) In accordance with rules adopted pursuant to this Article, a licensee may  
29 request that his or her license be declared inactive and may thereafter apply for active  
30 status.

31 **"§ 90-659. Suspension, revocation, and refusal to renew a license.**

32 (a) The Board shall take the necessary actions to deny or refuse to renew a license,  
33 suspend or revoke a license, or to impose probationary conditions on a licensee or  
34 applicant if the licensee or applicant:

35 (1) Has engaged in any of the following conduct:

36 a. Employed fraud, deceit, or misrepresentation in obtaining or  
37 attempting to obtain a license or the renewal of a license.

38 b. Committed an act of malpractice, gross negligence, or  
39 incompetence in the practice of respiratory care.

40 c. Practiced respiratory care without a license.

41 d. Engaged in health care practices that are determined to be  
42 hazardous to public health, safety, or welfare.

- 1           (2)   Was convicted of or entered a plea of guilty or nolo contendere to any  
2           crime involving moral turpitude.
- 3           (3)   Was adjudicated insane or incompetent, until proof of recovery from the  
4           condition can be established.
- 5           (4)   Engaged in any act or practice that violates any of the provisions of this  
6           Article or any rule adopted pursuant to this Article, or aided, abetted, or  
7           assisted any person in such a violation.

8           (b)   Denial, refusal to renew, suspension, or revocation of a license, or imposition  
9           of probationary conditions upon a licensee may be ordered by the Board after a hearing  
10           held in accordance with Article 3A of Chapter 150B of the General Statutes and rules  
11           adopted pursuant to this Article. An application may be made to the Board for  
12           reinstatement of a revoked license if the revocation has been in effect for at least one  
13           year.

14   **"§ 90-660. Expenses; fees.**

15           (a)   All salaries, compensation, and expenses incurred or allowed for carrying out  
16           the purposes of this Article shall be paid by the Board exclusively out of the fees received  
17           by the Board as authorized by this Article or funds received from other sources. In no  
18           case shall any salary, expense, or other obligations of the Board be charged against the  
19           State.

20           (b)   All monies received by the Board pursuant to this Article shall be deposited in  
21           an account for the Board and shall be used for the administration and implementation of  
22           this Article. The Board shall establish fees in amounts to cover the cost of services  
23           rendered for the following purposes:

- 24           (1)   For an initial application, a fee not to exceed twenty-five dollars  
25           (\$25.00).
- 26           (2)   For examination or reexamination, a fee not to exceed one hundred fifty  
27           dollars (\$150.00).
- 28           (3)   For issuance of any license, a fee not to exceed one hundred dollars  
29           (\$100.00).
- 30           (4)   For the renewal of any license, a fee not to exceed fifty dollars (\$50.00).
- 31           (5)   For the late renewal of any license, an additional late fee not to exceed  
32           fifty dollars (\$50.00).
- 33           (6)   For a license with a provisional or temporary endorsement, a fee not to  
34           exceed thirty-five dollars (\$35.00).
- 35           (7)   For copies of rules adopted pursuant to this Article and licensure  
36           standards, charges not exceeding the actual cost of printing and mailing.

37   **"§ 90-661. Requirement of license.**

38           After October 1, 2002, it shall be unlawful for any person who is not currently  
39           licensed under this Article to:

- 40           (1)   Engage in the practice of respiratory care.
- 41           (2)   Use the title 'respiratory care practitioner'.
- 42           (3)   Use the letters 'RCP', 'RTT', 'RT', or any facsimile or combination in  
43           any words, letters, abbreviations, or insignia.



1           (4) Imply orally or in writing or indicate in any way that the person is a  
2           respiratory care practitioner or is otherwise licensed under this Article.

3           (5) Employ or solicit for employment unlicensed persons to practice  
4           respiratory care.

5 **"§ 90-662. Violation a misdemeanor.**

6           Any person who violates any provision of this Article shall be guilty of a Class 1  
7           misdemeanor.

8 **"§ 90-663. Injunctions.**

9           The Board may apply to the superior court for an order enjoining violations of this  
10          Article, and upon a showing by the Board that any person has violated or is about to  
11          violate this Article, the court may grant an injunction or restraining order or take other  
12          appropriate action.

13 **"§ 90-664. Persons and practices not affected.**

14          The requirements of this Article shall not apply to:

15           (1) Any person registered, certified, credentialed, or licensed to engage in  
16           another profession or occupation or any person working under the  
17           supervision of a person registered, certified, credentialed, or licensed to  
18           engage in another profession or occupation in this State who is  
19           performing work incidental to or within the practice of that profession  
20           or occupation and does not represent himself or herself as a respiratory  
21           care practitioner.

22           (2) A student or trainee working under the direct supervision of a  
23           respiratory care practitioner while fulfilling an experience requirement  
24           or pursuing a course of study to meet requirements for licensure in  
25           accordance with rules adopted pursuant to this Article.

26           (3) A respiratory care practitioner serving in the armed forces or the Public  
27           Health Service of the United States or employed by the Veterans  
28           Administration when performing duties associated with that service or  
29           employment.

30           (4) A person who performs only support activities as defined in G.S. 90-  
31           648(13).

32 **"§ 90-665. Third-party reimbursement.**

33          Nothing in this Article shall be construed to require direct third-party reimbursements  
34          to persons licensed under this Article."

35          Section 2. G.S. 120-123 is amended by adding a new subdivision to read:

36          "(70) The North Carolina Respiratory Care Board as created by Article 37 of  
37          Chapter 90 of the General Statutes."

38          Section 3. The initial appointments to the North Carolina Respiratory Care  
39          Board, created in G.S. 90-649, as enacted in Section 1 of this act, shall be appointed no  
40          later than October 1, 2000. Notwithstanding the provisions of G.S. 90-649(b), as enacted  
41          in Section 1 of this act, the initial members of the North Carolina Respiratory Care Board  
42          who are appointed pursuant to G.S. 90-649(a)(1) must have passed the entry-level  
43          examination administered by the National Board for Respiratory Care, Inc.

1 Notwithstanding the provisions of G.S. 90-650(b), as enacted in Section 1 of this act, of  
2 the initial appointments to the North Carolina Respiratory Care Board, one of the  
3 members appointed by the General Assembly, upon the recommendation of the Speaker  
4 of the House of Representatives, and one of the members appointed by the General  
5 Assembly, upon the recommendation of the President Pro Tempore of the Senate, shall  
6 be appointed for three-year terms; one of the members appointed by the General  
7 Assembly, upon the recommendation of the Speaker of the House of Representatives, and  
8 one of the members appointed by the General Assembly, upon the recommendation of the  
9 President Pro Tempore of the Senate, shall be appointed for two-year terms; the public  
10 members appointed by the Governor shall be appointed for a one-year term; the physician  
11 member appointed by the North Carolina Medical Society shall be appointed for a one-  
12 year term; the physician member appointed by the Old North State Medical Society shall  
13 be appointed for a one-year term; and the members appointed by the North Carolina  
14 Hospital Association and the North Carolina Association of Medical Equipment Services  
15 shall be appointed for one-year terms.

16 Section 4.(a) Article 3 of Chapter 58 of the General Statutes is amended by adding  
17 a new section to read:

18 **"§ 58-3-225. Prompt claim payments under health benefit plans.**

19 (a) As used in this section:

20 (1) 'Health benefit plan' means an accident and health insurance policy or  
21 certificate; a nonprofit hospital or medical service corporation contract;  
22 a health maintenance organization subscriber contract; a plan provided  
23 by a multiple employer welfare arrangement; or a plan provided by  
24 another benefit arrangement, to the extent permitted by the Employee  
25 Retirement Income Security Act of 1974, as amended, or by any waiver  
26 of or other exception to that act provided under federal law or  
27 regulation. 'Health benefit plan' does not mean any plan implemented or  
28 administered by the North Carolina or United States Department of  
29 Health and Human Services, or any successor agency, or its  
30 representatives. 'Health benefit plan' also does not mean any of the  
31 following kinds of insurance:

32 a. Credit.

33 b. Disability income.

34 c. Coverage issued as a supplement to liability insurance.

35 d. Hospital income or indemnity.

36 e. Insurance under which benefits are payable with or without  
37 regard to fault and that is statutorily required to be contained in  
38 any liability policy or equivalent self-insurance.

39 f. Long-term or nursing home care.

40 g. Medical payments under motor vehicle or homeowners'  
41 insurance policies.

42 h. Medicare supplement.

- 1           i.       Short-term limited duration health insurance policies as defined  
2               in Part 144 of Title 45 of the Code of Federal Regulations.
- 3           j.       Workers' compensation.
- 4       (2)   'Claimant' includes a health care provider or facility that is responsible  
5           or permitted under contract with the insurer or by valid assignment of  
6           benefits for directly making the claim with an insurer.
- 7       (3)   'Health care facility' means a facility that is licensed under Chapter  
8           131E or Chapter 122C of the General Statutes or is owned or operated  
9           by the State of North Carolina in which health care services are  
10          provided to patients.
- 11       (4)   'Health care provider' means an individual who is licensed, certified, or  
12          otherwise authorized under Chapter 90 or 90B of the General Statutes to  
13          provide health care services in the ordinary course of business or  
14          practice of a profession or in an approved education or training  
15          program.
- 16       (5)   'Insurer' includes an insurance company subject to this Chapter, a  
17          service corporation organized under Article 65 of this Chapter, a health  
18          maintenance organization organized under Article 67 of this Chapter, or  
19          a multiple employer welfare arrangement subject to Article 49 of this  
20          Chapter, that writes a health benefit plan.
- 21       (b)   An insurer shall, within 30 calendar days after receipt of a claim, send by  
22          electronic or paper mail to the claimant:
- 23           (1)   Payment of the claim.
- 24           (2)   Notice of denial of the claim.
- 25           (3)   Notice that the proof of loss is inadequate or incomplete.
- 26           (4)   Notice that the claim is not submitted on the form required by the health  
27           benefit plan, by the contract between the insurer and health care  
28           provider or health care facility, or by applicable law.
- 29           (5)   Notice that coordination of benefits information is needed in order to  
30           pay the claim.
- 31           (6)   Notice that the claim is pending based on nonpayment of fees or  
32           premiums.
- 33       For purposes of this section, an insurer is presumed to have received a written claim five  
34       business days after the claim has been placed first-class postage prepaid in the United  
35       States mail addressed to the insurer or an electronic claim transmitted to the insurer or a  
36       designated clearinghouse on the day the claim is electronically transmitted. The  
37       presumption may be rebutted by sufficient evidence that the claim was received on  
38       another day or not received at all.
- 39       (c)   If the claim is denied, the notice shall include all of the specific good faith  
40       reason or reasons for the denial, including, without limitation, coordination of benefits,  
41       lack of eligibility, or lack of coverage for the services provided. If the claim is contested  
42       or cannot be paid because the proof of loss is inadequate or incomplete, or not paid  
43       pending receipt of requested coordination of benefits information, the notice shall contain

1 the specific good faith reason or reasons why the claim has not been paid and an  
2 itemization or description of all of the information needed by the insurer to complete the  
3 processing of the claim. If all or part of the claim is contested or cannot be paid because  
4 of the application of a specific utilization management or medical necessity standard is  
5 not satisfied, the notice shall contain the specific clinical rationale for that decision or  
6 shall refer to specific provisions in documents that are made readily available through the  
7 insurer which provide the specific clinical rationale for that decision; however, if a notice  
8 of noncertification has already been provided under G.S. 58-50-61(h), then the specific  
9 clinical rationale for the decision is not required under this subsection. If the claim is  
10 contested or cannot be paid because of nonpayment of premiums, the notice shall contain  
11 a statement advising the claimant of the nonpayment of premiums. If a claim is not paid  
12 pending receipt of requested coordination of benefits information, the notice shall so  
13 specify. If a claim is denied or contested in part, the insurer shall pay the undisputed  
14 portion of the claim within 30 calendar days after receipt of the claim and send the notice  
15 of the denial or contested status within 30 days after receipt of the claim. If a claim is  
16 contested or cannot be paid because the claim was not submitted on the required form,  
17 the notice shall contain the required form, if the form is other than a UB or HCFA form,  
18 and instructions to complete that form. Upon receipt of additional information requested  
19 in its notice to the claimant, the insurer shall continue processing the claim and pay or  
20 deny the claim within 30 days after receiving the additional information.

21 (d) If an insurer requests additional information under subsection (c) of this  
22 section and the insurer does not receive the additional information within 90 days after  
23 the request was made, the insurer shall deny the claim and send the notice of denial to the  
24 claimant in accordance with subsection (c) of this section. The insurer shall include the  
25 specific reason or reasons for denial in the notice, including the fact that information that  
26 was requested was not provided. The insurer shall inform the claimant in the notice that  
27 the claim will be reopened if the information previously requested is submitted to the  
28 insurer within one year after the date of the denial notice closing the claim.

29 (e) Health benefit plan claim payments that are not made in accordance with this  
30 section shall bear interest at the annual percentage rate of eighteen percent (18%)  
31 beginning on the date following the day on which the claim should have been paid. If  
32 additional information was requested by the insurer under subsection (b) of this section,  
33 interest on health benefit claim payments shall begin to accrue on the 31st day after the  
34 insurer received the additional information. A payment is considered made on the date  
35 upon which a check, draft, or other valid negotiable instrument is placed in the United  
36 States Postal Service in a properly addressed, postpaid envelope, or, if not mailed, on the  
37 date of the electronic transfer or other delivery of the payment to the claimant. This  
38 subsection does not apply to claims for benefits that are not covered by the health benefit  
39 plan; nor does this subsection apply to deductibles, co-payments, or other amounts for  
40 which the insurer is not liable.

41 (f) Insurers may require that claims be submitted within 180 days after the date of  
42 the provision of care to the patient by the health care provider and, in the case of health  
43 care provider facility claims, within 180 days after the date of the patient's discharge from

1 the facility. However, an insurer may not limit the time in which claims may be  
2 submitted to fewer than 180 days. Unless otherwise agreed to by the insurer and the  
3 claimant, failure to submit a claim within the time required does not invalidate or reduce  
4 any claim if it was not reasonably possible for the claimant to file the claim within that  
5 time, provided that the claim is submitted as soon as reasonably possible and in no event,  
6 except in the absence of legal capacity of the insured, later than one year from the time  
7 submittal of the claim is otherwise required.

8 (g) If a claim for which the claimant is a health care provider or health care facility  
9 has not been paid or denied within 60 days after receipt of the initial claim, the insurer  
10 shall send a claim status report to the insured. Provided, however, that the claims status  
11 report is not required during the time an insurer is awaiting information requested under  
12 subsection (c) of this section. The report shall indicate that the claim is under review and  
13 the insurer is communicating with the health care provider or health care facility to  
14 resolve the matter. While a claim remains unresolved, the insurer shall send a claim  
15 status report to the insured with a copy to the provider 30 days after the previous report  
16 was sent.

17 (h) To the extent permitted by the contract between the insurer and the health care  
18 provider or health care facility, the insurer may recover overpayments made to the health  
19 care provider or health care facility by making demands for refunds and by offsetting  
20 future payments. Any such recoveries may also include related interest payments that  
21 were made under the requirements of this section. Recoveries by the insurer must be  
22 accompanied by the specific reason and adequate information to identify the specific  
23 claim. To the extent permitted by the contract between the insurer and the health care  
24 provider or health care facility, the health care provider or health care facility may  
25 recover underpayments or nonpayments by the insurer by making demands for refunds.  
26 Any such recoveries by the health care provider or health care facility of underpayments  
27 or nonpayment by the insurer may include applicable interest under this section. The  
28 period for which such recoveries may be made may be specified in the contract between  
29 the insurer and health care provider or health care facility.

30 (i) Every insurer shall maintain written or electronic records of its activities under  
31 this section, including records of when each claim was received, paid, denied, or pending,  
32 and the insurer's review and handling of each claim under this section, sufficient to  
33 demonstrate compliance with this section.

34 (j) A violation of this section by an insurer subjects the insurer to the sanctions in  
35 G.S. 58-2-70. The authority of the Commissioner under this subsection does not impair  
36 the right of a claimant to pursue any other action or remedy available under law. With  
37 respect to a specific claim, an insurer paying statutory interest in good faith under this  
38 section is not subject to sanctions for that claim under this subsection.

39 (k) An insurer is not in violation of this section nor subject to interest payments  
40 under this section if its failure to comply with this section is caused in material part by (i)  
41 the person submitting the claim, or (ii) by matters beyond the insurer's reasonable control,  
42 including an act of God, insurrection, strike, fire, or power outages. In addition, an  
43 insurer is not in violation of this section or subject to interest payments to the claimant

1 under this section if the insurer has a reasonable basis to believe that the claim was  
2 submitted fraudulently and notifies the claimant of the alleged fraud.

3 (l) This section does not apply to claims processed by an insurer on a claims  
4 adjudication system that was implemented prior to January 1, 1982, provided that the  
5 insurer:

6 (1) Verifies with the Commissioner that its claims adjudication system  
7 qualifies under this subsection; and

8 (2) Is implementing a new claims adjudication software system and is  
9 proceeding in good faith to move all claims to the new system as soon  
10 as possible and in any event no later than December 31, 2002.

11 This subsection expires January 1, 2003.

12 (m) Nothing in this section limits or impairs the patient's liability under existing  
13 law for payment of medical expenses."

14 Section 4.(b) G.S. 58-3-100(c) reads as rewritten:

15 "(c) The Commissioner may impose a civil penalty under G.S. 58-2-70 if an HMO,  
16 service corporation, MEWA, or insurer fails to acknowledge a claim within 30 days after  
17 receiving written or electronic notice of the claim, but only if the notice contains  
18 sufficient information for the insurer to identify the specific coverage involved.  
19 Acknowledgement of the claim shall be made to the claimant or his legal representative  
20 advising that the claim is being investigated; or shall be a payment of the claim; or shall  
21 be a bona fide written offer of settlement; or shall be a written denial of the claim. A  
22 claimant includes an insured, a health care provider, or a health care facility that is  
23 responsible for directly making the claim with an insurer. This subsection does not apply  
24 to insurers subject to G.S. 58-3-225."

25 Section 4.(c) G.S. 58-3-172(a) reads as rewritten:

26 "(a) For all claims denied for health care provider services under health benefit  
27 plans, written notification of the denied claim shall be given to the insured and to the  
28 health care provider submitting the claim if the health care provider would otherwise be  
29 eligible for payment. This subsection does not apply to insurers subject to G.S. 58-3-  
30 225."

31 Section 4.(d) G.S. 58-51-15(a)(7) reads as rewritten:

32 "(7) A provision in the substance of the following language:

33 PROOFS OF LOSS: Written proof of loss must be furnished to the  
34 insurer at its said office in the case of a claim for loss for which this  
35 policy provides any periodic payment contingent upon continuing loss  
36 within ~~90~~180 days after the termination of the period for which the  
37 insurer is liable and in case of a claim for any other loss within ~~90~~180  
38 days after the date of such loss. Failure to furnish such proof within the  
39 time required shall not invalidate nor reduce any claim if it was not  
40 reasonably possible to give proof within such time, provided such proof  
41 is furnished as soon as reasonably possible and in no event, except in  
42 the absence of legal ~~capacity~~, capacity of the insured, later than one year  
43 from the time proof is otherwise required."

1           Section 5. Section 4 of this act becomes effective July 1, 2001, and applies to  
2 claims received on or after that date. The remainder of this act is effective when it  
3 becomes law.