

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE DRS65218-RU-11 (3/14)

Short Title: Health Care Provider Prof. Liab. Ins. Changes.

(Public)

Sponsors: Senators Berger; and Clodfelter.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REQUIRE CERTAIN PROFESSIONAL LIABILITY INSURERS TO
USE EXPERIENCE AND SCHEDULE RATING PLANS AND TO ESTABLISH
PREMIUM STABILIZATION ACCOUNTS TO MOLLIFY SEVERE MARKET
CYCLE CHANGES CAUSED BY DECREASES IN INVESTMENT INCOME.

The General Assembly of North Carolina enacts:

SECTION 1. Article 41 of Chapter 58 of the General Statutes is amended by
adding two new sections to read:

"§ 58-41-52. Health care provider professional liability insurance rating.

(a) As used in this section, "health care provider" has the same meaning as in
G.S. 90-21.11.

(b) Every insurer, self-insurer, and risk retention group that provides professional
liability insurance to health care providers in this State shall use experience rating plans
and, for risks that lack statistically credible experience, schedule rating plans.

(c) Experience rating plans may apply to the hospital professional liability,
physician and surgeon professional liability, other professional liability, and general
liability experience of a health care facility or an affiliated group of health care
providers that includes at least one health care facility. The experience of all members
of an affiliated group of health care providers may be combined to establish an
experience rating applicable to the group. The experience modification so established is
uniformly applied to all participating members.

(d) The experience modification shall apply to the manual premium that is paid
by the insured. In addition to any experience rating modification developed under a
plan, a modification reflecting specific risk characteristics may be applied to the
premium for a health care facility or affiliated group, in accordance with a schedule
rating table, which shall be part of the plan. Experience incurred by other companies or

1 self-insured experience may be used and given credibility in accordance with its
2 apparent reliability.

3 (e) To recognize these and other factors peculiar to a particular health care
4 facility or group, the insurer shall apply a debit or credit to the rates and premiums
5 otherwise developed, depending on the underwriter's overall evaluation of the risk.
6 Factors that may be considered may include any of the following:

7 (1) Loss control programs established by the insured.

8 (2) The status of the accreditation or licensure of the insured.

9 (3) Patient advocate programs established by the insured.

10 (4) Physician insurance limits.

11 (5) Continuing education programs established by the insured.

12 (f) An insurer shall not use any plan under this section until the plan has been
13 filed with and approved by the Commissioner.

14 **"§ 58-41-53. Professional liability insurance stabilization accounts.**

15 (a) As used in this section, "health care provider" has the same meaning as in
16 G.S. 90-21.11.

17 (b) Every insurer, self-insurer, and risk retention group that provides professional
18 liability insurance to health care providers in this State shall establish a stabilization
19 account for the purpose of moderating the rates it charges for that professional liability
20 insurance.

21 (c) Except in those years in which it has activated its stabilization account
22 pursuant to subsection (d) of this section, by March 31 of each year, every insurer
23 subject to this section shall contribute to its stabilization account an amount equal to
24 seven and one-half percent (7 ½%) of its net written health care provider professional
25 liability premium for the preceding calendar year. This amount shall be contributed in
26 the form of cash or cash equivalents and shall be invested in accordance with the
27 provisions of Article 7 of this Chapter governing property and liability insurance
28 company investments; provided, that no portion of the stabilization account shall be
29 invested in common or preferred stock.

30 (d) (i) An insurer subject to this section shall activate its stabilization account
31 whenever it seeks to increase its rates and (ii) its investment income attributable to
32 health care provider professional liability insurance for the preceding year has fallen
33 below the average of the investment income for the five-year period ending December
34 31 of the preceding year.

35 (e) In calculating any increase in health care provider professional liability
36 insurance rates, an insurer shall include in the calculation the difference between its
37 investment income attributable to health care provider professional liability insurance
38 for the preceding year and the average of that investment income for the five-year
39 period ending December 31 of the preceding year. No proposed rate increase shall take
40 effect unless the insurer demonstrates to the satisfaction of the Commissioner that it has
41 included the difference in calculating the proposed increase.

42 (f) Every insurer, self-insurer, and risk retention group that provides professional
43 liability insurance to health care providers in this State shall report annually to the
44 Commissioner on the status of its stabilization account established in accordance with

1 this section. Each annual report shall be accompanied by an annual report filing fee of
2 fifty dollars (\$50.00)."

3 **SECTION 2.** This act becomes effective January 1, 2004.