

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**SESSION 1999**

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**SENATE BILL 432**

Children & Human Resources Committee Substitute Adopted 4/26/99

House Committee Substitute Favorable 7/11/00

Fourth Edition Engrossed 7/11/00

Short Title: Health Care Personnel Registry Changes.

(Public)

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Sponsors:

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Referred to:

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March 22, 1999

A BILL TO BE ENTITLED

1 AN ACT PERTAINING TO RULES ADOPTED BY THE MEDICAL CARE  
2 COMMISSION FOR THE OPERATION OF THE ADULT CARE PORTION OF A  
3 COMBINATION HOME, AND TO RETIREE PREMIUMS UNDER THE  
4 TEACHERS' AND STATE EMPLOYEES' COMPREHENSIVE MAJOR MEDICAL  
5 PLAN, AND TO AMEND THE PHYSICIAN AND OPTOMETRIST LICENSURE  
6 LAWS, TO PROVIDE IMMUNITY AND EXPAND DISCIPLINE OPTIONS, AND  
7 TO PROVIDE THAT THE TEACHERS' AND STATE EMPLOYEES'  
8 COMPREHENSIVE MAJOR MEDICAL PLAN SHALL COVER THE COST OF  
9 ONE ANNUAL PAP SMEAR FOR ANY COVERED FEMALE UNDER THE  
10 PLAN'S WELLNESS BENEFIT, AND TO ALLOW INDIVIDUALS EXCLUDED  
11 FROM MEMBERSHIP IN THE TEACHERS' AND STATE EMPLOYEES'  
12 COMPREHENSIVE MAJOR MEDICAL PLAN FOR FILING FRAUDULENT  
13 CLAIMS TO BE CONSIDERED FOR REINSTATEMENT IN THE PLAN.

15 The General Assembly of North Carolina enacts:

16 Section 1.(a) G.S. 135-40.2(a)(2) reads as rewritten:

1       (a) The following persons are eligible for coverage under the Plan, on a  
2 noncontributory basis, subject to the provisions of G.S. 135-40.3:

3           ...  
4           (2) Retired teachers, State employees, members of the General Assembly,  
5 and retired State law enforcement officers who retired under the Law  
6 Enforcement Officers' Retirement System prior to January 1, 1985. ~~For~~  
7 ~~employees first hired on and after October 1, 1995, and members of the~~  
8 ~~General Assembly first taking office on and after October 1, 1995, future~~  
9 ~~coverage as retired employees and retired members of the General Assembly~~  
10 ~~is subject to a requirement that the future retiree have 20 or more years of~~  
11 ~~retirement service credit in order to be covered by the provisions of this~~  
12 ~~subdivision.~~

13           ... ."

14       Section 1.(b) G.S. 135-40.2(a1) and G.S. 135-40.2(b)(11) are repealed.

15       Section 2. G.S. 135-40.5(e) reads as rewritten:

16       "(e) Routine Diagnostic Examinations. – The Plan will pay one hundred percent  
17 (100%) of allowable charges for routine diagnostic examinations and tests, including ~~Pap~~  
18 ~~smears,~~ breast, colon, rectal, and prostate exams, X rays, mammograms, blood and blood  
19 pressure checks, urine tests, tuberculosis tests, and general health checkups that are  
20 medically necessary for the maintenance and improvement of individual health but no  
21 more often than once every three years for covered individuals to age 40 years, once  
22 every two years for covered individuals to age 50 years, and once a year for covered  
23 individuals age 50 years and older, unless a more frequent occurrence is warranted by a  
24 medical condition when such charges are incurred in a medically supervised facility.  
25 Routine diagnostic examinations and tests covered under this subsection also include one  
26 Pap smear per year for any covered female. Provided, however, that charges for such  
27 examinations and tests are not covered by the Plan when they are incurred to obtain or  
28 continue employment, to secure insurance coverage, to comply with legal proceedings, to  
29 attend schools or camps, to meet travel requirements, to participate in athletic and related  
30 activities, or to comply with governmental licensing requirements. The maximum amount  
31 payable under this subsection for a covered individual is one hundred fifty dollars  
32 (\$150.00) per fiscal year."

33       Section 3. G.S. 135-40.2(h) reads as rewritten:

34       "(h) No person shall be eligible for coverage as an employee or retired employee or  
35 as a dependent of an employee or retired employee upon a finding by the Executive  
36 Administrator or Board of Trustees or by a court of competent jurisdiction that the  
37 employee or dependent knowingly and willfully made or caused to be made a false  
38 statement or false representation of a material fact in a claim for reimbursement of  
39 medical services under the Plan. The Executive Administrator and Board of Trustees  
40 may make an exception to the provisions of this subsection when persons subject to this  
41 subsection have had a cessation of coverage for a period of five years and have made a  
42 full and complete restitution to the Plan for all fraudulent claim amounts. Nothing in this

1 subsection shall be construed to obligate the Executive Administrator and Board of  
2 Trustees to make an exception as allowed for under this subsection."

3 Section 4. G.S. 135-40.11(a)(6) reads as rewritten:

4 "(6) The last day of the month in which a covered individual is found to have  
5 knowingly and willfully made or caused to be made a false statement or  
6 false representation of a material fact in a claim for reimbursement of  
7 medical services under the Plan. The Executive Administrator and  
8 Board of Trustees may make an exception to the provisions of this  
9 subdivision when persons subject to this subdivision have had a  
10 cessation of coverage for a period of five years and have made a full and  
11 complete restitution to the Plan for all fraudulent claim amounts.  
12 Nothing in this subdivision shall be construed to obligate the Executive  
13 Administrator and Board of Trustees to make an exception as allowed  
14 for under this subdivision."

15 Section 5. G.S. 90-14 is amended by adding a new subsection to read:

16 "(f) A person, partnership, firm, corporation, association, authority, or other entity  
17 acting in good faith without fraud or malice shall be immune from civil liability for (i)  
18 reporting or investigating the acts or omissions of a licensee or applicant that  
19 violate the provisions of subsection (a) of this section or any other provision of law  
20 relating to the fitness of a licensee or applicant to practice medicine and (ii) initiating or  
21 conducting proceedings against a licensee or applicant if a complaint is made or action is  
22 taken in good faith without fraud or malice. A person shall not be held liable in any civil  
23 proceeding for testifying before the Board in good faith and without fraud or malice in  
24 any proceeding involving a violation of subsection (a) of this section or any other law  
25 relating to the fitness of an applicant or licensee to practice medicine, or for making a  
26 recommendation to the Board in the nature of peer review, in good faith and without  
27 fraud and malice."

28 Section 6. G.S. 90-121.2 reads as rewritten:

29 "**§ 90-121.2. Rules and regulations; discipline, suspension, revocation and regrant of**  
30 **certificate.**

31 (a) The Board shall have the power to make, adopt, and promulgate such rules and  
32 regulations, including rules of ethics, as may be necessary and proper for the regulation  
33 of the practice of the profession of optometry and for the performance of its duties. The  
34 Board shall have jurisdiction and power to hear and determine all complaints, allegations,  
35 charges of malpractice, corrupt or unprofessional conduct, and of the violation of the  
36 rules and regulations, including rules of ethics, made against any optometrist licensed to  
37 practice in North Carolina. The Board shall also have the power and authority to: (i)  
38 refuse to issue a license to practice optometry; (ii) refuse to issue a certificate of renewal  
39 of a license to practice optometry; (iii) revoke or suspend a license to practice optometry;  
40 and (iv) invoke such other disciplinary measures, censure, or probative terms against a  
41 licensee as it deems fit and proper; in any instance or instances in which the Board is  
42 satisfied that such applicant or licensee:

- 1 (1) Has engaged in any act or acts of fraud, deceit or misrepresentation in  
2 obtaining or attempting to obtain a license or the renewal thereof;
- 3 (2) Is a chronic or persistent user of intoxicants, drugs or narcotics to the  
4 extent that the same impairs his ability to practice optometry;
- 5 (3) Has been convicted of any of the criminal provisions of this Article or  
6 has entered a plea of guilty or nolo contendere to any charge or charges  
7 arising therefrom;
- 8 (4) Has been convicted of or entered a plea of guilty or nolo contendere to  
9 any felony charge or to any misdemeanor charge involving moral  
10 turpitude;
- 11 (5) Has been convicted of or entered a plea of guilty or nolo contendere to  
12 any charge of violation of any State or federal narcotic or barbiturate  
13 law;
- 14 (6) Has engaged in any act or practice violative of any of the provisions of  
15 this Article or violative of any of the rules and regulations promulgated  
16 and adopted by the Board, or has aided, abetted or assisted any other  
17 person or entity in the violation of the same;
- 18 (7) Is mentally, emotionally, or physically unfit to practice optometry or is  
19 afflicted with such a physical or mental disability as to be deemed  
20 dangerous to the health and welfare of his patients. An adjudication of  
21 mental incompetency in a court of competent jurisdiction or a  
22 determination thereof by other lawful means shall be conclusive proof  
23 of unfitness to practice optometry unless or until such person shall have  
24 been subsequently lawfully declared to be mentally competent;
- 25 (8) Repealed by Session Laws 1981, c. 496, s. 12.
- 26 (9) Has permitted the use of his name, diploma or license by another person  
27 either in the illegal practice of optometry or in attempting to  
28 fraudulently obtain a license to practice optometry;
- 29 (10) Has engaged in such immoral conduct as to discredit the optometry  
30 profession;
- 31 (11) Has obtained or collected or attempted to obtain or collect any fee  
32 through fraud, misrepresentation, or deceit;
- 33 (12) Has been negligent in the practice of optometry;
- 34 (13) Has employed a person not licensed in this State to do or perform any  
35 act of service, or has aided, abetted or assisted any such unlicensed  
36 person to do or perform any act or service which under this Article can  
37 lawfully be done or performed only by an optometrist licensed in this  
38 State;
- 39 (14) Is incompetent in the practice of optometry;
- 40 (15) Has practiced any fraud, deceit or misrepresentation upon the public or  
41 upon any individual in an effort to acquire or retain any patient or  
42 patients, including false or misleading advertising;

- 1 (16) Has made fraudulent or misleading statements pertaining to his skill,  
2 knowledge, or method of treatment or practice;
- 3 (17) Has committed any fraudulent or misleading acts in the practice of  
4 optometry;
- 5 (18) Repealed by Session Laws 1981, c. 496, s. 12.
- 6 (19) Has, in the practice of optometry, committed an act or acts constituting  
7 malpractice;
- 8 (20) Repealed by Session Laws 1981, c. 496, s. 12.
- 9 (21) Has permitted an optometric assistant in his employ or under his  
10 supervision to do or perform any act or acts violative to this Article or  
11 of the rules and regulations promulgated by the Board;
- 12 (22) Has wrongfully or fraudulently or falsely held himself out to be or  
13 represented himself to be qualified as a specialist in any branch of  
14 optometry;
- 15 (23) Has persistently maintained, in the practice of optometry, unsanitary  
16 offices, practices, or techniques;
- 17 (24) Is a menace to the public health by reason of having a serious  
18 communicable disease;
- 19 (25) Has engaged in any unprofessional conduct as the same may be from  
20 time to time defined by the rules and regulations of the Board.

21 In addition to and in conjunction with the actions described above, the Board may  
22 make a finding adverse to a licensee or applicant but withhold imposition of judgment  
23 and penalty or it may impose judgment and penalty but suspend enforcement thereof and  
24 place the licensee on probation, which probation may be vacated upon noncompliance  
25 with such reasonable terms as the Board may impose. The Board may administer a  
26 public or private reprimand or a private letter of concern, and the private reprimand and  
27 private letter of concern shall not require a hearing in accordance with G.S. 90-121.3 and  
28 shall not be disclosed to any person except the licensee. The Board may require a  
29 licensee to: (i) make specific redress or monetary redress; (ii) provide free public or  
30 charity service; (iii) complete educational, remedial training, or treatment programs; (iv)  
31 pay a fine; and (v) reimburse the Board for disciplinary costs.

32 (b) If any person engages in or attempts to engage in the practice of optometry  
33 while his license is suspended, his license to practice optometry in the State of North  
34 Carolina may be permanently revoked.

35 (c) The Board may, on its own motion, initiate the appropriate legal proceedings  
36 against any person, firm or corporation when it is made to appear to the Board that such  
37 person, firm or corporation has violated any of the provisions of this Article.

38 (d) The Board may appoint, employ or retain an investigator or investigators for  
39 the purpose of examining or inquiring into any practices committed in this State that  
40 might violate any of the provisions of this Article or any of the rules and regulations  
41 promulgated by the Board.

42 (e) The Board may employ or retain legal counsel for such matters and purposes  
43 as may seem fit and proper to said Board.

1 (f) As used in this section the term 'licensee' includes licensees, provisional  
2 licensees and holders of intern permits, and the term 'license' includes license, provisional  
3 license and intern permit.

4 (g) A person, partnership, firm, corporation, association, authority, or other entity  
5 acting in good faith without fraud or malice shall be immune from civil liability for (i)  
6 reporting or investigating the acts or omissions of a licensee or applicant that violate the  
7 provisions of subsection (a) of this section or any other provision of law relating to the  
8 fitness of a licensee or applicant to practice optometry and (ii) initiating or conducting  
9 proceedings against a licensee or applicant if a complaint is made or action is taken in  
10 good faith without fraud or malice. A person shall not be held liable in any civil  
11 proceeding for testifying before the Board in good faith and without fraud or malice in  
12 any proceeding involving a violation of subsection (a) of this section or any other law  
13 relating to the fitness of an applicant or licensee to practice optometry, or for making a  
14 recommendation to the Board in the nature of peer review, in good faith and without  
15 fraud and malice."

16 Section 7. G.S. 131E-104 reads as rewritten:

17 "**§ 131E-104. Rules and enforcement.**

18 (a) The Commission is authorized to adopt, amend, and repeal all rules necessary  
19 for the implementation of this Part.

20 (b) ~~The Commission shall adopt rules for the operation of the adult care portion of~~  
21 ~~a combination home that are equal to the rules adopted by the Social Services~~  
22 ~~Commission for the operation of freestanding adult care homes. The adult care portion of~~  
23 ~~a combination home in existence on January 1, 1982, shall be exempt from physical plant~~  
24 ~~minimum standards, unless the Department determines the exemption to be an imminent~~  
25 ~~hazard to health, safety and welfare of the residents. home. The rules shall provide that~~  
26 for each requirement applicable to freestanding adult care homes or freestanding nursing  
27 homes, the combination home may choose to operate the adult care portion of the home  
28 in compliance with either the requirement applicable to freestanding adult care homes or  
29 the higher standard applicable to freestanding nursing homes.

30 (c) The Department shall enforce the rules adopted or amended by the  
31 Commission with respect to nursing homes."

32 Section 8. Sections 1, 2, 3, and 4 of this act become effective August 1, 2000.  
33 The remainder of this act is effective when it becomes law.