

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

SESSION LAW 2012-135  
HOUSE BILL 237

AN ACT PROVIDING THAT THE NORTH CAROLINA RATE BUREAU SHARE WITH THE NORTH CAROLINA INDUSTRIAL COMMISSION INFORMATION ON THE STATUS OF WORKERS' COMPENSATION INSURANCE COVERAGE ON EMPLOYERS IN THIS STATE AND MAKING CLARIFYING, CONFORMING, AND OTHER CHANGES RELATING TO THE WORKERS' COMPENSATION LAWS OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

**SECTION 1.(a)** G.S. 58-36-16 reads as rewritten:

**"§ 58-36-16. Bureau to share information with Department of ~~Labor~~ Labor and North Carolina Industrial Commission.**

The Bureau shall provide to the Department of Labor and the North Carolina Industrial Commission information from the Bureau's records indicating each employer's experience rate modifier established for the purpose of setting premium rates for workers' compensation insurance and the name and business address of each employer whose workers' compensation coverage is provided through the assigned-risk pool pursuant to G.S. 58-36-1. Information provided to the Department of Labor and the North Carolina Industrial Commission with respect to experience rate modifiers shall include the name of the employer and the employer's most current intrastate or interstate experience rate modifier. The information provided to the Department and the Commission under this section shall be confidential and not open for public inspection. The Bureau shall be immune from civil liability for ~~erroneous information released by the Bureau~~ releasing information pursuant to this section, even if the information is erroneous, provided that the Bureau acted in good faith and without malicious or wilful intent to harm in releasing the erroneous information."

**SECTION 1.(b)** Article 36 of Chapter 58 of the General Statutes is amended by adding a new section to read:

**"§ 58-36-17. Bureau to share information with the North Carolina Industrial Commission.**

The Bureau shall provide to the North Carolina Industrial Commission information contained in the Bureau's records indicating the status of workers' compensation insurance coverage on North Carolina employers as reported to the Bureau by the Bureau's member companies. The North Carolina Industrial Commission shall take such steps, including obtaining software or software licenses, as are necessary to be able to receive and process such information from the Bureau. The records provided to the North Carolina Industrial Commission under this section shall be confidential and shall not be public records as that term is defined in G.S. 132-1. The North Carolina Industrial Commission shall use the information provided pursuant to this section only to carry out its statutory duties and obligations under The North Carolina Workers' Compensation Act. The Bureau shall be immune from civil liability for releasing information pursuant to this section, even if the information is erroneous, provided the Bureau acted in good faith and without malicious or willful intent to harm in releasing the information."

**SECTION 2.** G.S. 97-25.6 reads as rewritten:

**"§ 97-25.6. Reasonable access to medical information.**

(a) Notwithstanding any provision of G.S. 8-53 to the contrary, and because discovery is limited pursuant to G.S. 97-80, it is the policy of this State to protect the employee's right to a confidential physician-patient relationship while allowing the parties to have reasonable access to all relevant medical information, including medical records, reports, and information



necessary to the fair and swift administration and resolution of workers' compensation claims, while limiting unnecessary communications with and administrative requests to health care providers.

(b) As used in this section, "relevant medical information" means any medical record, report, or information that ~~is~~ is any of the following:

- (1) ~~restricted~~ Restricted to the particular evaluation, diagnosis, or treatment of the injury or disease for which compensation, including medical compensation, is ~~sought~~ sought.
- (2) ~~reasonably~~ Reasonably related to the injury or disease for which the employee claims ~~compensation~~ or compensation.
- (3) ~~related~~ Related to an assessment of the employee's ability to return to work as a result of the particular injury or disease.

(c) Relevant medical information shall be requested and provided subject to the following provisions:

(1) Medical records. – An employer is entitled, without the express authorization of the employee, to obtain the employee's medical records containing relevant medical information from the employee's health care providers. In a claim in which the employer is not paying medical compensation to a health care provider from whom the medical records are sought, or in a claim denied pursuant to G.S. 97-18(c), the employer shall provide the employee with contemporaneous written notice of the request for medical records. ~~The~~ Upon the request of the employee, the employer shall provide the employee with a copy of any records received in response to this request within 30 days of its receipt by the employer.

(2) Written communications with health care providers. – An employer may communicate with the employee's authorized health care provider in writing, without the express authorization of the employee, to obtain relevant medical information not available in the employee's medical records. The employer shall provide the employee with contemporaneous written notice of the written communication. The employer may request the following additional information:

- a. The diagnosis of the employee's ~~condition~~ condition.
- b. The appropriate course of ~~treatment~~ treatment.
- c. The anticipated time that the employee will be out of ~~work~~ work.
- d. The relationship, if any, of the employee's condition to the ~~employment~~ employment.
- e. Work restrictions resulting from the ~~condition~~ condition, including whether the employee is able to return to the employee's employment with the employer of injury as provided in an attached job description.
- f. The kind of work for which the employee may be ~~eligible~~ eligible.
- g. The anticipated time the employee will be ~~restricted~~ and restricted.
- h. Any permanent impairment as a result of the condition.

The employer shall provide a copy of the health care provider's response to the employee within 10 business days of its receipt by the employer.

(3) Oral communications with health care providers. – An employer may communicate with the employee's authorized health care provider by oral communication to obtain relevant medical information not contained in the employee's medical records, not available through written communication, and not otherwise available to the employer, subject to the following:

- a. The employer must give the employee prior notice of the purpose of the intended oral communication and an opportunity for the employee to participate in the oral communication at a mutually convenient time for the employer, employee, and health care provider.
- b. The employer shall provide the employee with a summary of the communication with the health care provider within 10 business days of any oral communication in which the employee did not participate.

(d) Additional Information Submitted by the Employer. – Notwithstanding subsection (c) of this section, an employer may submit additional relevant medical information not already contained in the employee's medical records to the employee's authorized health care provider and may communicate in writing with the health care provider about the additional information in accordance with the following procedure:

- (1) The employer shall first notify the employee in writing that the employer intends to communicate additional information about the employee to the employee's health care provider. The notice shall include the employer's proposed written communication to the health care provider and the additional information to be submitted.
- (2) The employee shall have 10 business days from the postmark or verifiable facsimile or electronic mail either to consent or object to the employer's proposed written communication.
- (3) Upon consent of the employee or in the absence of the employee's timely ~~response, objection,~~ the employer may submit the additional information directly to the health care provider.
- (4) Upon making a timely objection, the employee may request a protective order to prevent the written communication, in which case the employer shall refrain from communicating with the health care provider until the Commission has ruled upon the employee's request. If the employee does not file with the Industrial Commission a request for a protective order within the time period set forth in subdivision (2) of subsection (d) of this section, the employer may submit the additional information directly to the health care provider. In deciding whether to allow the submission of additional information to the health care provider, in part or in whole, the Commission shall determine whether the proposed written communication and additional information are pertinent to and necessary for the fair and swift administration and resolution of the workers' compensation claim and whether there is an alternative method to discover the information. If the Industrial Commission determines that any party has acted unreasonably by initiating or objecting to the submission of additional information to the health care provider, the Commission may assess costs associated with any proceeding, including reasonable attorneys' fees and deposition costs, against the offending party.

(e) Any medical records or reports that reflect evaluation, diagnosis, or treatment of the particular injury or disease for which compensation is sought or are reasonably related to the injury or disease for which the employee seeks compensation that are in the possession of a party shall be furnished to the requesting party by the opposing party when requested in writing, except for records or reports generated by a retained expert.

(f) Upon motion by an employee or the health care provider from whom medical records, reports, or information are sought, or with whom oral communication is sought, or upon its own motion, for good cause shown, the Commission may make any order which justice requires to protect an employee, health care provider, or other person from unreasonable annoyance, embarrassment, oppression, or undue burden or expense.

(g) Other forms of communication with a health care provider may be authorized by any of the following:

- (1) A valid written authorization voluntarily given and signed by the employee.
- (2) An agreement of the parties.
- (3) An order of the Industrial Commission issued upon a showing that the information sought is necessary for the administration of the employee's claim and is not otherwise reasonably obtainable under this ~~section~~ section or through other discovery authorized by the rules of the Commission.

(h) The employer may communicate with the health care provider to request medical bills or a response to a pending written request, or about nonsubstantive administrative matters without the express authorization of the employee.

(i) The Commission shall establish ~~annually~~ an appropriate ~~medical~~ fee to compensate health care providers for time spent communicating with the employer or employee. Each party shall bear its own costs for said communication.

(j) No cause of action shall arise and no health care provider shall incur any liability as a result of the release of medical records, reports, or information pursuant to this Article.

(k) For purposes of this section, the term "employer" means the employer, the employer's attorney, and the employer's insurance carrier or third-party administrator; and the term "employee" means the employee, legally appointed guardian, or any attorney representing the employee."

**SECTION 3.** G.S. 97-26 reads as rewritten:

**"§ 97-26. Fees allowed for medical treatment; malpractice of physician.**

(a) Fee Schedule. – The Commission shall adopt by rule a schedule of maximum fees for medical compensation, except as provided in subsection (b) of this section, and shall periodically review the schedule and make ~~revisions pursuant to the provisions of this Article; revisions.~~

The fees adopted by the Commission in its schedule shall be adequate to ensure that (i) injured workers are provided the standard of services and care intended by this Chapter, (ii) providers are reimbursed reasonable fees for providing these services, and (iii) medical costs are adequately contained.

~~Prior to adoption of a fee schedule, the Commission shall publish notice of its intent to adopt the schedule in the North Carolina Register and hold a public hearing. The published notice shall include the location, date and time of the public hearing, the proposed effective date of the fee schedule, the period of time during which the Commission will receive written comments on the proposed schedule, and the person to whom comments and questions should be directed. In addition to publication in the North Carolina Register, the notice may be mailed to parties who have requested notice of the fee schedule hearing. The public hearing shall be held no earlier than 15 days after the publication of the notice. The Commission shall receive written comments for at least 30 days or until the date of the public hearing, whichever is later, after which the Commission may adopt the fee schedule.~~

The Commission may consider any and all reimbursement systems and plans in establishing its fee schedule, including, but not limited to, the State Health Plan for Teachers and State Employees (hereinafter, "State Plan"), Blue Cross and Blue Shield, and any other private or governmental plans. The Commission may also consider any and all reimbursement methodologies, including, but not limited to, the use of current procedural terminology ("CPT") codes, diagnostic-related groupings ("DRGs"), per diem rates, capitated payments, and resource-based relative-value system ("RBRVS") payments. The Commission may consider statewide fee averages, geographical and community variations in provider costs, and any other factors affecting provider costs.

~~An appeal from a decision of the Commission establishing a fee schedule, by any party aggrieved thereby, shall be to the North Carolina Court of Appeals. The decision of the Commission shall be affirmed if supported by substantial evidence. For the purposes of the appeal, the Commission is a party.~~

(b) Hospital Fees. – Each hospital subject to the provisions of this subsection shall be reimbursed the amount provided for in this subsection unless it has agreed under contract with the insurer, managed care organization, employer (or other payor obligated to reimburse for inpatient hospital services rendered under this Chapter) to accept a different amount or reimbursement methodology.

Except as otherwise provided herein, payment for medical treatment and services rendered to workers' compensation patients by a hospital shall be a reasonable fee determined by the ~~Commission. Commission and adopted by rule.~~ Effective September 16, 2001, through June 30, 2002, the fee shall be the following amount unless the Commission adopts a different fee schedule in accordance with the provisions of this section:

- (1) For inpatient hospital services, the amount that the hospital would have received for those services as of June 30, 2001. The payment shall not be more than a maximum of one hundred percent (100%) of the hospital's itemized charges as shown on the UB-92 claim form nor less than the minimum percentage for payment of inpatient DRG claims that was in effect as of June 30, 2001.
- (2) For outpatient hospital services and any other services that were reimbursed as a discount off of charges under the State Plan as of June 30, 2001, the amount calculated by the Commission as a percentage of the hospital charges for such services. The percentage applicable to each hospital shall be

the percentage used by the Commission to determine outpatient rates for each hospital as of June 30, 2001.

- (3) For any other services, a reasonable fee as determined by the Industrial Commission.

~~Notwithstanding any other provisions of law, the Commission's determination of payment rates under this subsection shall:~~

- ~~(1) Comply with the procedures for adoption of a fee schedule established in G.S. 97-26(a);~~
- ~~(2) Include publication of the proposed payment rate, and a summary of the data and calculations on which the rate is based at least 90 days before the proposed effective date;~~
- ~~(3) Be subject to the declaratory ruling provisions of G.S. 150B-4; and~~
- ~~(4) Be deemed to constitute a final permanent rule under Article 2A of Chapter 150B for purposes of judicial review under Article 4 of that Chapter.~~

The explanation of the fee schedule change that is published pursuant to G.S. 150B-21.2(c)(2) shall include a summary of the data and calculations on which the fee schedule rate is based.

A hospital's itemized charges on the UB-92 claim form for workers' compensation services shall be the same as itemized charges for like services for all other payers.

(c) Maximum Reimbursement for Providers Under Subsection (a). – Each health care provider subject to the provisions of subsection (a) of this section shall be reimbursed the amount specified under the fee schedule unless the provider has agreed under contract with the insurer or managed care organization to accept a different amount or reimbursement methodology. In any instance in which neither the fee schedule nor a contractual fee applies, the maximum reimbursement to which a provider under subsection (a) is entitled under this Article is the usual, customary, and reasonable charge for the service or treatment rendered. In no event shall a provider under subsection (a) charge more than its usual fee for the service or treatment rendered.

(d) Information to Commission. – Each health care provider seeking reimbursement for medical compensation under this Article shall provide the Commission information requested by the Commission for the development of fee schedules and the determination of appropriate reimbursement.

(e) When Charges Submitted. – Health care providers shall submit charges to the insurer or managed care organization within 30 days of treatment, within 30 days after the end of the month during which multiple treatments were provided, or within such other reasonable period of time as allowed by the Commission. If an insurer or managed care organization disputes a portion of a health care provider's bill, it shall pay the uncontested portion of the bill and shall resolve disputes regarding the balance of the charges in accordance with this Article or its contractual arrangement.

(f) Repeating Diagnostic Tests. – A health care provider shall not authorize a diagnostic test previously conducted by another provider, unless the health care provider has reasonable grounds to believe a change in patient condition may have occurred or the quality of the prior test is doubted. The Commission may adopt rules establishing reasonable requirements for reports and records to be made available to other health care providers to prevent unnecessary duplication of tests and examinations. A health care provider that violates this subsection shall not be reimbursed for the costs associated with administering or analyzing the test.

(g) Direct Reimbursement. – The Commission may adopt rules to allow insurers and managed care organizations to review and reimburse charges for medical compensation without submitting the charges to the Commission for review and approval.

(g1) Administrative Simplification. – The applicable administrative standards for code sets, identifiers, formats, and electronic transactions to be used in processing electronic medical bills under this Article shall comply with 45 C.F.R. § 162. The Commission shall adopt rules to require electronic medical billing and payment processes, to standardize the necessary medical documentation for billing adjudication, to provide for effective dates and compliance, and for further implementation of this subsection.

(h) Malpractice. – The employer shall not be liable in damages for malpractice by a physician or surgeon furnished by him pursuant to the provisions of this section, but the

consequences of any such malpractice shall be deemed part of the injury resulting from the accident, and shall be compensated for as such.

(i) Resolution of Dispute. – The employee or health care provider may apply to the Commission by motion or for a hearing to resolve any dispute regarding the payment of charges for medical compensation in accordance with this Article."

**SECTION 4.** G.S. 97-26.1 reads as rewritten:

"§ 97-26.1. **Fees for medical records and reports; expert ~~witnesses-witnesses;~~ communications with health care providers.**

The Commission may establish maximum fees for the following when related to a claim under this Article: (i) the searching, handling, copying, and mailing of medical records, (ii) the preparation of medical reports and narratives, ~~and~~ (iii) the presentation of expert testimony in a Commission ~~proceeding-proceeding,~~ and (iv) the time spent communicating with the employer or employee pursuant to G.S. 97-25.6(i)."

**SECTION 5.** G.S. 97-27(b) reads as rewritten:

"(b) In any case arising under this Article in which the employee is dissatisfied with the percentage of permanent disability as provided by G.S. 97-31 and determined by the authorized health care provider, the employee is entitled to have another examination solely on the percentage of permanent disability provided by a duly qualified physician of the employee's choosing who is licensed to practice in North Carolina, or licensed in another state if agreed to by the parties or ordered by the Commission, and designated by the employee. That physician shall be paid by the employer in the same manner as health care providers designated by the employer or the Industrial Commission are paid. The Industrial Commission must either disregard or give less weight to the opinions of the duly qualified physician chosen by the employee pursuant to this subsection on issues outside the scope of the G.S. 97-27(b) examination. No fact that is communicated to or otherwise learned by any physician who attended or examined the employee, or who was present at any examination, shall be privileged with respect to a claim before the Industrial Commission. Provided, however, that all travel expenses incurred in obtaining the examination shall be paid by the employee."

**SECTION 6.** G.S. 97-29(b) reads as rewritten:

"(b) When a claim is compensable pursuant to G.S. 97-18(b), paid without prejudice pursuant to G.S. 97-18(d), agreed by the parties pursuant to G.S. 97-82, or when a claim has been deemed compensable following a hearing pursuant to G.S. 97-84, an employee proves by a preponderance of the evidence that the employee is unable to earn the same wages the employee had earned before the injury, either in the same or other employment, the employee qualifies for temporary total disability subject to the limitations noted herein. The employee shall not be entitled to compensation pursuant to this subsection greater than 500 weeks from the date of first disability unless the employee qualifies for extended compensation under subsection (c) of this section."

**SECTION 7.** G.S. 97-32.2(a) reads as rewritten:

"(a) In a compensable claim, the employer may engage vocational rehabilitation services at any point during a claim, regardless of whether the employee has reached maximum medical improvement to include, among other services, a one-time assessment of the employee's vocational ~~potential-potential,~~ except vocational rehabilitation services may not be required if the employee is receiving benefits pursuant to G.S. 97-29(c) or G.S. 97-29(d). If the employee (i) has not returned to work or (ii) has returned to work earning less than seventy-five percent (75%) of the employee's average weekly wages and is receiving benefits pursuant to G.S. 97-30, the employee may request vocational rehabilitation services, including education and retraining in the North Carolina community college or university systems so long as the education and retraining are reasonably likely to substantially increase the employee's wage-earning capacity following completion of the education or retraining program. Provided, however, the seventy-five percent (75%) threshold is for the purposes of qualification for vocational rehabilitation benefits only and shall not impact a decision as to whether a job is suitable per G.S. 97-2(22). The expense of vocational rehabilitation services provided pursuant to this section shall be borne by the employer in the same manner as medical compensation."

**SECTION 8.(a)** Creation and Membership. – The Joint Legislative Committee on Workers' Compensation Insurance Coverage Compliance and Fraud Prevention and Detection (Committee) is created. The Committee shall consist of eight members to be appointed as follows:

- (1) Four members of the Senate appointed by the President Pro Tempore of the Senate.
- (2) Four members of the House of Representatives appointed by the Speaker of the House of Representatives.

**SECTION 8.(b)** Scope of Review. – The Committee shall:

- (1) Review the statutes relating to workers' compensation in the State to determine whether there are sufficient safeguards to ensure that employers comply with statutory requirements related to workers' compensation insurance coverage and to prevent and detect fraudulent claims before the Industrial Commission.
- (2) Examine the measures taken by the Industrial Commission relating to compliance with statutory requirements related to workers' compensation insurance coverage and to fraudulent claims to determine whether the Commission is using effectively existing powers and resources relating to employer compliance and the prevention of claims fraud.
- (3) Recommend any statutory changes necessary to improve or enhance the Industrial Commission's efforts and effectiveness in securing employer compliance with statutory requirements related to workers' compensation insurance coverage and to the prevention and detection of fraudulent workers' compensation claims.
- (4) Study any other matter related to the integrity of the workers' compensation system that the Committee deems necessary to accomplish its purpose.

**SECTION 8.(c)** A vacancy shall be filled within 30 days by the officer who made the original appointment. The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Committee. The Committee shall meet at least once per quarter, except while the General Assembly is in regular session, and may meet at other times upon the joint call of the cochairs. A quorum of the Committee is five members. No action may be taken except by a majority vote at a meeting at which a quorum is present.

**SECTION 8.(d)** While in the discharge of its official duties, the Committee has the powers of a joint committee under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. Members of the Committee receive subsistence and travel expenses as provided in G.S. 120-3.1. The Committee may contract for consultants or hire employees in accordance with G.S. 120-32.02. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Committee in its work. Upon the direction of the Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of Representatives shall assign clerical staff to the Committee. The expenses for clerical employees shall be borne by the Committee.

**SECTION 8.(e)** Additional Powers. – The Committee, while in discharge of official duties, shall have access to any paper or document, and may compel the attendance of any State official or employee before the Committee or secure any evidence under G.S. 120-19. In addition, G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Committee as if it were a joint committee of the General Assembly.

**SECTION 8.(f)** Reports to Committee. – Whenever a State agency is required by law to report to the General Assembly or to any of its permanent, study, or oversight committees or subcommittees on matters affecting the workforce development system, the Department shall transmit a copy of the report to the cochairs of the Committee.

**SECTION 8.(g)** Reporting/Termination. – The Committee shall report to the 2013 General Assembly on legislation related to the integrity of the workers' compensation system, including statutory changes to strengthen the prevention and detection of workers' compensation fraud. The Committee shall terminate upon submission of its final report to the 2013 General Assembly.

**SECTION 9.** Notwithstanding G.S. 97-31.1, this act is effective when it becomes law. Section 2 of this act applies to claims pending on or after that date. Section 5 of this act applies to travel expenses incurred for examinations under G.S. 97-27(b) on or after that date. Section 6 and Section 7 of this act apply to claims arising on or after June 24, 2011.

In the General Assembly read three times and ratified this the 21<sup>st</sup> day of June, 2012.

s/ Walter H. Dalton  
President of the Senate

s/ Thom Tillis  
Speaker of the House of Representatives

s/ Beverly E. Perdue  
Governor

Approved 8:35 a.m. this 1<sup>st</sup> day of July, 2012