

NORTH CAROLINA GENERAL ASSEMBLY



JOINT LEGISLATIVE COMMITTEE ON WORKERS' COMPENSATION INSURANCE COVERAGE COMPLIANCE AND FRAUD PREVENTION AND DETECTION (2011)

REPORT TO THE
2013 SESSION
of the
2013 GENERAL ASSEMBLY
OF NORTH CAROLINA

JANUARY, 2013

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TRANSMITTAL LETTER

January 29, 2013

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TO THE MEMBERS OF THE 2013 REGULAR SESSION
OF THE 2013 GENERAL ASSEMBLY

The **JOINT LEGISLATIVE COMMITTEE ON WORKERS' COMPENSATION INSURANCE COVERAGE COMPLIANCE AND FRAUD PREVENTION AND DETECTION (2011)** respectfully submits the following report to the 2013 Regular Session of the 2013 General Assembly.



Sen. Harry Brown (Chair)



Rep. Dale Folwell (Chair)

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COMMITTEE PROCEEDINGS

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The Joint Legislative Committee on Workers' Compensation Insurance Coverage Compliance and Fraud Prevention and Detection (2011) met three times on November 28, 2012, December 12, 2012, and January 29, 2013. The following is a brief summary of the Committee's proceedings. Detailed minutes and information from each Committee meeting are available in the Legislative Library.

November 28, 2012

Presentations were received on the following subjects:

House Bill 709 (S.L. 2011-287):

- Bruce Hamilton and Gina Cammarano, practitioners in workers' compensation proceedings on behalf of employers and employees, respectively, described the process that led to the stakeholders' consensus on House Bill 709, and told the Committee that the bill had resulted in a number of changes that are intended to result in getting injured workers back to work sooner, including: more streamlined communications with doctors; better control of medical treatment; improved vocational rehabilitation benefits; and a 500 week cap on temporary total disability benefits.

Abuse of Minimum Coverage Policies ("Ghost Policies")

- Committee Counsel Bill Patterson explained that "ghost policies" are ordinary workers' compensation insurance policies that are issued to individuals who purport to be sole proprietors with no employees, and who are not themselves covered under the policy.
- Practitioner and treatise author Leonard Jernigan told the Committee that there is a legitimate purpose for issuing "ghost policies" in that general contractors need to obtain proof of insurance from subcontractors under G.S. 97-19. If the sub is a sole proprietor with no employees, the policy provides coverage for any employees the sub may hire in the future. Mr. Jernigan stated that problems arise when the policy holder is not a sole proprietor, but rather is an employee of a subcontractor. He suggested that applicants for insurance be required to fill out a form to provide information that might indicate whether the applicant is really a sole proprietor, or is another subcontractor's employee. He also supported more vigorous efforts to detect the misclassification of employees as independent contractors, and suggested that the General Assembly consider establishing an uninsured employee fund.

- Ray Evans, Executive Director of the N.C. Rate Bureau, told the Committee that there is a need for minimum coverage policies, which is his preferred term for "ghost policies" in the case of sole proprietors who are independent contractors with no current employees, who do not know how much work they will have during the coming year, and who need a policy that will cover any employees they may hire. Without minimum coverage policies those sole proprietors would not be able to find work because the general contractor requires them to show proof of insurance.
- Stuart Powell, Vice President of Insurance Operations and Technical Affairs, Independent Insurance Agents of North Carolina, told the Committee that his association represents between 800 and 900 agencies and more than 6,000 independent insurance agents. He stated that one-third of the calls he handles involving coverage and claim issues involve misclassification of employees and issues with obtaining required certificates of insurance. Mr. Powell told the Committee that problems with "ghost policies" arise from employee misclassification motivated by the financial incentive under current law, which excludes a sole proprietor from coverage unless he or she elects to have this coverage. One possible solution, according to Mr. Powell, would be to reverse the current situation by having the policy automatically cover everyone, unless the sole proprietor affirmatively opts-out.
- Mike Carpenter, Executive Vice President of the N.C. Home Builders Association, stated that general contractors must pay for injured employees unless all of the subcontractors have provided certificates of insurance. He also stated that confusion results from the fact that the distinctions between subcontractors and employees are not always clear. As an example of the cost difference resulting from the decision whether or not to include or exclude the sole proprietor from coverage, Mr. Carpenter stated that a mason with no employees will pay \$1,000 per year for a policy if he exempts himself from coverage, but will pay \$2,827 if he is included in the policy, and a trim carpenter will pay \$1,000 per year if exempted, but \$2,788 if included. Mr. Carpenter agreed that there is abuse of "ghost policies" and that the system needs reforming, but stated that he could not offer a solution.
- Wanda Taylor, Chief Deputy Commissioner of the Industrial Commission, explained that she frequently hears claims involving ghost policies, for which she believes there is a practical need and legitimate use, but which are also abused. Some policyholders do not realize that they are not covered, while others have made a conscious choice to exclude themselves to save money. She suggested that requiring the application form for policies to require the applicant to acknowledge either that he or she is or is not excluded from coverage, would help to avoid misunderstanding on this issue.

Fraud Prevention and Detection

- Industrial Commission Chair Pamela Young told the Committee that the Commission is kept very busy investigating workers pretending to be hurt as well as employers not carrying required insurance, and that the Commission is currently understaffed to investigate fraud.
- Sam Constance, Chief Investigator for the Commission's Fraud Investigations Section, told the Committee that his section has only five employees to investigate fraud claims, and works with the Attorney General's office to prosecute fraud. In order to be compliance-driven rather than complaint-driven as it now is, there would need to be changes in the laws, improved information technology, and additional staff. Mr. Constance stated that currently there is no way to track employees who file repeated claims as they move from job to job.

Disclosure of Employer Coverage Information under G.S. 58-36-17

- Mark Prak, Counsel to the N.C. Press Association, stated that information concerning employers' lack of workers' compensation insurance should be a matter of public record and the legislature should give the public better access to this data.
- Steve Riley, Senior Editor for Investigations, News and Observer, described the information that was available from the Industrial Commission prior to the enactment of G.S. 58-36-17, which permitted the publication of a series of news stories disclosing that approximately 30,000 North Carolina employers fail to purchase required workers' compensation insurance. Mr. Riley stated that the information available from the Commission after enactment of G.S. 58-36-17 does not permit employees or others to confirm the coverage status of employers.
- Ray Evans, Executive Director, N.C. Rate Bureau, explained that the members of the Rate Bureau have concerns about public access to the data shared with the Industrial Commissions, because of the commercialization of the information by third parties who sell it to competitors of the carriers whose data is being provided to the Commission by the Rate Bureau.
- Mike Strickland, Counsel to the N.C. Rate Bureau, explained that the Rate Bureau does not oppose a change to G.S. 58-36-17 to permit release of the name and address of the employer and the policy number and effective date. The members of the Rate Bureau continue to object to release of the identity of the carrier.

- Chair Pamela Young said that the Industrial Commission continues to receive information from the Rate Bureau, and will release such information as is permitted by law.

Co-Chair Rep. Folwell requested that the Industrial Commission, Rate Bureau, and Press Association confer and attempt to reach a consensus on changes to the current law that will permit additional information to be released by the Commission, and to report back to the Committee on their progress.

Rep. Folwell also asked the persons presenting on the issue of "Ghost Policies" to engage in discussions and to formulate best practices for the insurance industry designed to reduce or prevent the abuse of minimum coverage workers' compensation insurance policies, and to present any recommendations for desired legislation to address this issue to the 2013 General Assembly, in consultation with the Department of Insurance.

December 12, 2012

Presentations were received on the following subjects:

N.C. Medical Treatment Costs Compared with other States

- Committee Counsel Bill Patterson summarized a presentation to the House Insurance Committee in April 2011 by Dr. Richard Victor, presenting the results of a study by the Workers Compensation Insurance Institute comparing the medical treatment costs for workers' compensation in North Carolina and 15 other states, which found North Carolina highest in recent years in average cost, indemnity benefits, and hospital payments, and third-highest in disc cases with surgery and payment per incident. Mr. Patterson also explained current statutory provisions granting the employer/carrier a lien upon funds recovered by the employee from a third party for the amount of workers' compensation benefits received by the employee when the injuries are the result of a motor vehicle accident caused by the third-party's negligence.

Information on Workers' Compensation Claims by State Employees

- Lou Kost, HR Manager for the Office of State Personnel, and Dr. Ben Matthews, Director of School Support at the Department of Public Instruction, presented information on the volume and cost to the State of workers' compensation claims brought by public employees.
- Ms. Kost explained that the State is self-insured and pays workers' compensation claims as they occur, but does not have a budgeted line item for workers' compensation. She further explained that each State agency handles its own workers' compensation claims internally; the Office of State Personnel assists with claims, but does not mandate that an agency handle a claim in any particular manner. Ms. Kost presented a Summary Comparison

Report for fiscal years 2004/2005 through 2011/2012. The chart indicates that the number of “covered employees” for fiscal year 2011/2012 was 147,019, encompassing every person who receives a paycheck from the State, including temporary and contract employees. According to the chart, the number of workers’ compensation claims has decreased over time. For comparison, in 2004/2005 the total number of claims was 8,050; in 2011/2012, the total number of claims was 6,172. Total annual workers’ compensation expenditures (not adjusted for inflation) have increased from \$45,484,409 in 2004/2005 to \$75,050,135 in 2011/2012. Ms. Kost stated that the increase resulted in part from a decline in settlement of claims caused by lack of available funds. When a case does not settle, temporary total disability benefits paid to the injured worker, as well as payment of medical expenses, are ongoing and tend to increase over time because the worker often develops additional medical problems stemming from the original injury, such as depression. Furthermore, settlements must not only take into account the money paid to the worker, but there must also be a Medicare set aside placed in a trust fund to pay medical expenses so that Medicare will not end up paying for the work injury. Ms. Kost stated that it may be prudent for State agencies to reserve funds to pay settlements. When asked if HB 709 has made a difference, Ms. Kost stated that it has in that it is now clear that workers should return to work during the healing period.

- Mr. Matthews informed the Committee that there are approximately 175,630 public school employees, comprising 57% of the State’s workers. Mr. Matthews provided a handout showing the workers compensation benefits paid in FY 2011/12, as well as the portion of the total representing benefits paid for claims filed in prior years. Of the total of \$55,034,941 paid in the most recently completed fiscal year, \$10,067,589 represented benefits for claims filed in that year. The balance was for benefits paid to persons for claims filed in earlier years. Mr. Matthews stated that HB 709 has been beneficial, but it will take approximately a year to know more quantitatively what its impact has been.
- In addition to the handouts presented by Ms. Kost and Mr. Matthews at the meeting, Appendix D to this report includes a table prepared by Committee staff showing the inflation-adjusted expenditures corresponding to the OSP workers' compensation expenditures shown in Ms. Kost's handout, and a table based on information obtained from the Department of Public Instruction showing the occupational breakout of the \$55 million in workers' compensation benefits paid to public school employees in FY2011-12.

Report on Stakeholder Agreement on Changes to G.S. 58-36-17

- The Committee received a report from the Industrial Commission, the N.C. Rate Bureau, and the N.C. Press Association on amendments to G.S. 58-36-17 to broaden the scope of employer workers' compensation insurance coverage

information that may be released to the public. The parties announced their agreement to the terms of a draft bill, which was circulated to the Committee, authorizing the Industrial Commission to release the same information to the public that was permitted prior to the 2012 enactment of G.S. 58-36-17.

Employer and Employee Fraud

- Gary Salamido presented the views of the N.C. Chamber on the subject of employee and employer fraud in workers' compensation claims and coverage requirements.
- Kay Meyer, Program Director of Statewide Data Integration at the Office of the State Controller, explained the ways in which the Government Business Intelligence Competency Center can work with the Industrial Commission to improve and enhance the Commission's fraud detection and prevention efforts through data integration and analysis.

After these presentations, the Committee was advised by Gary Salamido with the N.C. Chamber of Commerce and Chip Baggett with the N.C. Medical Society that representatives of medical providers, businesses and insurers have been making progress in discussions of ways to address concerns with increased medical costs associated with workers' compensation claims.

January 29, 2013

At its third and final meeting, the Committee considered and approved this final report to the 2013 General Assembly.

FINDINGS AND RECOMMENDATIONS

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Expanding Public Access to Employer Workers' Compensation Coverage Information

The Committee finds that it is in the public interest to expand the categories of information relating to employer workers' compensation insurance coverage that the Industrial Commission is authorized to release to the public, as agreed to by the Industrial Commission, the N.C. Rate Bureau, and the N.C. Press Association. The Committee is informed that upon receiving this authorization, the Industrial Commission will make this information available on its website. The Committee therefore recommends enactment of Bill Draft 2013-TGz-2 [v.4] enclosed in Appendix C to authorize the Industrial Commission to release this information.

Improving Efficiency in the Management of Public Employee Workers' Compensation Claims

The Committee finds that the cost to the State of workers' compensation claims submitted by State and local government employees has risen significantly over the past several years and that it is desirable to consider ways in which efficiency in the management of these claims can be improved. The Committee therefore recommends enactment of Bill Draft 2013-MLz-27 [v.3] enclosed in Appendix C to require the Office of State Personnel, in conjunction with the Department of Public Instruction and the State Budget Office, to study this issue and report their findings and recommendations to the 2013 General Assembly.

Employer and Employee Fraud Detection and Prevention

The Committee finds that the State Controller, through the Government Business Intelligence Competency Center (GBICC), has technical expertise in data analysis that will benefit the Industrial Commission in the detection and prevention of workers' compensation fraud by employers and employees. The Committee therefore recommends enactment of Bill Draft 2013-LRz-28A [v. 2] enclosed in Appendix C to require agencies to work with the State Controller as necessary to support GBICC in this project.

Controlling Medical Costs in Workers' Compensation Claims

The Committee finds that the average workers' compensation cost per claim over the years 2006-2009 was significantly higher in North Carolina than in the other states in a study conducted by the Workers Compensation Research Institute. In that study, North Carolina ranked highest of the 16 study states in average hospital payment per claim and average hospital outpatient payment per claim, and ranked third-highest in average hospital payment per inpatient episode.

In response to concerns over these increasing medical costs, representatives of doctors, hospitals, insurers, and the business community met and agreed to a revised schedule of fees payable for treatment of injured workers, which was adopted on by the Industrial Commission as [04 NCAC 10J .0101 Fees for Medical Compensation](#). As a result of this revision, effective February 1, 2013, hospital inpatient and outpatient visits and ambulatory surgery rates will be frozen at the rates that were in effect on June 30, 2012. Further, effective April 1, 2013, the minimum payment rate in effect as of that date for inpatient services will be reduced by 10%, the payment rate in effect on that date for outpatient services and ambulatory center surgery will be reduced by 15%, and implants will be paid at no more than 28% above invoice costs.

The Committee is informed that the stakeholders have agreed to fund a comprehensive review of fee schedules for North Carolina's workers' compensation system to better determine what reimbursement rates should be, taking into consideration the rates charged in other states and the need for access, and that the anticipated completion date for this study is in the second quarter 2013. Based upon the stakeholders' progress to date, the Committee recommends that the General Assembly defer taking further action pending its consideration of the results of the study being undertaken by joint effort of the business, insurance, and medical industry stakeholders.

COMMITTEE MEMBERSHIP AND STAFF

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Members

President Pro Tempore of the Senate Appointments:

Sen. Harry Brown (Chair)

Sen. Andrew Brock
Sen. Warren Daniel
Sen. E. Newton

Speaker of the House of Representatives Appointments:

Rep. Dale Folwell (Chair)

Rep. Jeffrey Collins
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COMMITTEE CHARGE/STATUTORY AUTHORITY

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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.

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.

Authority: S.L. 2012-135, s. 8.

LEGISLATIVE PROPOSALS

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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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BILL DRAFT 2013-TGz-2 [v.4] (12/12)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

1/10/2013 11:01:45 AM

Short Title: Workers Comp Coverage/Public Records. (Public)

Sponsors: (Primary Sponsor).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PERMIT DISCLOSURE OF CERTAIN INFORMATION PERTAINING
TO WORKERS' COMPENSATION COVERAGE BY THE NORTH CAROLINA
INDUSTRIAL COMMISSION, AS RECOMMENDED BY THE JOINT
LEGISLATIVE COMMITTEE ON WORKERS' COMPENSATION INSURANCE
COVERAGE COMPLIANCE AND FRAUD PREVENTION AND DETECTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-36-17 reads as rewritten:

"§ 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. Notwithstanding the previous sentence and with respect to policies becoming effective on and after January 1, 2012, the North Carolina Industrial Commission may release data showing ~~workers~~ workers' compensation insurance policy information that includes ~~only~~ only: employer name and address; carrier name, address and telephone number; policy number; policy effective ~~dates,~~ dates; policy cancellation ~~dates,~~ dates; and policy reinstatement dates. This data shall not be confidential data and shall be a public record 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. This act is effective when it becomes law.

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013**

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D

BILL DRAFT 2013-MLz-27 [v.3] (01/09)

**(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
1/10/2013 12:42:21 PM**

Short Title: Study Savings for Administration of Claims. (Public)

Sponsors: Unknown (Primary Sponsor).

Referred to:

- 1 A BILL TO BE ENTITLED
2 AN ACT TO DIRECT THE OFFICE OF STATE PERSONNEL, IN CONJUNCTION
3 WITH THE DEPARTMENT OF PUBLIC INSTRUCTION AND THE OFFICE OF
4 STATE BUDGET AND MANAGEMENT, TO STUDY AND MAKE
5 RECOMMENDATIONS REGARDING THE MANAGEMENT OF WORKERS'
6 COMPENSATION CLAIMS SUBMITTED BY STATE AND LOCAL
7 GOVERNMENT EMPLOYEES, AS RECOMMENDED BY THE JOINT
8 LEGISLATIVE COMMITTEE ON WORKERS' COMPENSATION INSURANCE
9 COVERAGE COMPLIANCE AND FRAUD PREVENTION AND DETECTION.
10 The General Assembly of North Carolina enacts:
11 **SECTION 1.** The Office of State Personnel, in conjunction with the
12 Department of Public Instruction and the Office of State Budget and Management, shall
13 study the expenses related to the management of workers' compensation claims
14 submitted by State and local government employees, and make recommendations as to
15 how efficiency can be improved and expenses can be reduced. The study shall examine
16 at least all of the following:
17 (1) An identification of State agencies that currently include budget line
18 items for expenses related to workers' compensation claims.
19 (2) An identification of State agencies that do not currently include budget
20 line items for expenses related to workers' compensation claims,
21 including an explanation as to how these expenses are paid.
22 (3) An explanation of how the expenses related to the management of
23 workers' compensation claims are allocated among the State agencies,
24 including fees and expenses payable to third-party administrators and
25 legal fees and expenses incurred in the defense of these claims.
26 (4) Recommendations for alternative budgeting methods that can be used
27 for anticipated expenses related to workers' compensation claims,
28 including the use of a fractional percentage of State agency payroll
29 based on historical data or actuarial analysis.

- 1 (5) In order to increase the flexibility of State agencies to settle workers'
2 compensation claims, recommendations for alternative budgeting
3 methods that can be used for anticipated expenses related to lump sum
4 settlements of workers' compensation claims.
- 5 (6) Recommendations for strategies that may be implemented to further
6 motivate State agencies to return injured employees to work as soon as
7 possible.
- 8 (7) An identification of State agencies that would be the best candidates
9 for a pilot program to assess the efficacy of implementing one or more
10 of the recommendations identified in this study for achieving greater
11 efficiency and reducing expenses in the management of workers'
12 compensation claims.

13 **SECTION 2.** No later than October 1, 2013, the Office of State Personnel
14 shall report its findings and recommendations to the General Assembly.

15 **SECTION 3.** This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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D

BILL DRAFT 2013-LRz-28A [v.2] (01/07)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

1/10/2013 3:49:59 PM

Short Title: GBICC/Workers' Comp Program Integrity.

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED

2 AN ACT REQUIRING THAT THE STATE CONTROLLER, GOVERNMENT
3 BUSINESS INTELLIGENCE COMPETENCY CENTER, ENHANCE THE
4 STATE'S ENTERPRISE-LEVEL BUSINESS INTELLIGENCE THROUGH THE
5 COLLECTION AND ANALYSIS OF DATA FROM VARIOUS STATE
6 AGENCIES RELATED TO WORKERS' COMPENSATION INSURANCE
7 COVERAGE AND CLAIMS FOR THE PURPOSE OF FRAUD PREVENTION
8 AND DETECTION, AS RECOMMENDED BY THE JOINT LEGISLATIVE
9 COMMITTEE ON WORKERS' COMPENSATION INSURANCE COVERAGE
10 COMPLIANCE AND FRAUD PREVENTION AND DETECTION.

11 The General Assembly of North Carolina enacts:

12 **SECTION 1.** Section 6A.7A(g) of S.L. 2012-142 is amended by adding a
13 new subdivision to read:

14 **"SECTION 6A.7A.(g)** Miscellaneous Provisions. –

15 ...

16 (3) Workers' Compensation Program Integrity. – The State Controller and
17 the GBICC shall enhance the State's business intelligence through the
18 collection and analysis of data relating to workers' compensation
19 claims for the purpose of preventing and detecting fraud, as follows:

20 a. The North Carolina Industrial Commission shall release to
21 GBICC, or otherwise provide electronic access to, all data
22 requested by GBICC relating to workers' compensation
23 insurance coverage, claims, appeals, compliance, and
24 enforcement under Chapter 97 of the General Statutes

25 b. The North Carolina Rate Bureau shall release to GBICC, or
26 otherwise provide electronic access to, all data requested by
27 GBICC relating to workers' compensation insurance coverage,
28 claims, business ratings, and premiums under Chapter 58 of the
29 General Statutes.

30 c. The Department of Commerce, Division of Employment
31 Security (DES), shall release to GBICC, or otherwise provide

1 access to, all data requested by GBICC relating to
2 unemployment insurance coverage, claims, and business
3 reporting under Chapter 96 of the General Statutes.

4 d. The Department of Labor shall release to GBICC, or otherwise
5 provide access to, all data requested by GBICC relating to
6 safety inspections, wage and hour complaints, and enforcement
7 activities under Chapter 95 of the General Statutes.

8 e The Department of Revenue shall release to GBICC, or
9 otherwise provide access to, all data requested by GBICC
10 relating to the registration and address information of active
11 businesses, business tax reporting, and aggregate federal tax
12 Form 1099 data for comparison with information from DES, the
13 Rate Bureau, and the Secretary of State's Office for the
14 evaluation of business reporting. The Department of Revenue
15 and the Office of the State Controller shall work jointly to
16 assure that the evaluation of tax information pursuant to this
17 subdivision is performed in accordance with applicable federal
18 law.

19 f. All information shared with GBICC and the State Controller
20 under this subdivision is protected from release and disclosure
21 in the same manner as any other information available to
22 GBICC and the State Controller pursuant to this section."

23 **SECTION 2.** This act is effective when it becomes law.
24

SUPPORTING DOCUMENTATION

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NORTH CAROLINA STATE GOVERNMENT WORKERS' COMPENSATION PROGRAM

SUMMARY COMPARSION REPORT - FISCAL YEARS 2004/05 through 2011/12

	FY 04/05	FY 05/06	FY 06/07	FY 07/08	FY 08-09	FY 09-10	FY 10-11	FY 11-12
EMPLOYMENT INFORMATION								
Number of Covered Employees	159,137	162,335	165,396	168,716	171,208	164,669	158,037	147,019
Number of Man-hours	300,566,811	300,775,537	313,533,535	320,605,664	328,223,345	304,149,084	304,696,268	291,028,978
Number of Death Cases	0	3	4	6	0	1	1	1
NEW INJURIES / ILLNESSES CASES								
Injury & illnesses cases with Lost Workdays	881	766	535	491	569	660	511	466
Injury & illnesses cases without Lost Workdays	6,954	7,088	6,954	6,677	5,798	5,827	5,578	5,735
Injury & illnesses cases with restricted Workdays	257	235	231	219	302	292	249	123
TOTAL NEW REPORTED CASES	8,092	8,089	7,720	7,387	6,669	6,779	6,338	6,324
TOTAL # OF LOST & RESTR. WORKDAYS	127,613	141,495	135,588	148,853	138,266	209,924	238,161	292,889
WORKERS' COMPENSATION								
Medical Only Claims	7,037	7,143	6,731	6,282	5,561	5,382	5,062	4,896
Indemnity Claims	1,013	873	765	805	760	1,012	1,219	1,276
TOTAL NUMBER OF WC CLAIMS	8,050	8,016	7,496	7,087	6,321	6,394	6,281	6,172
Number of Denied Claims	62	91	238	328	330	269	292	312
ACCIDENT & INJURY EXPENDITURES								
Medical	\$ 22,996,435	\$ 23,235,647	\$ 26,584,845	\$ 24,001,716	\$ 31,652,384	\$ 33,280,984	\$ 38,126,447	\$ 40,224,809
Temporary Disability Payments	\$ 10,485,960	\$ 11,363,948	\$ 12,211,444	\$ 13,497,474	\$ 15,616,123	\$ 19,658,037	\$ 23,227,631	\$ 27,630,500
Permanent Disability Payments	\$ 8,719,648	\$ 10,699,277	\$ 11,890,139	\$ 13,688,620	\$ 9,943,946	\$ 5,464,631	\$ 6,255,318	\$ 4,218,953
Death Benefits	\$ 493,059	\$ 700,506	\$ 636,216	\$ 786,882	\$ 898,957	\$ 457,757	\$ 671,421	\$ 753,869
Other Costs	\$ 2,789,307	\$ 3,199,655	\$ 3,082,244	\$ 2,931,877	\$ 1,710,179	\$ 1,845,583	\$ 2,237,351	\$ 2,222,004
TOTAL WC EXPENDITURES	\$ 45,484,409	\$ 49,199,032	\$ 54,404,888	\$ 54,906,569	\$ 59,821,589	\$ 60,706,992	\$ 70,518,168	\$ 75,050,135
In-house Treatment Cost	\$ 359,334	\$ 362,973	\$ 321,307	\$ 243,753	\$ 459,976	\$ 318,623	\$ 197,347	\$ 292,889
Cost of Salary Continuation	\$ 1,565,447	\$ 1,433,868	\$ 1,671,307	\$ 1,679,463	\$ 3,772,099	\$ 3,880,457	\$ 4,357,138	\$ 3,544,761
Subrogation	\$ 331,020	\$ 291,394	\$ (368,684)	\$ (473,898)	\$ (314,004)	\$ (379,690)	\$ (496,315)	\$ (392,625)
TOTAL DOLLAR LOSS	\$ 45,843,743	\$ 49,562,005	\$ 56,028,818	\$ 56,355,887	\$ 63,739,660	\$ 64,526,382	\$ 74,576,338	\$ 78,495,160
SUMMARY INFORMATION								
AVERAGE WC COST PER EMPLOYEE	\$ 286	\$ 303	\$ 329	\$ 325	\$ 349	\$ 369	\$ 446	\$ 510
COST IN LOSS OF PRODUCTIVITY	\$ 17,168,366	\$ 19,209,035	\$ 20,194,790	\$ 23,110,573	\$ 21,466,860	\$ 32,592,316	\$ 36,976,327	\$ 47,229,478
TOTAL DOLLAR LOSS + PRODUCTIVITY	\$ 63,012,109	\$ 68,771,040	\$ 76,223,608	\$ 79,466,460	\$ 85,206,520	\$ 97,118,698	\$ 111,552,665	\$ 125,724,638

North Carolina State Government Workers' Compensation (WC) Program
Fiscal Years 2004-05 to 2011-12
Adapted from Office of State Personnel's (OSP) Schedule 1

	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12
OSP WC Expenditures, Nominal	\$45,484,409	\$49,199,032	\$54,404,888	\$54,906,569	\$59,821,589	\$60,706,992	\$70,518,168	\$75,050,135
OSP WC Expenditures, Real 2012 Dollars	\$53,683,813	\$55,737,286	\$60,018,803	\$57,721,203	\$63,686,492	\$63,896,536	\$71,704,046	\$75,050,135

Source: USDOL, BLS, CPI-U, US City Average. Available at <http://www.bls.gov/cpi/>

Workers' Compensation Benefits

**HOW MUCH DO THESE BENEFITS COST
DPI**

FY 2012 Comparisons – WC

FY12 Indemnity Lost time claims/wages @ 66 2/3rds	\$ 22,414,675
FY12 Medical 100% of medical paid – Related to injury	\$32,620,266
Total:	\$ 55,034,941 – over 3,700 open claims

WC PAYMENTS BY FISCAL YEARS

Claim Year	FY 12 Paid Benefits
Prior to 2000	\$ 2,604,939 – 87 Claims
2000	\$ 643,471
2001	\$ 729,604
2002	\$ 676,606
2003	\$ 1,447,456
2004	\$ 1,389,618
2005	\$ 1,721,545
2006	\$ 1,210,711
2007	\$ 2,662,969
2008	\$ 3,437,046
2009	\$ 5,878,448
2010	\$ 9,591,089
2011	\$12,973,849
2012	\$10,067,589
TOTAL	\$55,034,941

**North Carolina's Department of Public Instruction
 FY 2011-12 Worker's Compensation (WC) Benefits
 Payments by Occupation (\$ in millions)**

Occupation	Paid Benefits	% of Total
Bus Driver	6.3	11.5%
Cafeteria	0.8	1.4%
Coach	1.8	3.2%
Custodian	7.9	14.3%
Maintenance	1.4	2.6%
Other	4.4	8.0%
Principal	2.2	4.1%
Teacher	21.8	39.7%
Teachers' Assistant	8.4	15.3%
TOTAL	\$55.0	100.0%

Source: DPI

Notes: This \$55 M (representing over 3,700 open claims) is attributed to state-funded positions, as well as the state's portion of split-funded positions. This amount does not include those WC costs that are associated with federally and locally funded positions.

Staff Summary of Portions of Presentation to House Insurance
Committee on April 5, 2011, by Dr. Richard Victor, WCRI

Dr. Victor, Executive Director of the Workers Compensation Research Institute, told the Committee that WCRI is a not-for-profit public policy research institute operating since 1983 in Cambridge, Massachusetts, with funding from diverse membership dues, including:

- Employers, insurers, and third party administrators
- State governments in U.S., Canada and Australia
- Health care provider and managed care organizations
- Several state labor organizations

Dr. Victor stated that WCRI does not take positions in its studies, which are subject to external peer review, and which focus on benefit delivery system, not on insurance mechanism or pricing.

According to Dr. Victor, WCRI compared the cost of workers compensation claims in sixteen states, including North Carolina, looking at claims involving more than 7 days of lost time, and the results of this comparison included the following:

- From 2003 to 2008, NC total costs per claim increased more than the median state in the study (47% versus 30%)
- For claims from 2007-2008, the average outpatient hospital payment per claim was 53% higher in NC than in the median state in the study (\$5,883 v. \$3,848), and the average inpatient hospital payment per claim was 42% higher in NC than in the median state (\$29,214 v. \$20,633)
- NC ranked highest of the 16 study states in the following categories:
 - average total costs per claim (2006-2009)
 - average total indemnity benefits per claim (2006-2009)
 - average hospital payment per claim (2007-2009)
 - average hospital outpatient payment per claim (2008-2009)
- NC was the third-highest of the study states in the following categories:
 - percentage of disc cases with surgery (2000-2003)
 - average hospital payment per inpatient episode (2007-2009)

1 4 NCAC 10J.0101 is amended as published in 27:02 NCR 237 as follows:
2

3 **SUBCHAPTER 10J – FEES FOR MEDICAL COMPENSATION**
4

5 **SECTION 0100 – FEES FOR MEDICAL COMPENSATION**
6

7 **04 NCAC 10J .0101 FEES FOR MEDICAL COMPENSATION**

8 (a) The Commission has adopted and published a Medical Fee Schedule, pursuant to the provisions of G.S. 97-
9 26(a), setting maximum amounts, except for hospital fees pursuant to G.S. 97-26(b), that may be paid for medical,
10 surgical, nursing, dental, and rehabilitative services, and medicines, sick travel, and other treatment, including
11 medical and surgical supplies, original artificial members as may reasonably be necessary at the end of the healing
12 period and the replacement of such artificial members when reasonably necessitated by ordinary use or medical
13 circumstances. The amounts prescribed in the applicable published Fee Schedule shall govern and apply according
14 to G.S. 97-26(c). ~~However, in other hardship cases where~~ Where sufficient reason is demonstrated to the
15 Commission, amounts in excess of those so published may be allowed.

16 (b) The Commission's Medical Fee Schedule contains maximum allowed amounts for medical services provided
17 pursuant to Chapter 97 of the General Statutes. The Medical Fee Schedule utilizes 1995 through the present,
18 Current Procedural Terminology (CPT) codes adopted by the American Medical Association, Healthcare Common
19 Procedure Coding Systems (HCPCS) codes, and jurisdiction-specific codes. A listing of the maximum allowable
20 amount for each code is available on the Commission's website at <http://www.ic.nc.gov/ncic/pages/feesched.asp> and
21 in hardcopy at 430 N. Salisbury Street, Raleigh, North Carolina.

22 (c) The following methodology provides the basis for the Commission's Medical Fee Schedule:

23 (1) CPT codes for General Medicine are based on 1995 North Carolina Medicare values multiplied
24 by ~~1.58.~~ 1.58, except for CPT codes 99201-99205 and 99211-99215, which are based on 1995
25 Medicare values multiplied by 2.05.

26 (2) CPT codes for Physical Medicine are based on 1995 North Carolina Medicare values multiplied
27 by ~~1.30.~~ 1.36.

28 (3) CPT codes for Radiology are based on 1995 North Carolina Medicare values multiplied by 1.96.

29 (4) CPT codes for Surgery are based on 1995 North Carolina Medicare values multiplied by 2.06.

30 (d) The Commission's Hospital Fee Schedule, adopted pursuant to G.S. 97-26(b), provides for payment as follows:

31 (1) Inpatient hospital fees: Inpatient services are reimbursed based on a Diagnostic Related
32 Groupings (DRG) methodology. The Hospital Fee Schedule utilizes the 2001 Diagnostic Related
33 Groupings adopted by the State Health Plan. Each DRG amount is based on the amount that the
34 State Health Plan had in effect for the same DRG on June 30, 2001.

35 DRG amounts are further subject to the following payment band that establishes maximum and
36 minimum payment amounts:

37 (A) The maximum payment is 100 percent of the hospital's itemized charges.

1 (B) For hospitals other than critical access hospitals, the minimum payment is 75 percent of
2 the hospital's itemized charges. Effective February 1, 2013, the minimum payment rate is
3 the amount provided for under Subparagraph (5) below, subject to adjustment on April 1,
4 2013 as provided therein.

5 (C) For critical access hospitals, the minimum payment is 77.07 percent of the hospital's
6 itemized charges. Effective February 1, 2013, the minimum payment rate is the amount
7 provided for under Subparagraph (5) below, subject to adjustment on April 1, 2013 as
8 provided therein.

9 (2) Outpatient hospital fees: Outpatient services are reimbursed based on the hospital's actual charges
10 as billed on the UB-04 claim form, subject to the following percentage discounts:

11 (A) For hospitals other than critical access hospitals, the payment shall be 79 percent of the
12 hospital's billed charges. Effective February 1, 2013, the payment is the amount provided
13 for under Subparagraph (5) below, subject to adjustment on April 1, 2013 as provided
14 therein.

15 (B) For critical access hospitals, the payment shall be 87 percent of the hospital's billed
16 charges. For purposes of the hospital fee schedule, critical access hospitals are those
17 hospitals designated as such pursuant to federal law (42 CFR 485.601 et seq.) Effective
18 February 1, 2013, the critical access hospital's payment is the amount provided for under
19 Subparagraph (5) below, subject to adjustment on April 1, 2013 as provided therein.

20 (3) Ambulatory surgery fees: Ambulatory surgery center services are reimbursed at 79 percent of
21 billed charges. Effective February 1, 2013, the ambulatory surgery center services are reimbursed
22 at the amount provided for under Subparagraph (5) below, subject to adjustment on April 1, 2013
23 as provided therein.

24 (4) Other rates: If a provider has agreed under contract with the insurer or managed care organization
25 to accept a different amount or reimbursement methodology, that amount or methodology
26 establishes the applicable fee.

27 (5) Payment levels frozen and reduced pending study of new fee schedule: Effective February 1, 2013,
28 inpatient and outpatient payments for each hospital and the payments for each ambulatory surgery
29 center shall be set at the payment rates in effect for those facilities as of June 30, 2012. Effective
30 April 1, 2013, those rates shall then be reduced as follows:

31 (A) Hospital outpatient and ambulatory surgery: The rate in effect as of that date shall be
32 reduced by 15 percent.

33 (B) Hospital inpatient: The minimum payment rate in effect as of that date shall be reduced
34 by 10 percent.

35 (6) Effective April 1, 2013, implants shall be paid at no greater than invoice cost plus 28 percent.

36 (e) A provider of medical compensation shall submit its statement for services within 75 days of the rendition of the
37 service, or if treatment is longer, within 30 days after the end of the month during which multiple treatments were

1 provided. However, in cases where liability is initially denied but subsequently admitted or determined by the
2 Commission, the time for submission of medical bills shall run from the time the health care provider received
3 notice of the admission or determination of liability. Within 30 days of receipt of the statement, the employer,
4 carrier, or managed care organization, or administrator on its behalf, shall pay or submit the statement to the
5 Commission for approval or send the provider written objections to the statement. If an employer, carrier,
6 administrator, or managed care organization disputes a portion of the provider's bill, the employer, carrier,
7 administrator, or managed care organization, shall pay the uncontested portion of the bill and shall resolve disputes
8 regarding the balance of the charges through its contractual arrangement or through the Commission.

9 (f) Pursuant to G.S. 97-18(i), when the 10 percent addition to the bill is uncontested, payment shall be made to the
10 provider without notifying or seeking approval from the Commission. When the 10 percent addition to the bill is
11 contested, any party may request a hearing by the Commission pursuant to G.S. 97-83 and G.S. 97-84.

12 (g) When the responsible party seeks an audit of hospital charges, and has paid the hospital charges in full, the
13 payee hospital, upon request, shall provide reasonable access and copies of appropriate records, without charge or
14 fee, to the person(s) chosen by the payor to review and audit the records.

15 (h) The responsible employer, carrier, managed care organization, or administrator shall pay the statements of
16 medical compensation providers to whom the employee has been referred by the treating physician authorized by
17 the insurance carrier for the compensable injury or body part, unless the physician has been requested to obtain
18 authorization for referrals or tests; provided that compliance with the request shall not unreasonably delay the
19 treatment or service to be rendered to the employee.

20 (i) Employees are entitled to reimbursement for sick travel when the travel is medically necessary and the mileage
21 is 20 or more miles, round trip, at the business standard mileage rate set by the Internal Revenue Service per mile of
22 travel and the actual cost of tolls paid. Employees are entitled to lodging and meal expenses, at a rate to be
23 established for state employees by the North Carolina Director of Budget, when it is medically necessary that the
24 employee stay overnight at a location away from the employee's usual place of residence. Employees are entitled to
25 reimbursement for the costs of parking or a vehicle for hire, when the costs are medically necessary, at the actual
26 costs of the expenses.

27 (j) Any employer, carrier or administrator denying a claim in which medical care has previously been authorized is
28 responsible for all costs incurred prior to the date notice of denial is provided to each health care provider to whom
29 authorization has been previously given.

30
31 *Authority G.S. 97-18(i); 97-25; 97-25.6; 97-26; 97-80(a); 138-6.*