

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE BILL 237
PROPOSED SENATE COMMITTEE SUBSTITUTE H237-PCS30631-LRf-28

Short Title: 2012 Workers' Compensation Amendments.

(Public)

Sponsors:

Referred to:

March 7, 2011

1 A BILL TO BE ENTITLED
2 AN ACT PROVIDING THAT THE NORTH CAROLINA RATE BUREAU SHARE WITH
3 THE NORTH CAROLINA INDUSTRIAL COMMISSION INFORMATION ON THE
4 STATUS OF WORKERS' COMPENSATION INSURANCE COVERAGE ON
5 EMPLOYERS IN THIS STATE AND MAKING CLARIFYING, CONFORMING, AND
6 OTHER CHANGES RELATING TO THE WORKERS' COMPENSATION LAWS OF
7 NORTH CAROLINA.

8 The General Assembly of North Carolina enacts:

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

10 **"§ 58-36-16. Bureau to share information with Department of ~~Labor.~~Labor and North**
11 **Carolina Industrial Commission.**

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

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

27 **"§ 58-36-17. Bureau to share information with the North Carolina Industrial**
28 **Commission.**

29 The Bureau shall provide to the North Carolina Industrial Commission information
30 contained in the Bureau's records indicating the status of workers' compensation insurance
31 coverage on North Carolina employers as reported to the Bureau by the Bureau's member
32 companies. The North Carolina Industrial Commission shall take such steps, including
33 obtaining software or software licenses, as are necessary to be able to receive and process such
34 information from the Bureau. The records provided to the North Carolina Industrial



* H 2 3 7 - P C S 3 0 6 3 1 - L R F - 2 8 *

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 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

- 1 with the employer of injury as provided in an attached job
2 description.
- 3 f. The kind of work for which the employee may be ~~eligible~~; eligible.
4 g. The anticipated time the employee will be ~~restricted~~; and restricted.
5 h. Any permanent impairment as a result of the condition.
- 6 The employer shall provide a copy of the health care provider's response to
7 the employee within 10 business days of its receipt by the employer.
- 8 (3) Oral communications with health care providers. – An employer may
9 communicate with the employee's authorized health care provider by oral
10 communication to obtain relevant medical information not contained in the
11 employee's medical records, not available through written communication,
12 and not otherwise available to the employer, subject to the following:
- 13 a. The employer must give the employee prior notice of the purpose of
14 the intended oral communication and an opportunity for the
15 employee to participate in the oral communication at a mutually
16 convenient time for the employer, employee, and health care
17 provider.
18 b. The employer shall provide the employee with a summary of the
19 communication with the health care provider within 10 business days
20 of any oral communication in which the employee did not
21 participate.
- 22 (d) Additional Information Submitted by the Employer. – Notwithstanding subsection
23 (c) of this section, an employer may submit additional relevant medical information not already
24 contained in the employee's medical records to the employee's authorized health care provider
25 and may communicate in writing with the health care provider about the additional information
26 in accordance with the following procedure:
- 27 (1) The employer shall first notify the employee in writing that the employer
28 intends to communicate additional information about the employee to the
29 employee's health care provider. The notice shall include the employer's
30 proposed written communication to the health care provider and the
31 additional information to be submitted.
- 32 (2) The employee shall have 10 business days from the postmark or verifiable
33 facsimile or electronic mail either to consent or object to the employer's
34 proposed written communication.
- 35 (3) Upon consent of the employee or in the absence of the employee's timely
36 ~~response, objection,~~ the employer may submit the additional information
37 directly to the health care provider.
- 38 (4) Upon making a timely objection, the employee may request a protective
39 order to prevent the written communication, in which case the employer
40 shall refrain from communicating with the health care provider until the
41 Commission has ruled upon the employee's request. If the employee does not
42 file with the Industrial Commission a request for a protective order within
43 the time period set forth in subdivision (2) of subsection (d) of this section,
44 the employer may submit the additional information directly to the health
45 care provider. In deciding whether to allow the submission of additional
46 information to the health care provider, in part or in whole, the Commission
47 shall determine whether the proposed written communication and additional
48 information are pertinent to and necessary for the fair and swift
49 administration and resolution of the workers' compensation claim and
50 whether there is an alternative method to discover the information. If the
51 Industrial Commission determines that any party has acted unreasonably by

1 initiating or objecting to the submission of additional information to the
2 health care provider, the Commission may assess costs associated with any
3 proceeding, including reasonable attorneys' fees and deposition costs, against
4 the offending party.

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

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

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

17 (1) A valid written authorization voluntarily given and signed by the employee.

18 (2) An agreement of the parties.

19 (3) An order of the Industrial Commission issued upon a showing that the
20 information sought is necessary for the administration of the employee's
21 claim and is not otherwise reasonably obtainable under this section.
22 or through other discovery authorized by the rules of the Commission.

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

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

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

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

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

36 **"§ 97-26. Fees allowed for medical treatment; malpractice of physician.**

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

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

45 ~~Prior to adoption of a fee schedule, the Commission shall publish notice of its intent to~~
46 ~~adopt the schedule in the North Carolina Register and hold a public hearing. The published~~
47 ~~notice shall include the location, date and time of the public hearing, the proposed effective~~
48 ~~date of the fee schedule, the period of time during which the Commission will receive written~~
49 ~~comments on the proposed schedule, and the person to whom comments and questions should~~
50 ~~be directed. In addition to publication in the North Carolina Register, the notice may be mailed~~
51 ~~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.~~

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

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

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

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

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

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

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

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

43 (h) Malpractice. – The employer shall not be liable in damages for malpractice by a
44 physician or surgeon furnished by him pursuant to the provisions of this section, but the
45 consequences of any such malpractice shall be deemed part of the injury resulting from the
46 accident, and shall be compensated for as such.

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

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

1 "§ 97-26.1. Fees for medical records and reports; expert ~~witnesses-witnesses;~~
2 communications with health care providers.

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

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

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

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

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

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

34 "(a) In a compensable claim, the employer may engage vocational rehabilitation services
35 at any point during a claim, regardless of whether the employee has reached maximum medical
36 improvement to include, among other services, a one-time assessment of the employee's
37 vocational ~~potential-potential~~, except vocational rehabilitation services may not be required if
38 the employee is receiving benefits pursuant to G.S. 97-29(c) or G.S. 97-29(d). If the employee
39 (i) has not returned to work or (ii) has returned to work earning less than seventy-five percent
40 (75%) of the employee's average weekly wages and is receiving benefits pursuant to
41 G.S. 97-30, the employee may request vocational rehabilitation services, including education
42 and retraining in the North Carolina community college or university systems so long as the
43 education and retraining are reasonably likely to substantially increase the employee's
44 wage-earning capacity following completion of the education or retraining program. Provided,
45 however, the seventy-five percent (75%) threshold is for the purposes of qualification for
46 vocational rehabilitation benefits only and shall not impact a decision as to whether a job is
47 suitable per G.S. 97-2(22). The expense of vocational rehabilitation services provided pursuant
48 to this section shall be borne by the employer in the same manner as medical compensation."

49 **SECTION 8.** This act is effective when it becomes law and applies to claims filed
50 on or after that date.