

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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HOUSE BILL 237  
Senate Commerce Committee Substitute Adopted 6/7/12

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  
35 Commission under this section shall be confidential and shall not be public records as that term  
36 is defined in G.S. 132-1. The North Carolina Industrial Commission shall use the information



1 provided pursuant to this section only to carry out its statutory duties and obligations under The  
2 North Carolina Workers' Compensation Act. The Bureau shall be immune from civil liability  
3 for releasing information pursuant to this section, even if the information is erroneous, provided  
4 the Bureau acted in good faith and without malicious or willful intent to harm in releasing the  
5 information."

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

7 **"§ 97-25.6. Reasonable access to medical information.**

8 (a) Notwithstanding any provision of G.S. 8-53 to the contrary, and because discovery  
9 is limited pursuant to G.S. 97-80, it is the policy of this State to protect the employee's right to a  
10 confidential physician-patient relationship while allowing the parties to have reasonable access  
11 to all relevant medical information, including medical records, reports, and information  
12 necessary to the fair and swift administration and resolution of workers' compensation claims,  
13 while limiting unnecessary communications with and administrative requests to health care  
14 providers.

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

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

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

- 26 (1) Medical records. – An employer is entitled, without the express  
27 authorization of the employee, to obtain the employee's medical records  
28 containing relevant medical information from the employee's health care  
29 providers. In a claim in which the employer is not paying medical  
30 compensation to a health care provider from whom the medical records are  
31 sought, or in a claim denied pursuant to G.S. 97-18(c), the employer shall  
32 provide the employee with contemporaneous written notice of the request for  
33 medical records. ~~The~~ Upon the request of the employee, the employer shall  
34 provide the employee with a copy of any records received in response to this  
35 request within 30 days of its receipt by the employer.
- 36 (2) Written communications with health care providers. – An employer may  
37 communicate with the employee's authorized health care provider in writing,  
38 without the express authorization of the employee, to obtain relevant  
39 medical information not available in the employee's medical records. The  
40 employer shall provide the employee with contemporaneous written notice  
41 of the written communication. The employer may request the following  
42 additional information:
- 43 a. The diagnosis of the employee's ~~condition~~ condition.
- 44 b. The appropriate course of ~~treatment~~ treatment.
- 45 c. The anticipated time that the employee will be out of ~~work~~ work.
- 46 d. The relationship, if any, of the employee's condition to the  
47 ~~employment~~ employment.
- 48 e. Work restrictions resulting from the ~~condition~~ condition, including  
49 whether the employee is able to return to the employee's employment  
50 with the employer of injury as provided in an attached job  
51 description.

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

1 proceeding, including reasonable attorneys' fees and deposition costs, against  
2 the offending party.

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

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

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

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

16 (2) An agreement of the parties.

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

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

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

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

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

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

34 "**§ 97-26. Fees allowed for medical treatment; malpractice of physician.**

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

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

43 ~~Prior to adoption of a fee schedule, the Commission shall publish notice of its intent to~~  
44 ~~adopt the schedule in the North Carolina Register and hold a public hearing. The published~~  
45 ~~notice shall include the location, date and time of the public hearing, the proposed effective~~  
46 ~~date of the fee schedule, the period of time during which the Commission will receive written~~  
47 ~~comments on the proposed schedule, and the person to whom comments and questions should~~  
48 ~~be directed. In addition to publication in the North Carolina Register, the notice may be mailed~~  
49 ~~to parties who have requested notice of the fee schedule hearing. The public hearing shall be~~  
50 ~~held no earlier than 15 days after the publication of the notice. The Commission shall receive~~

1 ~~written comments for at least 30 days or until the date of the public hearing, whichever is later,~~  
2 ~~after which the Commission may adopt the fee schedule.~~

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

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

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

21 Except as otherwise provided herein, payment for medical treatment and services rendered  
22 to workers' compensation patients by a hospital shall be a reasonable fee determined by the  
23 ~~Commission.~~ Commission and adopted by rule. Effective September 16, 2001, through June  
24 30, 2002, the fee shall be the following amount unless the Commission adopts a different fee  
25 schedule in accordance with the provisions of this section:

- 26 (1) For inpatient hospital services, the amount that the hospital would have  
27 received for those services as of June 30, 2001. The payment shall not be  
28 more than a maximum of one hundred percent (100%) of the hospital's  
29 itemized charges as shown on the UB-92 claim form nor less than the  
30 minimum percentage for payment of inpatient DRG claims that was in effect  
31 as of June 30, 2001.
- 32 (2) For outpatient hospital services and any other services that were reimbursed  
33 as a discount off of charges under the State Plan as of June 30, 2001, the  
34 amount calculated by the Commission as a percentage of the hospital  
35 charges for such services. The percentage applicable to each hospital shall be  
36 the percentage used by the Commission to determine outpatient rates for  
37 each hospital as of June 30, 2001.
- 38 (3) For any other services, a reasonable fee as determined by the Industrial  
39 Commission.

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

- 42 (1) ~~Comply with the procedures for adoption of a fee schedule established in~~  
43 ~~G.S. 97-26(a);~~
- 44 (2) ~~Include publication of the proposed payment rate, and a summary of the data~~  
45 ~~and calculations on which the rate is based at least 90 days before the~~  
46 ~~proposed effective date;~~
- 47 (3) ~~Be subject to the declaratory ruling provisions of G.S. 150B-4; and~~
- 48 (4) ~~Be deemed to constitute a final permanent rule under Article 2A of Chapter~~  
49 ~~150B for purposes of judicial review under Article 4 of that Chapter.~~
- 50

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.