

GENERAL ASSEMBLY OF NORTH CAROLINA
1993 SESSION

CHAPTER 679
SENATE BILL 906

AN ACT TO MAKE VARIOUS SUBSTANTIVE AMENDMENTS TO THE
WORKERS' COMPENSATION ACT AND TO MAKE RELATED CHANGES.

The General Assembly of North Carolina enacts:

PART I. TITLE

Section 1. This act shall be known as "The Workers' Compensation Reform Act of 1994."

PART II. MEDICAL

Subpart A – Managed Care

Sec. 2.1. Chapter 97 of the General Statutes is amended by adding the following new section:

"§ 97-25.2. Managed care organizations.

The requirements of G.S. 97-25 may be satisfied by contracting with a managed care organization. Notwithstanding any other provision of this Article, if an employer or carrier contracts with a managed care organization for medical services pursuant to this Article, those employees who are covered by the contract with the managed care organization shall receive medical services for a condition for which the employer has accepted liability or authorized treatment under this Article in the manner prescribed by the contract and in accordance with the managed care organization's certificate of authority; provided that the contract complies with rules adopted by the Commission, consistent with this Article, governing managed care organizations. An employee must exhaust all dispute resolution procedures of a managed care organization before applying to the Commission for review of any issue related to medical services compensable under this Article. Once application to the Commission has been made, the employee shall be entitled to an examination by a duly qualified physician or surgeon in the same manner as provided by G.S. 97-27.

If an employee's medical services are provided through a managed care organization pursuant to this section, subject to the rules of the managed care organization, the employee shall select the attending physician from those physicians who are members of the managed care organization's panel, and may subsequently change attending physicians once within the group of physicians who are members of the managed care organization's panel without approval from the employer or insurer. Additional changes

in the attending physician or any change to a physician or examination by a physician not a member of the insurer's managed care organization's panel shall only be made pursuant to the organization's contract or upon reasonable grounds by order of the Commission."

Subpart B – Preauthorization

Sec. 2.2. Chapter 97 of the General Statutes is amended by adding a new section to read:

"§ 97-25.3. Preauthorization.

(a) An insurer may require preauthorization for inpatient admission to a hospital, inpatient admission to a treatment center, and inpatient or outpatient surgery. The insurer's preauthorization requirement must adhere to the following standards:

- (1) The insurer may require no more than 10 days advance notice of the inpatient admission or surgery.
- (2) The insurer must respond to a request for preauthorization within two business days of the request.
- (3) The insurer shall review the need for the inpatient admission or surgery and may require the employee to submit to an independent medical examination as provided in G.S. 97-27(a). This examination must be completed and the insurer must make its determination on the request for preauthorization within seven days of the date of the request unless this time is extended by the Commission for good cause.
- (4) The insurer shall document its review findings and determination in writing and shall provide a copy of the findings and determination to the employee and the employee's attending physician, and, if applicable, to the hospital or treatment center.
- (5) The insurer shall authorize the inpatient admission or surgery when it requires the employee to submit to a medical examination as provided in G.S. 97-27(a) and the examining physician concurs with the original recommendation for the inpatient admission or surgery. The insurer shall also authorize the inpatient admission or surgery when the employee obtains a second opinion from a physician approved by the insurer or the Commission, and the second physician concurs with the original recommendation for the inpatient admission or surgery. However, the insurer shall not be required by this subdivision to authorize the inpatient admission or surgery if it denies liability under this Article for the particular medical condition for which the services are sought.
- (6) Except as provided in subsection (c) of this section, the insurer may reduce its reimbursement of the provider's eligible charges under this Article by up to fifty percent (50%) if the insurer has notified the provider in writing of its preauthorization requirement and the provider

- failed to timely obtain preauthorization. The employee shall not be liable for the balance of the charges.
- (7) The insurer shall adhere to all other procedures for preauthorization prescribed by the Commission.
- (b) An insurer may not impose a preauthorization requirement for the following:
- (1) Emergency services;
 - (2) Services rendered in the diagnosis or treatment of an injury or illness for which the insurer has not admitted liability or authorized payment for treatment pursuant to this Article; and
 - (3) Services rendered in the diagnosis and treatment of a specific medical condition for which the insurer has not admitted liability or authorized payment for treatment although the insurer admits the employee has suffered a compensable injury or illness.
- (c) The Commission may, upon reasonable grounds, upon the request of the employee or provider, authorize treatment for which preauthorization is otherwise required by this section but was not obtained if the Commission determines that the treatment is or was reasonably required to effect a cure or give relief.
- (d) The Commission may adopt procedures governing the use of preauthorization requirements and expeditious review of preauthorization denials.
- (e) A managed care organization may impose preauthorization requirements consistent with the provisions of Chapter 58 of the General Statutes.
- (f) A provider that refuses to treat an employee for other than an emergency medical condition because preauthorization has not been obtained shall be immune from liability in any civil action for the refusal to treat the employee because of lack of preauthorization."

Subpart C – Medical Fees

Sec. 2.3. G.S. 97-26 reads as rewritten:

"§ 97-26. ~~Liability~~ Fees allowed for medical treatment measured by average cost in community; treatment; malpractice of physician.

~~The pecuniary liability of the employer for medical, surgical, hospital service, nursing services, medicines, sick travel or other treatment required when ordered by the Commission, shall be limited to such charges as prevail in the same community for similar treatment of injured persons of a like standard of living when such treatment is paid for by the injured person, and the~~

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

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

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

The Commission may consider any and all reimbursement systems and plans in establishing its fee schedule, including, but not limited to, the Teachers' and State Employees' Comprehensive Major Medical Plan (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. – Payment for medical compensation rendered by a hospital participating in the State Plan shall be equal to the payment the hospital receives for the same treatment and services under the State Plan. Payment for a particular type of medical compensation that is not covered under the State Plan shall be based on the allowable charge under the State Plan for comparable services or treatment, as determined by the Commission. 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 or managed care organization to accept a different amount or reimbursement methodology.

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

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

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

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

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

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

Subpart D – Utilization Guidelines

Sec. 2.4. Chapter 97 of the General Statutes is amended by adding the following new sections to read:

"§ 97-25.4. Utilization guidelines for medical treatment.

(a) The Commission may adopt utilization rules and guidelines, consistent with this Article, for medical care and medical rehabilitation services, other than those services provided by managed care organizations pursuant to G.S. 97-25.2, including, but not limited to, necessary palliative care, physical therapy treatment, psychological therapy, chiropractic services, medical rehabilitation services, and attendant care. The Commission's rules and guidelines shall ensure that injured employees are provided the services and care intended by this Article and that medical costs are adequately contained. In developing the rules and guidelines, the Commission may consider, among other factors, the practice guidelines adopted by the boards and associations representing medical and rehabilitation professionals.

(b) Palliative care rules or guidelines adopted by the Commission may require that the provider (i) supply to the employer a treatment plan, including a schedule of measurable objectives, a projected termination date for treatment, and an estimated cost of services, and (ii) obtain preauthorization from the employer, not inconsistent with the provisions of G.S. 97-25.3.

"§ 97-25.5. Utilization guidelines for vocational and other rehabilitation.

The Commission may adopt utilization rules and guidelines, consistent with this Article, for vocational rehabilitation services and other types of rehabilitation services. In developing the rules and guidelines, the Commission may consider, among other factors, the practice and treatment guidelines adopted by professional rehabilitation associations and organizations."

Subpart E – Duration of Medical Compensation and Prosthesis Replacement

Sec. 2.5. Chapter 97 of the General Statutes is amended by adding a new section to read:

"§ 97-25.1. Limitation of duration of medical compensation.

The right to medical compensation shall terminate two years after the employer's last payment of medical or indemnity compensation unless, prior to the expiration of this period, either: (i) the employee files with the Commission an application for additional medical compensation which is thereafter approved by the Commission, or (ii) the Commission on its own motion orders additional medical compensation. If the Commission determines that there is a substantial risk of the necessity of future medical compensation, the Commission shall provide by order for payment of future necessary medical compensation."

Sec. 2.6. G.S. 97-2(19) reads as rewritten:

"(19) Medical Compensation. – The term 'medical compensation' means medical, surgical, hospital, nursing, and rehabilitative services, and medicines, sick travel, and other treatment, including medical and surgical supplies, as may reasonably be required to effect a cure or give relief and for such additional time as, in the judgment of the Commission, will tend to lessen the period of disability; and any original artificial members as may reasonably be necessary at the end of the healing ~~period~~-period and the replacement of such artificial members when reasonably necessitated by ordinary use or medical circumstances."

PART III. COMPENSATION

Subpart A – Payment of Compensation

Sec. 3.1. G.S. 97-18 reads as rewritten:

"§ 97-18. Prompt payment of compensation required; installments; payment without prejudice; notice to Commission; penalties.

(a) Compensation under this Article shall be paid periodically, promptly and directly to the person entitled thereto unless otherwise specifically provided.

(b) When the employer admits the employee's right to compensation, the ~~The~~ first installment of compensation payable ~~under the terms of an agreement by the employer~~ shall become due on the fourteenth day after the employer has written or actual knowledge notice of the injury or death, on which date all compensation then due shall be paid. ~~Thereafter compensation~~ Compensation thereafter shall be paid in installments weekly except where the Commission determines that payment in installments should be made monthly or at some other period. Upon paying the first installment of compensation and upon suspending, reinstating, changing, or modifying such compensation for any cause, the insurer shall immediately notify the Commission, on a form prescribed by the Commission, that compensation has begun, or has been suspended, reinstated, changed, or modified. A copy of each notice shall be provided to the employee. The first notice of payment to the Commission shall contain the date and nature of the injury, the average weekly wages of the employee, the weekly compensation rate, the date the disability resulting from the injury began, and the date compensation commenced.

(c) If the employer denies the employee's right to compensation, the employer shall notify the Commission, on or before the fourteenth day after it has written or actual notice of the injury or death, and advise the employee in writing of its refusal to pay compensation on a form prescribed by the Commission. This notification shall (i) include the name of the employee, the name of the employer, the date of the alleged injury or death, the insurer on the risk, if any, and a detailed statement of the grounds upon which the right to compensation is denied, and (ii) advise the employee of the employee's right to request a hearing pursuant to G.S. 97-83.

(d) In any claim for compensation in which the employer or insurer is uncertain on reasonable grounds whether the claim is compensable or whether it has liability for the claim under this Article, the employer or insurer may initiate compensation payments without prejudice and without admitting liability. The initial payment shall be accompanied by a form prescribed by and filed with the Commission, stating that the payments are being made without prejudice. Payments made pursuant to this subsection may continue until the employer or insurer contests or accepts liability for the claim or 90 days from the date the employer has written or actual notice of the injury or death, whichever occurs first, unless an extension is granted pursuant to this section. Prior to the expiration of the 90-day period, the employer or insurer may upon reasonable grounds apply to the Commission for an extension of not more than 30 days. The initiation of payment does not affect the right of the employer or insurer to continue to investigate or deny the compensability of the claim or its liability therefor during this period. If at any time during the 90-day period or extension thereof, the employer or insurer contests the compensability of the claim or its liability therefor, it may suspend payment of compensation and shall promptly notify the Commission and the employee on a form prescribed by the Commission. The employer or insurer must provide on the prescribed form a detailed statement of its grounds for denying compensability of the claim or its liability therefor. If the employer or insurer does not contest the

compensability of the claim or its liability therefor within 90 days from the date it first has written or actual notice of the injury or death, or within such additional period as may be granted by the Commission, it waives the right to contest the compensability of and its liability for the claim under this Article. However, the employer or insurer may contest the compensability of or its liability for the claim after the 90-day period or extension thereof when it can show that material evidence was discovered after that period that could not have been reasonably discovered earlier, in which event the employer or insurer may terminate or suspend compensation subject to the provisions of G.S. 97-18.1.

~~(e)(e)~~ The first installment of compensation payable under the terms of an award by the Commission, or under the terms of a judgment of the court upon an appeal from such an award, shall become due ~~14-10~~ days from the ~~date of such an award or from the date of such a judgment of the court, on which date all compensation then due shall be paid.~~ day following expiration of the time for appeal from the award or judgment or the day after notice waiving the right of appeal by all parties has been received by the Commission, whichever is sooner. Thereafter compensation shall be paid in installments weekly, except where the Commission determines that payment in installments shall be made monthly or in some other manner. ~~A payment becomes due within the meaning of this subsection the day following expiration of time for appeal of an award or judgment or after notice waiving right of appeal by all parties has been received by the Commission, whichever is sooner. Except that if the applicable time for appeal is longer than 14 days, then payment must be made within five days after it becomes due as herein defined.~~

~~(d)(f)~~ Upon making the first payment, and upon suspension of payment for any cause, the employer shall immediately notify the Commission, in accordance with the form prescribed by the Commission, that payment of compensation has begun or has been suspended, as the case may be. The employer's or insurer's grounds for contesting the employee's claim or its liability therefor as specified in the notice suspending compensation under subsection (d) of this section are the only bases for the employer's or insurer's defense on the issue of compensability in a subsequent proceeding, unless the defense is based on newly discovered material evidence that could not reasonably have been discovered prior to the notice suspending compensation.

~~(e)(g)~~ If any installment of compensation payable in accordance with the terms of an agreement approved by the Commission is not paid within 14 days after it becomes due, as provided in subsection (b) of this section, or if any installment of compensation payable in accordance with the terms of an award by the Commission is not paid within 14 days after it becomes due, as provided in subsection (e) of this section, there shall be added to such unpaid installment an amount equal to ten per centum (10%) thereof, which shall be paid at the same time as, but in addition to, such installment, unless such nonpayment is excused by the Commission after a showing by the employer that owing to conditions over which he had no control such installment could not be paid within the period prescribed for the payment.

~~(f)(h)~~ Within 16 days after final payment of compensation has been made, the employer shall send to the Commission and the employee a notice, in accordance with a

form prescribed by the Commission, stating that such final payment has been made, the total amount of compensation paid, the name of the employee and of any other person to whom compensation has been paid, the date of the injury or death, and the date to which compensation has been paid. If the employer fails to so notify the Commission or the employee within such time, the Commission shall assess against such employer a civil penalty in the amount of twenty-five dollars (\$25.00).

~~(g)~~(i) If any bill for services rendered under G.S. 97-25 by any provider of health care is not paid within 60 days after it has been approved by the Commission and returned to the responsible party, or within 60 days after it was properly submitted, in accordance with the provisions of this Article, to an insurer or managed care organization responsible for direct reimbursement pursuant to G.S. 97-26(g), there shall be added to such unpaid bill an amount equal to ten per centum (10%) thereof, which shall be paid at the same time as, but in addition to, such medical bill, unless such late payment is excused by the Commission."

Sec. 3.2. G.S. 97-82 reads as rewritten:

"§ 97-82. Memorandum of agreement between employer and employee to be submitted to Commission on prescribed forms for ~~approval~~ approval; direct payment as award.

(a) ~~If after seven days after the date of the injury, or at any time in case of death, the employer and the injured employee or his dependents reach an agreement in regard to compensation under this Article, they may enter into a memorandum of the agreement in the form prescribed by the Industrial Commission, Commission, accompanied by a full and complete medical report, shall be filed with and approved by the Commission; otherwise such agreement shall be voidable by the employee or his dependents.~~

An agreement, however, shall be incorporated into a memorandum of agreement in regard to compensation: (i) for loss or permanent injury, disfigurement, or permanent and total disability under G.S. 97-31, (ii) for death from a compensable injury or occupational disease under G.S. 97-38, or (iii) when compensation under this Article is paid or payable to an employee who is incompetent or under 18 years of age.

The memorandum of agreement, accompanied by a full and complete medical report, shall be filed with and approved by the Commission; otherwise such agreement shall be voidable by the employee or his dependents.

(b) ~~If approved by the Commission, thereupon the a memorandum of agreement shall for all purposes be enforceable by the court's decree as hereinafter specified. Payment pursuant to G.S. 97-18(b), or payment pursuant to G.S. 97-18(d) when compensability and liability are not contested prior to expiration of the period for payment without prejudice, shall constitute an award of the Commission on the question of compensability of and the insurer's liability for the injury for which payment was made. Compensation paid in these circumstances shall constitute payment of compensation pursuant to an award under this Article."~~

Sec. 3.3. G.S. 97-83 reads as rewritten:

"§ 97-83. ~~In event of disagreement,~~ Commission is to make award after hearing.

If the employer and the injured employee or his dependents fail to reach an agreement, in regard to compensation under this Article within 14 days after the employee has knowledge of the injury or death, or if they have reached such an agreement which has been signed and filed with the Commission, and compensation has been paid or is due in accordance therewith, and the parties thereto then disagree as to the continuance of any weekly payment under such agreement, fail to reach an agreement in regard to benefits under this Article within 14 days after the employer has written or actual notice of the injury or death, or upon the arising of a dispute under this Article, either party may make application to the Industrial Commission for a hearing in regard to the matters at issue, and for a ruling thereon. The county commissioners of each of the counties shall provide a suitable place for the Industrial Commission to conduct hearings in the county seat of such county so long as the provision of such a suitable place does not interfere with the normal use of county facilities.

Immediately after such application has been received the Commission shall set the date of a hearing, which shall be held as soon as ~~practicable,~~ practicable and shall notify the parties at issue of the time and place of such hearing. The hearing or hearings shall be held in the city or county where the injury occurred, unless otherwise authorized by the Industrial Commission."

Sec. 3.4. G.S. 97-24(a) reads as rewritten:

"(a) The right to compensation under this Article shall be forever barred unless (i) a claim or memorandum of agreement as provided in G.S. 97-82 is be filed with the Industrial Commission or the employee is paid compensation as provided under this Article within two years after the accident, ~~accident~~ or (ii) a claim or memorandum of agreement as provided in G.S. 97-82 is filed with the Commission within two years after the last payment of medical compensation when no other compensation has been paid and when the employer's liability has not otherwise been established under this Article. The provisions of this subsection shall not limit the time otherwise allowed for the filing of a claim for compensation for occupational disease in G.S. 97-58, but in no event shall the time for filing a claim for compensation for occupational disease be less than the times provided herein for filing a claim for an injury by accident."

Sec. 3.5. Chapter 97 of the General Statutes is amended by adding a new section to read:

"§ 97-47.1. Payment without prejudice; limitations period.

When the employer has paid compensation without prejudice but timely contested liability as provided in G.S. 97-18(d), the right, if any, to further indemnity compensation and medical compensation shall terminate two years after the employer's last payment of medical or indemnity compensation, whichever last occurs, unless the employee files with the Commission a claim for further compensation prior to the expiration of this period."

Subpart B – Termination of Benefits

Sec. 3.6. Chapter 97 of the General Statutes is amended by adding a new section to read:

"§ 97-18.1. Termination or suspension of compensation benefits.

(a) Payments of compensation pursuant to an award of the Commission shall continue until the terms of the award have been fully satisfied.

(b) An employer may terminate payment of compensation for total disability being paid pursuant to G.S. 97-29 when the employee has returned to work for the same or a different employer, subject to the provisions of G.S. 97-32.1. The employer shall promptly notify the Commission and the employee, on a form prescribed by the Commission, of the termination of compensation and the availability of trial return to work and additional compensation due the employee for any partial disability.

(c) An employer seeking to terminate or suspend compensation being paid pursuant to G.S. 97-29 for a reason other than those specified in subsection (b) of this section shall notify the employee and the employee's attorney of record in writing of its intent to do so on a form prescribed by the Commission. A copy of the notice shall be filed with the Commission. This form shall contain the reasons for the proposed termination or suspension of compensation, be supported by available documentation, and inform the employee of the employee's right to contest the termination or suspension by filing an objection in writing with the Commission within 14 days of the date the employer's notice is filed with the Commission or within such additional reasonable time as the Commission may allow.

(d) If the employee fails to object to the employer's notice of proposed termination or suspension within the time provided, the Commission may enter an appropriate order terminating or suspending the compensation if it finds that there is a sufficient basis under this Article for this action. If the employee files a timely objection to the employer's notice, the Commission shall conduct an informal hearing by telephone with the parties or their counsel. If either party objects to conducting the hearing by telephone, the Commission may conduct the hearing in person in Raleigh or at another location selected by the Commission. The parties shall be afforded an opportunity to state their position and to submit documentary evidence at the informal hearing. The employer may waive the right to an informal hearing and proceed to the formal hearing. The informal hearing, whether by telephone or in person, shall be conducted only on the issue of termination or suspension of compensation and shall be conducted within 25 days of the receipt by the Commission of the employer's notice to the employee unless this time is extended by the Commission for good cause. The Commission shall issue a decision on the employer's application for termination of compensation within five days after completion of the informal hearing. The decision shall (i) approve the application, (ii) disapprove the application, or (iii) state that the Commission is unable to reach a decision on the application in an informal hearing, in which event the Commission shall schedule a formal hearing pursuant to G.S. 97-83 on the employer's application for termination of compensation. Compensation may be terminated or suspended by the employer following an informal hearing only if its application is approved. If the Commission was unable to reach a decision in the informal hearing, the employee's compensation shall continue pending a decision by the Commission in the formal hearing. The Commission's decision in the informal hearing is not binding in subsequent hearings.

The employer or the employee may request a formal hearing pursuant to G.S. 97-83 on the Commission's decision approving or denying the employer's application for termination of compensation. A formal hearing under G.S. 97-83 ordered or requested pursuant to this section shall be a hearing **de novo** on the employer's application for termination or suspension of compensation and may be scheduled by the Commission on a preemptive basis.

(e) At an informal hearing on the issue of termination or suspension of compensation, and at any subsequent hearing, the Commission may address related issues regarding the selection of medical providers or treatment under G.S. 97-25, subject to exhaustion of the dispute resolution procedures of a managed care organization pursuant to G.S. 97-25.2."

Subpart C – Credit for Payments

Sec. 3.7. G.S. 97-42 reads as rewritten:

"§ 97-42. Deduction of payments.

Any payments—Payments made by the employer to the injured employee during the period of his disability, or to his dependents, which by the terms of this Article were not due and payable when made, may, subject to the approval of the Industrial Commission be deducted from the amount to be paid as compensation. Provided, that in the case of disability such deductions shall be made by shortening the period during which compensation must be paid, and not by reducing the amount of the weekly payment. Unless otherwise provided by the plan, when payments are made to an injured employee pursuant to an employer-funded salary continuation, disability or other income replacement plan, the deduction shall be calculated from payments made by the employer in each week during which compensation was due and payable, without any carry-forward or carry-back of credit for amounts paid in excess of the compensation rate in any given week."

PART IV. TRIAL RETURN TO WORK

Sec. 4.1. Chapter 97 of the General Statutes is amended by adding a new section to read:

"§ 97-32.1. Trial return to work.

Notwithstanding the provisions of G.S. 97-32, an employee may attempt a trial return to work for a period not to exceed nine months. During a trial return to work period, the employee shall be paid any compensation which may be owed for partial disability pursuant to G.S. 97-30. If the trial return to work is unsuccessful, the employee's right to continuing compensation under G.S. 97-29 shall be unimpaired unless terminated or suspended thereafter pursuant to the provisions of this Article."

PART V. ADMINISTRATIVE

Sec. 5.1. Chapter 97 of the General Statutes is amended by adding a new section to read:

"§ 97-77.1. Advisory council.

The chairman of the Commission may appoint an advisory council to advise the chairman on workers' compensation issues and other matters within the jurisdiction of the Commission. The members of the council shall serve at the pleasure of the chairman. The members of the council shall not receive compensation for their service on the council."

Sec. 5.2. G.S. 97-79 reads as rewritten:

"§ 97-79. Offices and supplies; deputies with power to subpoena witnesses and to take testimony; meetings; hearings.

(a) The Commission shall be provided with adequate offices in which the records shall be kept and its official business transacted during regular business hours; it shall also be provided with necessary office furniture, stationery, and other supplies.

(b) ~~The Commission may appoint deputies who shall have the same power to issue subpoenas, administer oaths, conduct hearings, hold persons, firms or corporations in contempt as provided in Chapter 5A of the General Statutes, as members of the Commission pursuant to G.S. 97-80 and the same power to take evidence, and enter orders, opinions, and awards based thereon as is possessed by the members of the Commission, Commission, and such deputy or deputies. The deputies shall be subject to the State Personnel System.~~

(c) The Commission or any member thereof may hold sessions at any place within the State as may be deemed necessary by the Commission.

(d) Hearings before the Commission shall be open to the public and shall be stenographically reported, and the Commission is authorized to contract for the reporting of such hearings. The Commission shall by regulation provide for the preparation of a record of the hearings and other proceedings. Notwithstanding the provisions of this subsection, informal hearings conducted pursuant to the provisions of G.S. 97-18.1, whether by telephone or in person, shall not be open to the public nor stenographically reported unless the Commission orders otherwise.

~~(e) The North Carolina Industrial Commission, or any member thereof, or any deputy is authorized by appropriate order, to make additional parties plaintiff or defendant in any proceeding pending before the North Carolina Industrial Commission when it is made to appear that such new party is either a necessary party or a proper party to a final determination of the proceeding.~~

(f) The Commission shall create an ombudsman program to assist unrepresented claimants, employers, and other parties, to enable them to protect their rights under this Article. In addition to other duties assigned by the Commission, the ombudsman shall meet with, or otherwise provide information to, injured employees, investigate complaints, and communicate with employers' insurance carriers and physicians at the request of the claimant. Assistance provided under this subsection shall not include representing the claimant in a compensation hearing."

Sec. 5.3. G.S. 97-80 reads as rewritten:

"§ 97-80. Rules and regulations; subpoena of witnesses; examination of books and records; depositions; costs.

(a) The Commission may make rules, not inconsistent with this Article, for carrying out the provisions of this Article. ~~Processes and procedure~~ Processes, procedure, and discovery under this Article shall be as summary and simple as reasonably may be.

(b) The Commission or any member thereof, or any person deputized by it, shall have the power, for the purpose of this Article, to tax costs against the parties, ~~and to subpoena witnesses, to administer or cause to have administered oaths, hold persons, firms or corporations in contempt as provided in Chapter 5A of the General Statutes, and to examine or cause to be examined such parts of the books and records of the parties to a proceeding as relate to questions in dispute. to preserve order at hearings, to compel the attendance and testimony of witnesses, and to compel the production of books, papers, records, and other tangible things.~~

(c) The Commission may order parties to participate in mediation, under rules substantially similar to those approved by the Supreme Court for use in the Superior Court division, except the Commission shall determine the manner in which payment of the costs of the mediated settlement conference is assessed.

(d) The Commission may order testimony to be taken by deposition and any Any party to a proceeding under this Article may, upon application to the Commission, which application shall set forth the materiality of the evidence to be given, cause the depositions of witnesses residing within or without the State to be taken, the costs to be taxed as other costs by Commission. ~~Such depositions~~ Depositions ordered by the Commission upon application of a party shall be taken after giving the notice and in the manner prescribed by law for depositions in action at law, except that they shall be directed to the Commission, the commissioner, or the deputy commissioner before whom the proceedings may be pending.

~~(b)(c)~~ All subpoenas of the Commission or its deputies shall be served in the manner and for the same fees as are now provided by law for like services; each A subpoena may be issued by the Commission and served in accordance with G.S. 1A-1, Rule 45. Upon a motion, the Commission may quash a subpoena if it finds that the evidence the production of which is required does not relate to a matter in issue, the subpoena does not describe with sufficient particularity the evidence the production of which is required, of for any other reason sufficient in law the subpoena may be quashed. Each witness who appears in obedience to such subpoena of the Commission shall receive for attendance the fees and mileage for witnesses in civil cases in courts of the county where the hearing is held.

(f) The Commission may by rule provide for and limit the use of interrogatories and other forms of discovery, and it may provide reasonable sanctions for failure to comply with a Commission order compelling discovery.

(g) The Commission or any member or deputy thereof shall have the same power as a judicial officer pursuant to Chapter 5A of the General Statutes to hold a person in civil contempt, as provided thereunder, for failure to comply with an order of the Commission, Commission member, or deputy. A person held in civil contempt may

appeal in the manner provided for appeals pursuant to G.S. 97-85 and G.S. 97-86. The provisions of G.S. 5A-24 shall not apply to appeals pursuant to this subsection.

(h) The Commission or any member or deputy thereof shall also have the same power as a judicial officer pursuant to Chapter 5A of the General Statutes to punish for criminal contempt, subject to the limitations thereunder, (i) for wilful behavior committed during the sitting of the commissioner or deputy commissioner and directly tending to interrupt the proceedings; (ii) for wilful disobedience of a lawful order of the Commission or a member or deputy thereof; or (iii) for wilful refusal to be sworn or affirmed as a witness, or, when so sworn or affirmed, wilful refusal to answer any legal and proper question when refusal is not legally justified. The Commission or any member or deputy thereof may issue an order of arrest as provided by G.S. 15A-305 when authorized by G.S. 5A-16 in connection with contempt proceedings. When the commissioner or deputy commissioner chooses not to proceed summarily pursuant to G.S. 5A-14, the proceedings shall be before a district court judge, and venue lies throughout the district where the order was issued directing the person charged to appear. A person found in criminal contempt may appeal in the manner provided for appeals in criminal actions to the superior court of the district in which the order of contempt was issued, and the appeal is by hearing **de novo** before a superior court judge.

~~(c) The superior court shall, on application of the Commission or any member or deputy thereof, enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers and records."~~

Sec. 5.4. Subsection (c) of G.S. 97-80 shall expire June 30, 1995, in accordance with the provisions of Chapter 399 of the 1993 Session Laws, unless the General Assembly amends Chapter 399 of the 1993 Session Laws to provide otherwise.

Sec. 5.5. G.S. 90-411 reads as rewritten:

"§ 90-411. Record copy fee.

A health care provider may charge a reasonable fee to cover the costs incurred in searching, handling, copying, and mailing medical records to the patient or the patient's designated representative. The maximum fee shall be fifty cents (50¢) per page, provided that the health care provider may impose a minimum fee of up to ten dollars (\$10.00), inclusive of copying costs. If requested by the patient or the patient's designated representative, nothing herein shall limit a reasonable professional fee charged by a physician for the review and preparation of a narrative summary of the patient's medical record. This section shall only apply with respect to liability claims for personal ~~injury-injury~~, except that charges for medical records and reports related to claims under Article 1 of Chapter 97 of the General Statutes shall be governed by the fees established by the North Carolina Industrial Commission pursuant to G.S. 97-26.4."

Sec. 5.6. Chapter 97 of the General Statutes is amended by adding the following section:

"§ 97-26.1. Fees for medical records and reports; expert witnesses.

The Commission may establish maximum fees for the following when related to a claim under this Article: (i) the searching, handling, copying, and mailing of medical

records, (ii) the preparation of medical reports and narratives, and (iii) the presentation of expert testimony in a Commission proceeding."

Sec. 5.7. Chapter 97 of the General Statutes is amended by adding a new section to read:

"§ 97-83.1. Facilities for hearings; security.

The senior resident superior court judge shall provide suitable facilities for the conduct of hearings under this Article in the county or counties within the judge's district at the time the Commission schedules hearings therein. The senior resident superior court judge shall, to the extent the judge determines necessary and practicable, provide or arrange for security at Commission hearings upon the request of a member or deputy of the Commission."

PART VI. SECOND INJURY FUND

Sec. 6.1. G.S. 97-40.1(a) reads as rewritten:

"(a) There is hereby created a fund to be known as the 'Second Injury Fund,' to be held and disbursed by the Industrial Commission as hereinafter provided.

For the purpose of providing money for said fund the Industrial Commission may assess against the employer or its insurance carrier the payment of not to exceed ~~one hundred dollars (\$100.00)~~ two hundred fifty dollars (\$250.00) for the loss, or loss of use, of each minor member in every case of a permanent partial disability where there is such loss, and shall assess not to exceed ~~five hundred dollars (\$500.00)~~ seven hundred fifty dollars (\$750.00) for fifty percent (50%) or more loss or loss of use of each major member, defined as back, foot, leg, hand, arm, eye, or hearing.

~~In addition to the assessments hereinabove provided for, the Commission shall also deposit in said fund all moneys received by it for the Second Injury Fund under the provisions of G.S. 97-40."~~

PART VII. PENALTIES FOR FRAUD AND MISREPRESENTATION

Sec. 7.1. Chapter 97 of the General Statutes is amended by adding the following new section to read:

"§ 97-88.2. Penalty for misrepresentation.

(a) Any person who willfully makes a false statement or representation of a material fact for the purpose of obtaining or denying any benefit or payment, or assisting another to obtain or deny any benefit or payment under this Article, shall be guilty of a Class 1 misdemeanor. The court may order restitution.

(b) The Commission shall refer all cases of suspected fraud and all violations related to workers' compensation claims, by or against insurers or self-funded employers, to the Department of Insurance to:

- (1) Perform investigations and refer possible criminal violations to the appropriate prosecutorial authorities;
- (2) Conduct administrative violation proceedings; and
- (3) Assess and collect penalties and restitution.

(c) Any person who threatens an employee with criminal prosecution under the provisions of subsection (a) of this section for the purpose of coercing or attempting to coerce the employee into agreeing to compensation under this Article shall be guilty of a Class 1 misdemeanor.

(d) The Commission shall not be liable in a civil action for any action made in good faith under this section, including the identification and referral of a person for investigation and prosecution for an alleged administrative violation or criminal offense. Any person, including, but not limited to, an attorney, an employee, an employer, an insurer, and an employee of an insurer, who in good faith comes forward with information under this section, shall not be liable in a civil action.

(e) The Commission shall report annually to the General Assembly on the number and disposition of investigations involving claimants, employers, insurance company officials, officials of third-party administrators, insurance agents, attorneys, health care providers, and vocational rehabilitation providers."

Sec. 7.2. Chapter 97 of the General Statutes is amended by adding a new section to read:

"§ 97-88.3. Penalty for health care providers.

(a) In addition to any liability under G.S. 97-88.2, any health care provider who willfully or intentionally undertakes the following acts is subject to an administrative penalty, assessed by the Commission, not to exceed ten thousand dollars (\$10,000):

- (1) Submitting charges for health care that was not furnished;
- (2) Fraudulently administering, providing, and attempting to collect for inappropriate or unnecessary treatment or services; or
- (3) Violating the provisions of Article 28 of Chapter 90 of the General Statutes.

A penalty assessed by the Commission for a violation of subdivision (3) of this subsection is in addition to penalties assessed under G.S. 90-407.

(b) In addition to any liability under G.S. 97-88.2, any health care provider who willfully or intentionally undertakes the following acts is subject to an administrative penalty, assessed by the Commission, not to exceed one thousand dollars (\$1,000):

- (1) Failing or refusing to timely file required reports or records;
- (2) Making unnecessary referrals; and
- (3) Knowingly violating this Article or rules promulgated hereunder, including treatment guidelines, with intention to deceive or to gain improper advantage of a patient, employee, insurer, or the Commission.

(c) A health care provider who knowingly charges or otherwise holds an employee financially responsible for the cost of any services provided for a compensable injury under this Article is guilty of a Class 1 misdemeanor.

(d) Any person, including, but not limited to, an employer, an insurer, and an employee of an insurer, who in good faith comes forward with information under this section, shall not be liable in a civil action.

(e) Information relating to possible violations under this section shall be reported to the Commission which shall refer the same to the appropriate licensing or regulatory board or authority for the health care provider involved.

(f) A hospital that relies in good faith on a written order of a physician in performing health care services shall not be subject to an administrative penalty in violation of this section."

PART VIII. WORKERS' COMPENSATION INSURANCE

Subpart A – Failure to Insure

Sec. 8.1. G.S. 97-94 reads as rewritten:

"§ 97-94. Employers required to give proof ~~within 30 days~~ that they have complied with preceding section; ~~fine~~ penalty for not keeping liability insured; review; liability for compensation; failure to secure payment of compensation a misdemeanor.

(a) Every employer subject to the compensation provisions of this Article ~~shall, within 30 days, after this Article takes effect, shall~~ file with the ~~Industrial~~ Commission, in form prescribed by it, ~~and thereafter, annually or as often as may the Commission determines to~~ be necessary, evidence of ~~his~~ its compliance with the provisions of G.S. 97-93 and all ~~others~~ other provisions relating thereto.

(b) Any employer required to secure the payment of compensation under this Article who refuses or neglects to secure such compensation shall be punished by a ~~fine~~ penalty of one dollar (\$1.00) for each employee, but not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100) for each day of such refusal or neglect, and until the same ceases; and he shall be liable during continuance of such refusal or neglect to an employee either for compensation under this Article or at law at the election of the injured employee.

The ~~fine~~ penalty herein provided may be assessed by the Industrial Commission administratively, in an open hearing, with the right to a hearing if requested within 30 days after notice of the assessment of the penalty and the right of review and appeal as in other cases. Enforcement of the ~~fine~~ penalty shall be made by the Office of the Attorney General.

(c) Any employer required to secure the payment of compensation under this Article who willfully refuses or neglects to secure such compensation shall be guilty of a Class 1 misdemeanor.

(d) Any person who, with the ability and authority to bring an employer in compliance with G.S. 97-93, wilfully and intentionally refuses or neglects to bring the employer in compliance, shall be guilty of a Class 1 misdemeanor and may be assessed a civil penalty by the Commission in an amount up to one hundred percent (100%) of the amount of any compensation due the employer's employees injured during the time the employer failed to comply with G.S. 97-93. Notwithstanding the provisions of G.S. 97-101, the Commission may suspend collection or remit all or part of the civil penalty

on condition that the employer pays the compensation due and complies with G.S. 97-93."

Sec. 8.2. G.S. 97-93 reads as rewritten:

"§ 97-93. Employers required to carry insurance or prove financial ability to pay for benefits; employers required to post notice; self-insured employers regulated by Commissioner of Insurance.

(a) Every employer subject to the provisions of this Article relative to the payment of compensation shall either:

- (1) Insure and keep insured his liability under this Article in any authorized corporation, association, organization, or in any mutual insurance association formed by a group of employers so authorized; or
- (2) Furnish to the Commissioner of Insurance satisfactory proof of the employer's financial ability, either alone or through membership in a group comprising two or more employers who agree to pool their liabilities under this Article, to directly pay the compensation in the amount and manner and when due as provided for in this Article.

(b) In the case of subdivision (a)(2) of this section, the Commissioner of Insurance may require the deposit of an acceptable security, indemnity, or bond to secure the payment of compensation liabilities as they are incurred. Any individual employer or group of employers who furnish proof of financial ability under subdivision (a)(2) of this section shall be governed in all respects by this Article and by such rules as may be promulgated by the Commissioner of Insurance.

(c) Payment of dividends to the members of any group of employers who agree to pool their liabilities under subdivision (a)(2) of this section shall not be contingent upon the maintenance or continuance of membership in such pools.

(d) Every employer who is in compliance with the provisions of subsection (a) of this section shall post in a conspicuous place in places of employment a notice stating that employment by this employer is subject to the North Carolina Workers' Compensation Act and stating whether the employer has a policy of insurance against liability or qualifies as a self-insured employer. In the event the employer allows its insurance to lapse or ceases to qualify as a self-insured employer, the employer shall, within five working days of this occurrence, remove any notices indicating otherwise."

Sec. 8.3. G.S. 105-163.7 is amended by adding a new subsection to read:

"(c) An employer who is required to file an annual report under subsection (b) of this section must report to the Secretary the following information concerning compliance with Article 1 of Chapter 97 of the General Statutes, the Workers' Compensation Act:

- (1) Whether the employer is required to maintain insurance or qualify as a self-insured employer under the provisions of G.S. 97-93.
- (2) Whether the employer is insured, self-insured through a group, or individually self-insured.

- (3) The name of the employer's workers' compensation insurance carrier and the number and expiration date of the insurance policy if the employer has workers' compensation insurance.
- (4) The name of the self-insured group, the group's third-party administrator, and the group's or employer's self-insured code number used by the Department of Insurance, if the employer is a member of a self-insured group.
- (5) The name of the employer's third-party administrator and the employer's self-insured code number used by the Department of Insurance, if the employer is individually self-insured.
- (6) Whether any information reported to the Secretary on a previous return has changed.

The Secretary must compile the information concerning workers' compensation reported by employers on an annual report and must give the compiled data to the Industrial Commission."

Sec. 8.4. G.S. 105-259(b) reads as rewritten:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

- (1) To comply with a court order or a law.
- (2) Review by the Attorney General or a representative of the Attorney General.
- (3) Review by a tax official of another state or the Internal Revenue Commissioner of the United States to aid the state or the Commissioner in collecting a tax imposed by this State, the other state, or the United States if the laws of the other state or the United States allow the state or the United States to provide similar tax information to a representative of this State.
- (4) To provide a governmental agency or an officer of an organized association of taxpayers with a list of taxpayers who have paid a privilege license tax under Article 2 of this Chapter.
- (5) To furnish to the chair of a board of county commissioners information on the county sales and use tax.
- (6) To sort, process, or deliver tax information on behalf of the Department of Revenue.
- (7) To exchange information with the Division of Motor Vehicles of the Department of Transportation when the information is needed to fulfill a duty imposed on the Department of Revenue or the Division of Motor Vehicles.
- (8) To furnish to the Department of State Treasurer, upon request, the name, address, and account and identification numbers of a taxpayer who may be entitled to property held in the Escheat Fund.

- (9) To furnish to the Employment Security Commission the name, address, and account and identification numbers of a taxpayer when the information is requested by the Commission in order to fulfill a duty imposed under Article 2 of Chapter 96 of the General Statutes.
- (10) Review by the State Auditor to the extent authorized in G.S. 147-64.7.
- (11) To give a spouse who elects to file a joint tax return a copy of the return or information contained on the return.
- (12) To contract with a financial institution for the receipt of withheld income tax payments under G.S. 105-163.6 or for the transmittal of payments by electronic funds transfer.
- (13) To furnish the Fiscal Research Division of the General Assembly, upon request, a sample, suitable in character, composition, and size for statistical analyses, of tax returns or other tax information from which taxpayers' names and identification numbers have been removed.
- (14) To exchange information concerning a tax imposed by Subchapter V of this Chapter with the Standards Division of the Department of Agriculture when the information is needed to administer the Gasoline and Oil Inspection Act, Article 3 of Chapter 119 of the General Statutes.
- (15) To exchange information concerning a tax imposed by Articles 2A, 2B, 2C, or 2D of this Chapter with one of the following agencies when the information is needed to fulfill a duty imposed on the agency:
 - a. The North Carolina Alcoholic Beverage Control Commission.
 - b. The Division of Alcohol Law Enforcement of the Department of Crime Control and Public Safety.
 - c. The Bureau of Alcohol, Tobacco, and Firearms of the United States Treasury Department.
- (16) To furnish to the Department of Secretary of State the name, address, and account and identification numbers of a corporation liable for corporate income or franchise taxes to enable the Secretary of State to notify the corporation of the annual report filing requirement or that its articles of incorporation or its certificate of authority has been suspended.
- (17) To inform the Business License Information Office of the Department of Secretary of State of the status of an application for a license for which a tax is imposed and of any information needed to process the application.
- (18) To furnish to the Office of the State Controller the name, address, and account and identification numbers of a taxpayer upon request to enable the State Controller to verify statewide vendor files or track debtors of the State.
- (19) To furnish to the North Carolina Industrial Commission information concerning workers' compensation reported to the Secretary under G.S. 105-163.7."

Subpart B – Assigned Risk

Sec. 8.5. G.S. 58-36-1(5) reads as rewritten:

- "(5) a. It is the duty of every insurer that writes workers' compensation insurance in this State and is a member of the Bureau, as defined in this section and G.S. 58-36-5 to insure and accept any workers' compensation insurance risk that has been certified to be 'difficult to place' by any fire and casualty insurance agent who is licensed in this State. When any such risk is called to the attention of the Bureau by receipt of an application with an estimated or deposit premium payment and it appears that the risk is in good faith entitled to such coverage, the Bureau will bind coverage for 30 days and will designate a member who must issue a standard workers' compensation policy of insurance that contains the usual and customary provisions found in those policies. Coverage will be bound at 12:01 A.M. on the first day following the postmark time and date on the envelope in which the application is mailed including the estimated annual or deposit premium, or the expiration of existing coverage, whichever is later. If there should be no postmark, coverage will be effective 12:01 A.M. on the date of receipt by the Bureau unless a later date is requested. Those applications hand delivered to the Bureau will be effective as of 12:01 A.M. of the date following receipt by the Bureau unless a later date is requested. The designated carrier may request of the Bureau certification of the State Department of Labor that the insured is complying with the laws, rules, and regulations of that Department. The certification must be finished within 30 days by the State Department of Labor unless extension of time is granted by agreement between the Bureau and the State Department of Labor. The Bureau will make and adopt such rules as are necessary to carry this section into effect, subject to final approval of the Commissioner. As a prerequisite to the transaction of workers' compensation insurance in this State, every member of the Bureau that writes such insurance must file with the Bureau written authority permitting the Bureau to act in its behalf, as provided in this section, and an agreement to accept risks that are assigned to the member by the Bureau, as provided in this section.
- b. Upon notice of cancellation or the decision to decline to write or renew a policy of workers' compensation insurance for an employer, the carrier or its agents shall supply the employer

with a form, supplied by the Bureau, by which the employer may request the Bureau to list the employer and pertinent information about it among a compendium of such information on employers refused voluntary coverage, which shall be made available by the Bureau to all insurers and self-insureds' administrators doing business in this State. It shall be stored and indexed to allow access to information by industry, primary classifications of employees, geography, experience modification, and in any other manner the Bureau determines is commercially useful to facilitate voluntary coverage of listed employers.

c. Failure or refusal by any assigned employer risk to make full disclosure to the Bureau, servicing carrier, or insurer writing a policy of information regarding the employer's true ownership, change of ownership, operations, or payroll, or any other failure to disclose fully any records pertaining to workers' compensation insurance shall be sufficient grounds for the Bureau to authorize the termination of the policy of that employer."

Sec. 8.6. The North Carolina Rate Bureau and its member companies are directed to cooperate fully with the Commissioner of Insurance in conducting a thorough and complete study of the methods and costs of assigning "difficult to place" workers' compensation insurance risks under G.S. 58-36-1(5). Such study shall be completed and the Commissioner shall report on the same to the Joint Legislative Commission on Governmental Operations by February 1, 1995, for consideration of any needed legislation in the 1995 General Assembly. The report of the Commissioner, and the study preceding the same, shall examine such things as, but not be limited to, the criteria used for assigning a workers' compensation risk, the qualifications of and the compensation paid to insurers which service risks assigned under that statute, safety and loss prevention services provided to risks so assigned, the acquisition expenses paid by the Rate Bureau and its member insurers to insurance agents placing risks through such assignments, and the equities of both member insurers and self-funded employers sharing in any possible losses sustained by that assigned risk plan. The study and report of the Commissioner may, in his discretion, also address the procedures and methodology for insurance rate making for workers' compensation and employers' liability insurance under Article 36 of Chapter 58 of the General Statutes.

PART IX. ATTORNEYS' FEES

Sec. 9.1. G.S. 97-90 reads as rewritten:

"§ 97-90. Legal and medical fees to be approved by Commission; misdemeanor to receive fees unapproved by Commission, or to solicit employment in adjusting claims; agreement for fee or compensation.

(a) Fees for attorneys and ~~physicians and charges of hospitals~~ charges of health care providers for medical compensation under this Article shall be subject to the approval of the Commission; but no physician or hospital or other medical facilities shall be entitled to collect fees from an employer or insurance carrier until he has made the reports required by the ~~Industrial~~ Commission in connection with the case. ~~Unless otherwise provided by the rules, schedules, or orders of the Commission,~~ Except as provided in G.S. 97-26(g), a request for a specific prior approval to charge shall be submitted to the Commission for each such fee or charge.

(b) Any person (i) who receives any fee, other consideration, or any gratuity on account of services so rendered, unless such consideration or gratuity is approved by the Commission or ~~such court,~~ the court, as provided in subsection (c), or (ii) who makes it a business to solicit employment for a lawyer or for himself in respect of any claim or award for compensation, shall be guilty of a misdemeanor, and upon conviction thereof shall, for each offense, be punished by a fine of not more than five hundred dollars (\$500.00) or by imprisonment not to exceed one year, or by both such fine and imprisonment.

(c) If an attorney has an agreement for fee or compensation under this Article, he shall file a copy or memorandum thereof with the hearing officer or Commission prior to the conclusion of the hearing. If the agreement is not considered unreasonable, the hearing officer or Commission shall approve it at the time of rendering decision. If the agreement is found to be unreasonable by the hearing officer or Commission, the reasons therefor shall be given and what is considered to be reasonable fee allowed. If within five days after receipt of notice of such fee allowance, the attorney shall file notice of appeal to the full Commission, the full Commission shall hear the matter and determine whether or not the attorney's agreement as to a fee or the fee allowed is unreasonable. If the full Commission is of the opinion that such agreement or fee allowance is unreasonable and so finds, then the attorney may, by filing written notice of appeal within 10 days after receipt of such action by the full Commission, appeal to the senior resident judge of the superior court ~~or the judge holding the courts of the district of or~~ in the county in which the cause of action arose or in which the claimant resides; and upon such appeal said judge shall consider the matter and determine in his discretion the reasonableness of said agreement or fix the fee and direct an order to the Commission following his determination therein. The Commission shall, within 20 days after receipt of notice of appeal from its action concerning said agreement or allowance, transmit its findings and reasons as to its action concerning such agreement or allowance to the judge of the superior court designated in the notice of appeal. In all other cases where there is no agreement for fee or compensation, the attorney or claimant may, by filing written notice of appeal within five days after receipt of notice of action of the full Commission with respect to attorneys' fees, appeal to the senior resident judge of the superior court ~~or the judge holding the courts of the district of the~~ county in which the cause arose or in which the claimant resides; and upon such appeal said judge shall consider the matter of such fee and determine in his discretion the attorneys' fees to be allowed in the cause. The Commission shall, within 20 days after notice of appeal has been filed, transmit its findings and reasons as to its action

concerning such fee or compensation to the judge of the superior court designated in the notice of appeal; provided that the Commission shall in no event have any jurisdiction over any attorneys' fees in any third-party action. In any case in which an attorney appeals to the superior court on the question of attorneys' fees, the appealing attorney shall notify the Commission and the employee of any and all proceedings before the superior court on the appeal, and either or both may appear and be represented at such proceedings.

The Commission, in determining an allowance of attorneys' fees, shall examine the record to determine the services rendered. The factors which may be considered by the Commission in allowing a reasonable fee include, but are not limited to, the time invested, the amount involved, the results achieved, whether the fee is fixed or contingent, the customary fee for similar services, the experience and skill level of the attorney, and the nature of the attorney's services.

In making the allowance of attorneys' fees, the Commission shall, upon its own motion or that of an interested party, set forth findings sufficient to support the amount approved.

The Commission may deny or reduce an attorney's fees upon proof of solicitation of employment in violation of the Rules of Professional Conduct of the North Carolina State Bar.

(d) Provided, that nothing contained in this section shall prevent the collection of such reasonable fees of physicians and charges for hospitalization as may be recovered in an action, or embraced in settlement of a claim, against a third-party **tort-feasor** as described in ~~G.S. 97-10~~. G.S. 97-10.2.

~~(e) The fees provided for in subsection (a) of this section shall be approved by the Commission no later than June 1 of the year in which the Commission exercises its authority under subsection (a) of this section, but shall not become effective until July 1 following such approval.~~

(e) A health care provider shall not pursue a private claim against an employee for all or part of the costs of medical treatment provided to the employee by the provider unless the employee's claim or the treatment is finally adjudicated not to be compensable or the employee fails to request a hearing after denial of liability by the employer. Notwithstanding subsequent denial of liability or adjudication that the condition treated was not compensable, the insurer shall be liable as provided in G.S. 97-26 to providers whose services have been authorized by the insurer or employer. The statute of limitations applicable to a provider's claim for payment shall be tolled during the period the compensability of a claim or liability for particular treatment remains an issue in a compensation case."

PART X. MISCELLANEOUS

Sec. 10.1. G.S. 97-31.1 does not apply to this act.

Sec. 10.2. G.S. 97-81(a) reads as rewritten:

"(a) The Commission shall prepare and cause to be printed, and upon request furnish, free of charge to any employee or employer, such blank forms and literature as

it shall deem requisite to facilitate or prompt the efficient administration of this Article. The Commission may authorize the use of electronic submission of forms and other means of transmittal of forms and notices when it deems appropriate."

Sec. 10.3. G.S. 135-39.5 is amended by adding a new subdivision to read:

"(22) Providing to the Industrial Commission the schedule of allowable charges under the Plan for each participating hospital and other information deemed necessary by the Commission to fulfill its duties under G.S. 97-26."

Sec. 10.4. G.S. 58-50-65(a) reads as rewritten:

"(a) Nothing in Articles 50 through 55 of this Chapter shall apply to or affect any policy of liability or workers' compensation insurance—insurance, except that the provisions of G.S. 58-50-50 and subsections (b) and (c) of G.S. 58-50-55 shall apply to policies of workers' compensation insurance."

Sec. 10.5. G.S. 97-86 reads as rewritten:

"§ 97-86. Award conclusive as to facts; appeal; certified questions of law.

The award of the Industrial Commission, as provided in G.S. 97-84, if not reviewed in due time, or an award of the Commission upon such review, as provided in G.S. 97-85, shall be conclusive and binding as to all questions of fact; but either party to the dispute may, within 30 days from the date of such award or within 30 days after receipt of notice to be sent by registered mail or certified mail of such award, but not thereafter, appeal from the decision of said Commission to the Court of Appeals for errors of law under the same terms and conditions as govern appeals from the superior court to the Court of Appeals in ordinary civil actions. The procedure for the appeal shall be as provided by the rules of appellate procedure.

The Industrial Commission of its own motion may certify questions of law to the Court of Appeals for decision and determination by said Court. In case of an appeal from the decision of the Commission, or of a certification by said Commission of questions of law, to the Court of Appeals, said appeal or certification shall operate on a **supersedeas** except as provided in G.S. 97-86.1, and no employer shall be required to make payment of the award involved in said appeal or certification until the questions at issue therein shall have been fully determined in accordance with the provisions of this Article. If the employer is a noninsurer, then the appeal of such employer shall not act as a **supersedeas** and the plaintiff in such case shall have the same right to issue execution or to satisfy the award from the property of the employer pending the appeal as obtains to the successful party in an action in the superior court.

When any party to an appeal from an award of the Commission is unable, by reason of his poverty, to make the deposit or to give the security required by law for said appeal, ~~the chairman of the Industrial Commission may, in his~~ any member of the Commission or any deputy commissioner may, in their discretion, enter an order allowing said party to appeal from the award of the Commission without giving security therefor. The party ~~desiring to appeal~~ appealing from the judgment shall, within 30 days from the filing of the ~~appeal from the award by the full Commission,~~ award, make an affidavit that he is unable by reason of his poverty to give the security required by law, and that he is advised by a practicing attorney that there is error in the matters of law in the award of the Commission in said case. The affidavit must be accompanied by a

written statement from a practicing attorney of North Carolina that he has examined the affiant's case and is of the opinion that the decision of the Commission in said case is contrary to law. The request for appeal shall be passed upon and granted or denied by ~~the chairman of the Commission~~ a member of the Commission or deputy commissioner within ~~30~~ 20 days from receipt of the affidavit and letter as specified above."

Sec. 10.6. G.S. 97-19 reads as rewritten:

"§ 97-19. Liability of principal contractors; certificate that subcontractor has complied with law; right to recover compensation of those who would have been liable; order of liability.

Any principal contractor, intermediate contractor, or subcontractor who shall sublet any contract for the performance of any work without requiring from such subcontractor or obtaining from the Industrial Commission a certificate, issued by a workers' compensation insurance carrier, or a certificate of compliance issued by the Department of Insurance to a self-insured subcontractor, stating that such subcontractor has complied with G.S. 97-93 hereof, shall be liable, irrespective of whether such subcontractor has regularly in service ~~less than four~~ fewer than three employees in the same business within this State, to the same extent as such subcontractor would be if he were subject to the provisions of this Article for the payment of compensation and other benefits under this Article on account of the injury or death of any such subcontractor, any principal or partner of such subcontractor or any employee of such subcontractor due to an accident arising out of and in the course of the performance of the work covered by such subcontract. If the principal contractor, intermediate contractor or subcontractor shall obtain such certificate at the time of subletting such contract to subcontractor, he shall not thereafter be held liable to any such subcontractor, any principal or partner of such subcontractor, or any employee of such subcontractor for compensation or other benefits under this Article. If the subcontractor has no employees and waives in writing his right to coverage under this section, the principal contractor, intermediate contractor, or subcontractor subletting the contract shall not thereafter be held liable for compensation or other benefits under this Article to said subcontractor. Subcontractors who have no employees are not required to comply with G.S. 97-93.

Any principal contractor, intermediate contractor, or subcontractor paying compensation or other benefits under this Article, under the foregoing provisions of this section, may recover the amount so paid from any person, persons, or corporation who independently of such provision, would have been liable for the payment thereof.

Every claim filed with the Industrial Commission under this section shall be instituted against all parties liable for payment, and said Commission, in its award, shall fix the order in which said parties shall be exhausted, beginning with the immediate employer.

The principal or owner may insure any or all of his contractors and their employees in a blanket policy, and when so insured such contractor's employees will be entitled to compensation benefits regardless of whether the relationship of employer and employee exists between the principal and the contractor."

Sec. 10.7. G.S. 97-2 is amended by adding the following new subdivisions to read:

"(20) Health care provider. – The term 'health care provider' means physician, hospital, pharmacy, chiropractor, nurse, dentist, podiatrist, physical therapist, rehabilitation specialist, psychologist, and any other person providing medical care pursuant to this Article.

(21) Managed care organization. – The term 'managed care organization' means a preferred provider organization or a health maintenance organization regulated under Chapter 58 of the General Statutes."

Sec. 10.8. G.S. 97-92(a) reads as rewritten:

"(a) Every employer shall hereafter keep a record of all injuries, fatal or otherwise, received by his employees in the course of their employment on blanks approved by the Commission. Within five days after the occurrence and knowledge thereof as provided in G.S. 97-22 of an injury to an employee, causing his absence from work for more than one ~~day,~~ day or charges for medical compensation exceeding the amount set by the Commission, a report thereof shall be made in writing and mailed or transmitted to the ~~Industrial~~ Commission on blanks to be procured from in the form approved by the Commission for this purpose."

Sec. 10.9. G.S. 97-18.1(b), as enacted in Section 3.6 of this act, reads as rewritten:

"(b) An employer may terminate payment of compensation for total disability being paid pursuant to G.S. 97-29 when the employee has returned to work for the same or a different employer, subject to the provisions of ~~G.S. 97-32.1.~~ G.S. 97-32.1, or when the employer contests a claim pursuant to G.S. 97-18(d) within the time allowed thereunder. The employer shall promptly notify the Commission and the employee, on a form prescribed by the Commission, of the termination of compensation and the availability of trial return to work and additional compensation due the employee for any partial disability."

Sec. 10.10. The Part headings and Subpart headings are for reference only and in no way limit, prescribe, or define the scope or application of the text of this act.

PART XI. EFFECTIVE DATE

Sec. 11.1. This act is effective upon ratification, except as follows:

(a) Sections 3.6, 4.1, and G.S. 97-79(d), as contained in Section 5.2, become effective October 1, 1994, and apply to claims pending on or filed after that date.

(b) G.S. 97-26(b) and G.S. 97-26(f), as enacted in Section 2.3, become effective October 1, 1994. G.S. 97-26(a), as enacted in Section 2.3, is effective upon ratification but the provisions of the third paragraph of said subsection shall not apply to the fee schedule in effect as of the date of ratification of this act.

(c) Sections 7.1, 7.2, and 8.1 become effective October 1, 1994, and apply to violations occurring on or after that date.

(d) Sections 2.1, 2.2, 2.4, 3.7, and 5.5 become effective September 1, 1994, and apply to claims pending on or filed after that date.

(e) Section 6.1 and G.S. 97-79(f), as contained in Section 5.2, become effective July 1, 1994.

(f) Sections 3.2, 3.3, 3.4, 3.5, subsections (b), (c), (d), (f), and (g), and the catch line of G.S. 97-18, as contained in Section 3.1, and Section 10.9 become effective January 1, 1995, and apply to claims pending on or filed after that date.

(g) Section 2.5 is effective upon ratification and applies to injuries by accident occurring on or after that date.

(h) Section 2.6 is effective upon ratification and applies to claims pending on or filed after the date of ratification.

(i) Section 8.5 becomes effective September 1, 1994.

Section 5.1 expires July 1, 1997.

In the General Assembly read three times and ratified this the 5th day of July, 1994.

Dennis A. Wicker
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives