

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

FILED SENATE
Mar 26, 2015
S.B. 697
PRINCIPAL CLERK

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SENATE DRS25212-LR-107A (03/14)

Short Title: IC/Establish Prescription Drug Fee Schedule. (Public)

Sponsors: Senators Hise and Pate (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO DIRECT THE NORTH CAROLINA INDUSTRIAL COMMISSION TO
3 ADOPT A DRUG FORMULARY AND PHARMACY FEE SCHEDULE.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 97-26 reads as rewritten:

6 "§ 97-26. Fees allowed for medical treatment; drug formulary; pharmacy fee schedule;
7 malpractice of physician.

8 (a) Medical Compensation Fee Schedule. – The Commission shall adopt by rule a
9 schedule of maximum fees for medical compensation and shall periodically review the
10 schedule and make revisions.

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

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

24 (a1) Prescription Drug Schedule. – The Commission shall adopt by rule a
25 nationally-recognized drug formulary that approves certain prescription drugs, prescribed
26 over-the-counter drugs, and professional pharmaceutical services, and prohibits the sale of
27 non-approved drugs and services without prior authorization from the workers' compensation
28 carrier or self-insured employer's workers' compensation administrator. The Commission shall
29 ensure that the formulary rules remain up-to-date and in accordance with the adopted drug
30 formulary. The prescription drug formulary rules shall specify an independent review process
31 for claims in which the authorized treatment provider or authorized pharmacy determines that a
32 deviation from the formulary is reasonably medically necessary for the treatment of the injured
33 worker's compensable injury. The formulary rules shall allow the injured worker the option to
34 purchase a brand name medication rather than a generic or over-the-counter medication. The
35 injured worker shall be responsible for paying the difference between the cost of the brand
36 name and the cost of the generic or over-the-counter medication.



1 (a2) Pharmacy Fee Schedule. – The Commission shall establish by rule a pharmacy fee
2 schedule that does all of the following:

3 (1) Provides injured workers with access to prescription drugs, prescribed
4 over-the-counter drugs, and professional pharmaceutical services.

5 (2) Provides reasonable fees for prescription drugs, prescribed over-the-counter
6 drugs, and professional pharmaceutical services.

7 (3) Adequately contains costs for payors.

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

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

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

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

27 (c1) Drug and Pharmacy Reimbursement Limits. – Nothing contained in subsections (a1)
28 or (a2) of this section shall be construed to permit any act in conflict with the provisions of
29 G.S. 97-26.2, governing reimbursement for prescription drugs and professional pharmaceutical
30 services.

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

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

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

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

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

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

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

17 **SECTION 2.** Notwithstanding the provisions of G.S. 150B-21.2, the Industrial
18 Commission shall adopt permanent rules in accordance with the provisions of this act using the
19 procedure and time lines for temporary rules set forth in G.S. 150B-21.1(a3). The rules adopted
20 by the Industrial Commission in accordance with this section shall:

- 21 (1) Be subject to review by the Rules Review Commission as provided by
22 G.S. 150B-21.1; provided, however, that if the rules are approved by the
23 Rules Review Commission, the rules shall become effective as provided by
24 G.S. 150B-21.3(b); and
- 25 (2) Remain in effect unless the rules are specifically disapproved by the General
26 Assembly in a bill enacted into law on or before the adjournment of the
27 session of the General Assembly that begins at least 25 days after the date
28 the rules are approved by the Rules Review Commission. If a rule adopted
29 pursuant to this section is specifically disapproved by a bill enacted into law,
30 then the rule is repealed as of the date specified in the enacted act.

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