

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 1032
Second Edition Engrossed 5/13/93

Short Title: Workers' Comp/Med Cost Controls.

(Public)

Sponsors: Senator Sands.

Referred to: Manufacturing and Labor.

May 4, 1993

1 A BILL TO BE ENTITLED
2 AN ACT TO CONTROL MEDICAL COSTS UNDER THE WORKERS'
3 COMPENSATION ACT BY LIMITING THE EMPLOYER'S LIABILITY FOR
4 MEDICAL COMPENSATION TO SCHEDULES OF FEES ESTABLISHED BY
5 THE INDUSTRIAL COMMISSION.

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 97-26 reads as rewritten:

8 "**§ 97-26. Liability for medical treatment ~~measured by average cost in community;~~**
9 **limited to fees schedules; malpractice of physician.**

10 (a) The pecuniary liability of the employer for ~~medical, surgical, hospital service,~~
11 ~~nursing services, medicines, sick travel or other treatment required when ordered by the~~
12 ~~Commission, medical compensation shall be limited to ~~such charges as prevail in the~~~~
13 ~~same community for similar treatment of injured persons of a like standard of living~~
14 ~~when such treatment is paid for by the injured person, and the the fees contained in the~~
15 ~~schedules established in accordance with G.S. 97-90.~~

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

20 Sec. 2. G.S. 97-90 reads as rewritten:

21 "**§ 97-90. Legal and medical fees to be approved by Commission; misdemeanor to**
22 **receive fees unapproved by Commission, or to solicit employment in**
23 **adjusting claims; agreement for fee or compensation.**

1 (a) Fees for attorneys ~~and physicians and charges of hospitals for medical~~
2 ~~compensation~~ under this Article shall be subject to the approval of the ~~Commission; but no~~
3 Commission. Fees for medical compensation shall be limited to maximum medical fee
4 schedules. The schedules shall be established and published, or incorporated by
5 reference, by the Commission. Fees for medical compensation shall be based on, and
6 be equal to, maximum fees payable under the State of North Carolina Teachers' and
7 State Employees' Comprehensive Major Medical Plan for similar services, procedures,
8 and tasks where such medical care is provided and shall incorporate changes. No
9 physician or hospital or other medical facilities shall be entitled to collect fees from an
10 employer or insurance carrier until he has made the reports required by the Industrial
11 Commission in connection with the case. Unless otherwise provided by the rules,
12 schedules, or orders of the Commission, a request for a specific prior approval to charge
13 shall be submitted to the Commission for each such fee or charge.

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

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

1 arose or in which the claimant resides; and upon such appeal said judge shall consider
2 the matter of such fee and determine in his discretion the attorneys' fees to be allowed in
3 the cause. The Commission shall, within 20 days after notice of appeal has been filed,
4 transmit its findings and reasons as to its action concerning such fee or compensation to
5 the judge of the superior court designated in the notice of appeal; provided that the
6 Commission shall in no event have any jurisdiction over any attorneys' fees in any third-
7 party action.

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

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

16 Sec. 3. This act becomes effective January 1, 1994.