

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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SENATE BILL 880*
Judiciary I Committee Substitute Adopted 4/23/01

Short Title: Workers' Comp/Health & Disability Reimbursement. (Public)

Sponsors:

Referred to:

April 4, 2001

A BILL TO BE ENTITLED

AN ACT TO RESTORE STABILITY UNDER THE WORKERS' COMPENSATION ACT BY OVERTURNING THE CASE DECIDED BY THE 2000 COURT OF APPEALS OF NORTH CAROLINA ENTITLED HANSEN V. CRYSTAL FORD-MERCURY, INC., BY PROVIDING THAT INSURERS THAT PROVIDE HEALTH BENEFIT PLANS, DISABILITY INCOME PLANS, OR ANY OTHER HEALTH INSURANCE ARE NOT REAL PARTIES IN INTEREST IN ANY PROCEEDING OR SETTLEMENT UNDER THE WORKERS' COMPENSATION ACT AND TO PROHIBIT INSURERS THAT PROVIDE HEALTH BENEFIT PLANS FROM OFFSETTING AGAINST PROVIDER REIMBURSEMENT ANY CHARGE FOR MEDICAL SERVICES UNLESS THE SPECIFIC MEDICAL CHARGES WERE FOUND TO BE COMPENSABLE ACCORDING TO A FINAL ADJUDICATION UNDER THE WORKERS' COMPENSATION ACT OR A SETTLEMENT AGREEMENT UNDER THE ACT APPROVED BY THE NORTH CAROLINA INDUSTRIAL COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 97 of the General Statutes is amended by adding a new section to read:

"§ 97-90.1. Insurers that provide employee's health benefit plans, disability income plans, or any other health insurance plans.

An insurer that covers an employee under a health benefit plan as defined in G.S. 58-3-167, a disability income plan, or any other health insurance plan is not a real party in interest and shall not intervene or participate in any proceeding or settlement agreement under this Article to determine whether a claim is compensable under this Article or to seek reimbursement for medical payments under its plan. The insurer that covers an employee under a health benefit plan as defined in G.S. 58-3-167 or any other health insurance plan may seek reimbursement from the employee, employer, or carrier that is liable or responsible for the specific medical charge according to a final adjudication of the claim under this Article or an order of the Commission approving a

1 settlement agreement entered into under this Article for health plan payments for that
2 specific medical charge."

3 **SECTION 2.** G.S. 97-17 reads as rewritten:

4 "**§ 97-17. Settlements allowed in accordance with Article.**

5 (a) Nothing herein contained shall be construed so as to This Article does not
6 prevent settlements made by and between the employee and employer so long as the
7 amount of compensation and the time and manner of payment are in accordance with
8 the provisions of this Article. A copy of ~~such a~~ settlement agreement shall be filed by
9 the employer with and approved by the Industrial Commission: Provided, however, that
10 ~~no~~ Commission. No party to any agreement for compensation approved by the
11 Industrial Commission shall thereafter be heard to deny the truth of the matters therein
12 set forth, contained in the settlement agreement, unless it shall be made to appear the
13 party is able to show to the satisfaction of the Commission that there has been error due
14 to fraud, misrepresentation, undue influence or mutual mistake, in which event the
15 Industrial Commission may set aside such the agreement. Except as provided in this
16 subsection, the decision of the Commission to approve a settlement agreement is final
17 and is not subject to review or collateral attack.

18 (b) The Commission shall not approve a settlement agreement under this section,
19 unless all of the following conditions are satisfied:

20 (1) The settlement agreement is deemed by the Commission to be fair,
21 just, and in the best interest of all of the parties.

22 (2) The settlement agreement contains a list of all of the known medical
23 expenses of the employee related to the injury to the date of the
24 settlement agreement, including medical expenses that the employer or
25 carrier disputes, and a list of medical expenses, if any, that will be paid
26 by the employer under the settlement agreement.

27 (3) The settlement agreement contains a finding that the positions of all of
28 the parties to the agreement are reasonable as to the payment of
29 medical expenses.

30 (c) In determining whether the positions of all of the parties to the agreement are
31 reasonable as to the payment of medical expenses under subdivision (3) of subsection
32 (b) of this section, the Commission shall consider all of the following:

33 (1) Whether the employer admitted or denied the employee's claim for
34 compensation.

35 (2) The amount of all of the known medical expenses of the employee
36 related to the injury to the date of the settlement agreement, including
37 medical expenses that the employer or carrier disputes.

38 (3) The need for finality in the litigation."

39 **SECTION 3.** G.S. 97-92 reads as rewritten:

40 "(b) The records of the Commission, Commission that are not awards under G.S.
41 97-84 and that are not reviews of awards under G.S. 97-85, insofar as they refer to
42 accidents, injuries, and settlements are not public records under G.S. 132-1 and shall not

1 be open to the public, but only to the parties satisfying the Commission of their interest
2 in such records and the right to inspect them, and to State and federal agencies pursuant
3 to G.S. 97-81."

4 **SECTION 4.** G.S. 58-51-5(a) is amended by adding a new subdivision to
5 read:

6 "(8) It contains no provision excluding from coverage claims that are
7 subject to the Workers' Compensation Act, Article 1 of Chapter 97 of
8 the General Statutes, unless the exclusion extends to only specific
9 medical charges for which the employee, employer, or carrier is liable
10 or responsible according to a final adjudication of the claim under that
11 Article or an order of the North Carolina Industrial Commission
12 approving a settlement agreement entered into under that Article."

13 **SECTION 5.** Article 50 of Chapter 58 of the General Statutes is amended by
14 adding a new section to read:

15 **"§ 58-50-57. Offsets against provider reimbursement for workers' compensation**
16 **payments forbidden.**

17 (a) An insurer that provides a health benefit plan as defined in G.S. 58-3-167
18 shall not offset or reverse a health plan payment against a provider reimbursement for
19 other medical charges unless the health plan payment was for a specific medical charge
20 for which the employee, employer, or carrier is liable or responsible according to a final
21 adjudication of the claim under the Workers' Compensation Act, Article 1 of Chapter 97
22 of the General Statutes or an order of the North Carolina Industrial Commission
23 approving a settlement agreement entered into under that Article.

24 (b) No contract between an insurer that provides a health benefit plan as defined
25 in G.S. 58-3-167 and a medical provider shall contain a provision that authorizes the
26 insurer to offset or reverse a health plan payment against a provider reimbursement for
27 other medical charges unless the health plan payment was for a specific medical charge
28 for which the employee, employer, or carrier is liable or responsible according to a final
29 adjudication of the claim under the Workers' Compensation Act, Article 1 of Chapter 97
30 of the General Statutes or an order of the North Carolina Industrial Commission
31 approving a settlement agreement entered into under that Article."

32 **SECTION 6.** This act is effective when it becomes law.