Protect and Put NC Back to Work

NCMS Position: Support as Amended

House Bill 709

Sponsor(s): Folwell (R-Forsyth), Dollar (R-Wake), Hager (R-Rutherford), Crawford (D-Granville)
Status: Passed, S.L. 2011-287

Senate Bill 544

Sponsor(s): Brown (R-Onslow), Apodaca (R-Henderson), Davis (R-Macon)
Status: Senate Committee on Insurance

Summary: Before the introduction of HB 709, bill sponsor Representative Dale Folwell (R-Forsyth) held many meetings with interested stakeholders to discuss the future of the Workers Compensation Act in North Carolina. Workers Compensation reform became a key priority for the General Assembly's new leadership in 2011, and a compromise bill was passed by both chambers and signed by the Governor in June.

The NCMS was a key participant in the negotiations, and changes made throughout the lengthy legislative process made for a much-improved bill agreed to by the business coalition, NCMS, organized labor and the plaintiff's bar.

Provisions of primary concern to NCMS are as follows:

Second Opinions

When requested in writing by the employee, the employer may agree to authorize and pay for a second opinion performed by a physician. Where the parties do not agree, the employee may ask the Industrial Commission to order the exam.

Change of Provider

The employee may select a provider to attend, prescribe, and assume the employee's case subject to Industrial Commission approval. Where the parties disagree about the care, the IC can order necessary treatment. The employee has a higher burden to convince the IC that the change of treatment or provider is necessary. In deciding, the IC may disregard or give less weight to the opinion of the health care provider from whom the employee sought treatment before requesting authorization for the change. This replaced previously problematic language requiring the IC to disregard physician opinions.

Reasonable Access to Medical Information

The NCMS assisted the bill sponsor in rewriting this section to help better control how employers communicate with physicians and their staff about workers comp patients. The law will now include a clear process that employers must follow to access "relevant medical information" through a medical practice. This term is clearly defined in the new law. The steps also are structured to protect medical practice resources so that when a request for information is made, there should be no question how to respond.

An employer may obtain the employee's relevant medical records without the employee's authorization; however the employer must provide the employee with a copy of the records received. An employer may also communicate with a provider in writing without the employee's authorization, but only to obtain information not available in the medical records. The employer may ask only limited questions related to diagnosis, treatment, return to work, etc. These questions will be similar to those on the Medical Status Questionnaire. An employer may orally communicate with the provider to obtain information not contained in the medical records, not available through written communications, and not otherwise available. The employer must give the employee prior notice and an opportunity to participate in the conversation. The provision intends to make conversations with the physicians a last resort. In addition to all of these provisions, an employer also is now able to submit to a physician additional information (e.g., surveillance materials) not contained in medical records. The employee must receive advance notice of this and has an opportunity to object to that communication.

Language also is included in the law to require the Industrial Commission to establish an annual fee to compensate physicians for time spent communicating with parties involved in Workers Compensation claims. Language also exists to protect physicians from liability for releasing medical information under the new law.

Other Notable Provisions

The new law instructs the Industrial Commission to adopt rules for electronic billing, which will to address the inefficient billing practices that have long plagued medical practices and work comp carriers. The NCMS has been advocating for e-billing and administrative simplification in workers' comp for nearly 10 years.

The law establishes a 500-week cap for employee's claiming total temporary disability benefits. These benefits were previously unlimited. There are also new limitations on the types of injuries where permanent total disability benefits are available.

The law also clarifies the rules surrounding independent medical exams requested by employers.