

04 NCAC 10A .0101 is amended as published in 27:02 NCR 168 as follows:

## CHAPTER 10 - INDUSTRIAL COMMISSION

### SUBCHAPTER 10A - WORKERS' COMPENSATION RULES

#### SECTION .0100 - ADMINISTRATION

##### **04 NCAC 10A .0101 LOCATION OF OFFICES AND HOURS OF BUSINESS**

The offices of the North Carolina Industrial Commission (~~hereinafter "Industrial Commission"~~) are located in the Dobbs Building, 430 North Salisbury Street, in Raleigh, North Carolina, ~~27611. Carolina. The same office hours will be observed by the Industrial Commission as are, or may be, observed by other State offices in Raleigh.~~ Documents that are not being filed electronically may be filed between the hours of 8:00 a.m. and 5:00 p.m. only. Documents permitted to be filed electronically may be filed until 11:59 p.m. on the ~~day due.~~ required filing date.

*History Note: Authority G.S. 97-80(a);*

*Eff. January 1, 1990;*

*Amended Eff. January 1, 2013; January 1, 2011; June 1, 2000.*

1 Rule 04 NCAC 10A .0102 is amended as published on the OAH website for the public comment period beginning  
2 January 31 through February 26, 2014, with changes as follows:

3  
4 **04 NCAC 10A .0102 OFFICIAL FORMS**

5 ~~(a) The Industrial Commission will remain in continuous session subject to the call of the Chairman to meet as a~~  
6 ~~body for the purpose of transacting such business as may come before it.~~

7 ~~(b) In reviewing an Opinion and Award of Deputy Commissioner or of a sole Commissioner acting as the hearing~~  
8 ~~officer, the Full Commission may sit en banc or in panels of three.~~

9 (a) Copies of the Commission's rules and forms may be obtained by contacting the Commission in person at the  
10 address in Rule .0101 of this Subchapter, by written request mailed to 4340 Mail Service Center, Raleigh, NC  
11 27699-4340, Attn.: Administrator, or from the Commission's website at <http://www.ic.nc.gov/forms.html>.

12 (b) [The use of any printed forms other than those provided by the Commission is prohibited except that insurance]  
13 Insurance carriers, self-insured [employers;] employers, attorneys and other parties may reproduce Commission forms  
14 for their own use, provided:

15 (1) no statement, question, or information blank contained on the Commission form is omitted from  
16 the substituted [form, and] form; and

17 (2) the substituted form is identical in size and format with the Commission form.  
18

19 *History Note: Authority G.S. 97-80(a); 97-81(a);*  
20 *Eff. January 1, 1990;*  
21 *Amended Eff. April 1, 2014; June 1, 2000.*

04 NCAC 10A .0103 is amended as published in 27:02 NCR 168 as follows:

**04 NCAC 10A .0103 NOTICE OF ACCIDENT AND CLAIM OF INJURY OR OCCUPATIONAL DISEASE**

(a) ~~The Industrial Commission will supply, on request, forms identified by number and title as follows:~~

~~Form 17—Workers' Compensation Notice~~

~~Form 18—Notice of Accident to Employer and Claim of Employee or His Personal Representative or Dependents (N.C.G.S. 97-24)~~

~~Form 18B—Claim by Employee or His Personal Representative or Dependents for Workers' Compensation Benefits for Lung Damage, Including Asbestosis, Silicosis, and Byssinosis (N.C.G.S. 97-53)~~

~~Form 18M—Employee's Claim for Additional Medical Compensation~~

~~Form 19—Employer's Report of Employee's Injury to the Industrial Commission~~

~~Form 21—Agreement for Compensation for Disability Pursuant to N.C.G.S. 97-82~~

~~Form 22—Statement of Days Worked and Earnings of Injured Employee (Wage Chart)~~

~~Form 24—Application to Terminate or Suspend Payment of Compensation Pursuant to N.C.G.S. 97-18.1~~

~~Form 25C—Authorization for Rehabilitation Professional to Obtain Medical Records of Current Treatment~~

~~Form 25D—Dentist's Itemized Statement of Charges for Treatment and Certification of Treatment Disability~~

~~Form 25M—Physician's Itemized Statement of Charges for Treatment and Certification of Treatment of Disability~~

~~Form 25N—Notice to the Industrial Commission of Assignment of Rehabilitation Professional~~

~~Form 25R—Evaluation for Permanent Impairment~~

~~Form 25T—Itemized Statement of Charges for Travel~~

~~Form 25P—Itemized Statement of Charges for Drugs~~

~~Form UB-92—Hospital Bill~~

~~Form 26—Supplemental Agreement as to Payment of Compensation Pursuant to N.C.G.S. 97-82~~

~~Form 26D—Agreement for Compensation Under N.C.G.S. 97-37~~

~~Form 28—Return to Work Report~~

~~Form 28B—Report of Employer or Carrier/Administrator of Compensation and Medical Compensation Paid and Notice of Right to Additional Medical Compensation~~

~~Form 28T—Notice of Termination of Compensation by Reason of Trial Return to Work Pursuant to N.C.G.S. 97-18.1(b) and N.C.G.S. 97-32.1~~

~~Form 28U—Employee's Request that Compensation be Reinstated After Unsuccessful Trial Return to Work Pursuant to N.C.G.S. 97-32.1~~

~~Form 29—Supplementary Report for Fatal Accidents~~

~~Form 30—Agreement for Compensation for Death~~

~~Form 30D—Notice of Death Award (Approval of Agreement)~~

1 Form 31—Application for Lump Sum Award  
2 Form 33—Request that Claim be Assigned for Hearing  
3 Form 33R—Response to Request that Claim be Assigned for Hearing  
4 Form 36—Subpoena for Witness and Subpoena to Produce Items or Documents  
5 Form 42—Application for Appointment of Guardian Ad Litem  
6 Form 44—Application for Review  
7 Form 50—Itemized Statement of Charge for Nursing  
8 Form 51—Consolidated Fiscal Annual Report of "Medical Only" and "Lost Time" Cases  
9 Form 60—Employer's Admission of Employee's Right to Compensation Pursuant to N.C.G.S. 97-18(b)  
10 Form 61—Denial of Workers' Compensation Claim Pursuant to N.C.G.S. 97-18(e) and (d)  
11 Form 62—Notice of Reinstatement of Compensation Pursuant to N.C.G.S. 97-32.1 and N.C.G.S. 97-18(b)  
12 Form 63—Notice to Employee of Payment of Compensation Without Prejudice to Later Deny the Claim  
13 Pursuant to N.C.G.S. 97-18(d)  
14 Form 90—Report of Earnings  
15 Form IZ-510—Medical Bill Analysis Used for Approval and Reduction of Medical Bills  
16 Form MCS2—Petition for Order Referring Case to Mediated Settlement Conference  
17 Form MCS4—Designation of Mediator  
18 Form MCS5—Report of Mediator  
19 Form MCS6—Mediator's Declaration of Interest and Qualifications  
20 Form MCS7—Report of Evaluator  
21 Form MSC8—Mediated Settlement Agreement

22 The mailing address for each Industrial Commission form appears at the bottom right corner of the form.

23 (b) The use of any printed forms other than those approved and adopted by the Industrial Commission is prohibited.  
24 Insurance carriers, self-insureds, attorneys and other parties may reproduce approved forms for their own use,  
25 provided:

26 (1) No statement, question, or information blank contained on the approved Industrial Commission's  
27 form is omitted from the substituted form.

28 (2) Such substituted form is substantially identical in size and format with the approved Industrial  
29 Commission's form.

30 (c) The following forms may be utilized in preparing routine orders for the signature of a Commissioner or Deputy  
31 Commissioner, and are appended at the end of these Rules:

32 Form I—Order for Third Party Recovery Distribution per N.C.G.S. 97-10.2

33 Form IIa—Order Approving Compromise Settlement Agreement (admitted liability, medical paid) and  
34 Third Party Distribution

35 Form IIb—Order Approving Compromise Settlement Agreement (denied liability, unpaid medical) and  
36 Third Party Distribution

37 Form IIIa—Order for Approving Compromise Settlement Agreements (admitted liability, medical paid)

Form IIIb—Order for Approving Compromise Settlement Agreements (denied liability, unpaid medical)

(d) ~~Copies of rules, forms and Industrial Commission Minutes can be obtained by contacting the Administrator's Office of the Industrial Commission, 4319 Mail Service Center, Raleigh, NC 27699-4319.~~

To give notice of an accident or occupational disease and to make a workers' compensation claim, an employee may complete a Form 18 Notice of Accident to Employer and Claim of Employee, Representative, or Dependent and file it electronically with Claims Administration, or by mail to North Carolina Industrial Commission, 4335 Mail Service Center, Raleigh, NC 28799-4335.

*History Note: Authority G.S. 97-22; 97-24; 97-58; 97-80(a); 97-81;*

*Eff. January 1, 1990*

*Amended Eff. January 1, 2013.*

04 NCAC 10A .0104 is amended as published in 27:02 NCR 169 as follows:

**04 NCAC 10A .0104      EMPLOYER'S REQUIREMENT TO FILE A FORM 19**

~~An employer shall immediately report to its carrier or administrator any injury, or allegation by an employee of an injury, sustained in the course of employment for which the attention of a physician is needed or actually sought. Within five days of knowledge of the injury or allegation, the employer or carrier/administrator or its successor in interest shall file with the Industrial Commission and provide a copy to the employee of a Form 19, Employer's Report of Employee's Injury to the Industrial Commission, if injury causes the employee to be absent from work for more than one day and the employee's medical compensation is greater than an amount which is established periodically by the Industrial Commission in its Minutes. The employer may record the employee's or another person's description of the injury on said form without admitting the truth of the information.~~

(a) The form required to be provided by G.S. 97-92(a) is the Form 19 *Employer's Report of Employee's Injury or Occupational Disease to the Industrial Commission.*

~~In addition to providing the Form 19 to the employee, the employer or carrier/administrator shall also provide a blank Form 18 for use by the employee.~~

(b) The employer, carrier, or administrator shall provide the employee with a copy of the completed Form 19 *Employer's Report of Employee's Injury or Occupational Disease to the Industrial Commission*, along with a blank Form 18 *Notice of Accident to Employer and Claim of Employee, Representative, or Dependent* for use by the employee in making a claim.

~~The front of the Form 19 shall prominently display the following statement: "To the Employee: This Form 19 is not your claim for workers' compensation benefits. To make a claim, you must complete and sign the enclosed Form 18 and file it with Claims Administration, North Carolina Industrial Commission, 4335 Mail Service Center, Raleigh, NC 28799-4335 within two year of the date of your injury or last payment of medical compensation. For occupational diseases, the claim must be filed within two years of the date of disability and the date your doctor told you that you have a work-related disease, whichever is later."~~

*History Note:      Authority G.S. 97-80(a); 97-92;*

*Eff. March 15, 1995;*

*Amended Eff. January 1, 2013; January 1, 2011; August 1, 2006; March 1, 2001; June 1, 2000.*

04 NCAC 10A .0106 is adopted with changes as published in 27:02 NCR 170 as follows:

**04 NCAC 10A .0106      FILING OF ANNUAL REPORT REQUIREMENT**

Every carrier, ~~self-insured employer, group self-insured employer, and statutory self-insured employer within the meaning of individual self-insurer, group self-insurer, and member self-insurer as defined by G.S. 97-130~~ shall submit on a yearly basis a Form 51 *Annual Consolidated Fiscal Report of "Medical Only" and "Lost Time" Cases*.

*History Note:      Authority G.S. 97-80(a); 97-92; 97-93; 97-130*

*Eff. January 1, 2013.*

04 NCAC 10A .0107 is adopted with changes as published in 27:02 NCR 170 as follows:

**04 NCAC 10A .0107      COMPUTATION OF TIME**

Except as otherwise provided by statute<sup>(s)</sup> or rule, in computing any period of time prescribed or allowed by the Commission Rules, by order of the Commission, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or a holiday established by the State Personnel Commission, in which event the period runs until the end of the next day [which] that is not a Saturday, Sunday or a holiday established by the State Personnel Commission. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation. Whenever a party has the right to do some act or take some proceedings within a prescribed period after the service of any document, three days shall be added to the prescribed period.

*History Note:      Authority G.S. 97-80;*

*Eff. January 1, 2013.*



04 NCAC 10A .0201 is amended as published in 27:02 NCR 170 as follows:

**SECTION .0200 – NOTICE OF ACT**

**04 NCAC 10A .0201 POSTING REQUIREMENT FOR EMPLOYERS**

~~(a) Pursuant to the provisions of N.C.G.S. 97-93, all employers subject to the provisions of the Workers' Compensation Act shall post in a conspicuous location in places of employment a Form 17, Workers' Compensation Notice, to give notice to the employees that they are in an employment subject to the provisions of the Workers' Compensation Act and that their employer has obtained workers' compensation coverage or has qualified as self-insured for workers' compensation purposes.~~

~~(b) Should the employer allow its workers' compensation coverage to lapse or that cease to qualify as a self-insured, the employer shall remove within five working days any Form 17 and any other notice indicating otherwise.~~

(a) The form required to be posted by G.S. 97-93(e) is the Form 17 *Workers' Compensation Notice to Injured Workers and Employers*, that includes the following:

(1) name of insurer;

(2) policy number; and

(3) dates of coverage.

(b) If there is a change in coverage, the Form 17 *Workers' Compensation Notice to Injured Workers and Employers* shall be amended within 5 working days.

*History Note: Authority G.S. 97-80(a); 97-93;*

*Eff. January 1, 1990;*

*Amended Eff. January 1, 2013; March 15, 1995.*

04 NCAC 10A .0302 is amended with changes as published in 27:02 NCR 171 as follows:

**04 NCAC 10A .0302 REQUIRED CONTACT INFORMATION FROM CARRIERS**

All insurance carriers, third party administrators and self-insured employers shall designate a primary contact person for workers' compensation issues in North Carolina and shall maintain and provide annually to the Director of Claims Administration of the ~~Industrial Commission~~ Commission, the primary contact person's current contact information, including direct telephone and facsimile numbers, mailing addresses, and email addresses. Contact information shall be updated within 30 days of any change. ~~Failure to comply with this Rule may result in sanctions, including those specified in Rule 802. The Industrial Commission shall implement guidelines to facilitate the collection of this information.~~

*History Note:* Authority G.S. 97-80(a); 97-94;  
Eff. January 1, 2011;  
Amended Eff. January 1, 2013.

04 NCAC 10A .0401 is amended with changes as published in 27:02 NCR 171 as follows:

**SECTION .0400 – DISABILITY, COMPENSATION, FEES**

**04 NCAC 10A .0401      CALCULATING THE SEVEN-DAY WAITING PERIOD**

(a) ~~If~~ When the injured employee is not paid wages for the entire day on which the injury occurred, the seven-day waiting period prescribed by the Workers' Compensation Act shall include the day of injury regardless of the hour of the injury.

(b) ~~If~~ When the injured employee is paid wages for the entire day on which ~~he is injured~~ the injury occurred and fails to return to work on his next regular workday because of the injury, the seven-day waiting period shall begin with the first calendar day following ~~his~~ the injury, even though this may or may not be a regularly scheduled workday.

(c) All days, or parts of days, when the injured employee is unable to earn a full day's wages, or is not paid a full day's wages due to injury, shall be counted in computing the waiting period even though the days may not be consecutive, or regularly scheduled workdays. ~~and even though these are not regularly scheduled workdays.~~

(d) ~~If~~ There is no seven-day waiting period when the permanent partial disability period, when period added to the temporary disability period, exceeds 21 days, ~~there is no waiting period.~~ days.

*History Note:      Authority G.S. 97-28; 97-80(a);*

*Eff. January 1, 1990;*

*Amended Eff. January 1, 2013.*

04 NCAC 10A .0402 is amended with changes as published in 27:02 NCR 172 as follows:

**04 NCAC 10A .0402 SUBMISSION OF EARNINGS STATEMENT REQUIRED**

(a) ~~[Upon request of the employee or the Commission]~~ Within 30 days of a request by the employee or the Commission, the employer shall submit a verified statement of the specific days worked and the earnings of the employee during the 52-week period immediately preceding the injury to the Commission and the employee's attorney of record or the employee, if not represented.

(b) In all cases involving a fractional part of a week, the daily average weekly wage shall be computed ~~on the basis of one-seventh of the average weekly wage;~~ based upon the applicable fractional portion of the week worked.

*History Note: Authority G.S. 97-2(5); 97-18(b); 97-80(a); 97-81;  
Eff. January 1, 1990;  
Amended Eff. January 1, 2013.*

04 NCAC 10A .0403 is amended as published in 27:02 NCR 172 as follows:

**04 NCAC 10A .0403 MANNER OF PAYMENT OF COMPENSATION**

(a) All payments of compensation ~~must~~ shall be made directly to the employee, dependent, guardian or personal representative ~~representative. entitled thereto unless otherwise ordered by the Industrial Commission. At the employee's request, payment~~ Payment of compensation shall be mailed by first class mail, postage pre-paid, to an address specified by the employee, unless another method is specified by and agreed upon by the parties. ~~otherwise directed by the Industrial Commission.~~

(b) All payments of compensation ~~must~~ shall be made in ~~strict~~ accordance with the award issued by the Industrial Commission.

*History Note: Authority G.S. 97-18; 97-80(a);*

*Eff. January 1, 1990;*

*Amended Eff. January 1, 2013; June 1, 2000.*

04 NCAC 10A .0404 is amended with changes as published in 27:02 NCR 172 as follows:

**04 NCAC 10A .0404      TERMINATION AND SUSPENSION OF COMPENSATION**

(a) ~~Payments of compensation undertaken pursuant to an award of the Industrial Commission shall continue until the terms of the award have been fully satisfied. In cases where [Where] the award is to pay compensation during disability, there is a rebuttable presumption that disability continues until the employee returns to suitable employment.~~ No application to terminate or suspend compensation shall be approved by the Commission without a formal hearing if the effect of such the approval is to set aside the provisions of an award of the Industrial Commission.

(b) When an employer, ~~or carrier/administrator~~ carrier, or administrator seeks to terminate or suspend temporary total disability compensation being paid pursuant to G.S. § 97-29 G.S. 97-29 for a reason other than those specified in ~~G.S. § 97-18(d), payment without prejudice, G.S. 97-18(d) (payment without prejudice), or G.S. § 97-18.1(b), trial return to work, G.S. 97-18.1(b) (trial return to work), or G.S. 97-29(b) (expiration of 500-week limit on disability compensation (only for claims arising on or after June 24, 2011))~~, the employer, ~~or carrier/administrator~~ carrier, or administrator shall notify the employee and the employee's attorney of record, ~~record or the employee, if any not represented,~~ on Form 24, "Application to Stop Payment of Compensation." Application to Terminate or Suspend Payment of Compensation. This form requests:

- (1) the date of injury [of] or accident and date the disability began;
- (2) the nature and extent of injury;
- (3) the number of weeks compensation paid and the date range including from and to;
- (4) the total amount of indemnity compensation paid to date;
- (5) whether one of the following events has occurred:
  - (A) an agreement was approved by the Commission and the date;
  - (B) an employer admitted employee's right to compensation pursuant to G.S. 97-18(b);
  - (C) an employer paid compensation to the employee without contesting the claim within the statutory period provided under G.S. 97-18(d); or
  - (D) any other event related to the termination or suspension of compensation[-];
- (6) whether the application is made to terminate or suspend compensation and the grounds; and
- (7) whether the employee is in managed care.

(c) The employer, ~~or carrier/administrator~~ carrier, or administrator shall specify the legal grounds and the alleged facts supporting the application, and shall complete the blank space in the "Important Notice to Employee" portion of Form 24 Application to Terminate or Suspend Payment of Compensation by inserting a date 17 days from the date the employer, ~~or carrier/administrator~~ carrier, or administrator deposits the completed Form 24 in the mail to the employee and the employee's attorney of record, if any. ~~The original of the Form 24 and the attached documents shall be sent to the Industrial Commission at the same time and by the same method by which a copy of the Form 24 and attached documents are sent to the employee and the employee's attorney of record, if any.~~ serves the completed Form 24 Application to Terminate or Suspend Payment of Compensation on the employee's attorney of record by e-

1 ~~mail or facsimile, or the employee, if not represented, by [e-mail, facsimile or U.S. Mail] certified mail, return~~  
2 ~~receipt requested. The Form 24 *Application to Terminate or Suspend Payment of Compensation* and attached~~  
3 ~~documents shall be sent to the Commission via upload to the Electronic Document Fee Portal, and shall be~~  
4 ~~contemporaneously served on [plaintiffs] employee's counsel by e-mail or facsimile, or on [plaintiff] the employee,~~  
5 ~~if unrepresented, by [U.S. Mail] certified mail, return receipt requested. [If the Form 24 *Application to Terminate or*~~  
6 ~~*Suspend Payment of Compensation* is served by U.S. Mail, a copy shall also be uploaded to the Electronic~~  
7 ~~Document Fee Portal.]~~

8 (d) The Form 24 *Application to Terminate or Suspend Payment of Compensation* shall specify the number of pages  
9 of documents attached which are to be considered by the Industrial Commission. ~~Failure to specify the number of~~  
10 ~~pages may result in the refusal of the Industrial Commission to accept the same for filing.~~ If the employee or the  
11 employee's attorney of record, if any, record objects by the date inserted on the employer's Form 24, *24 Application*  
12 ~~to Terminate or Suspend Payment of Compensation, or within such additional reasonable time as the Industrial~~  
13 ~~Commission may allow, the Industrial Commission shall set the case for an informal hearing, unless waived by the~~  
14 ~~parties in favor of a formal hearing. The objection shall be accompanied by all currently available supporting~~  
15 ~~documentation. A copy of any objection shall be sent, with any supporting documents, contemporaneously served~~  
16 ~~on to the employer employer, and carrier/administrator, carrier, or administrator. The Form 24 *Application to*~~  
17 ~~*Terminate or Suspend Payment of Compensation* or objection may be supplemented with any additional relevant~~  
18 ~~documentation received after the initial filing. The term "carrier/administrator" "carrier" or "administrator" also~~  
19 ~~includes any successor in interest. interest in the pending claim.~~

20 (e)(e) If an employee does not object within the allowed time, the Industrial Commission shall review the Form 24  
21 *Application to Terminate or Suspend Payment of Compensation* and any attached documentation, and an  
22 Administrative Decision and Order may shall be rendered without an informal hearing as to whether compensation  
23 shall be terminated or suspended, there is a sufficient basis under the Workers' Compensation Act to terminate or  
24 suspend compensation, except as provided in paragraph (f) below. Paragraph (g) of this Rule. Either party may seek  
25 review of the Administrative Decision and Order as provided by 4 NCAC 10A-.0703. Rule .0703 of this Subchapter.

26 (d)(f) If the employee timely objects to the Form 24, *24 Application to Terminate or Suspend Payment of*  
27 *Compensation*, the Industrial Commission shall conduct an informal hearing within 25 days of the receipt by the  
28 Industrial Commission of the Form 24, unless the time is extended for good cause shown. *24 Application to*  
29 *Terminate or Suspend Payment of Compensation*, unless the time is extended for good cause shown. The informal  
30 hearing may be by telephone conference between the Industrial Commission and the parties or their attorneys of  
31 record, record, if any. ~~When good cause is shown the~~ The informal hearing may be conducted with the parties or  
32 their attorneys of record, if any, record personally present with the Industrial Commission Commission, in Raleigh  
33 or such other location as is selected by the Industrial Commission. The Industrial Commission shall make  
34 arrangements for the informal hearing with a view towards conducting the hearing in the most expeditious manner  
35 manner, under the circumstances. ~~Except for good cause shown, the~~ The informal hearing shall be no more than 30  
36 minutes, with each side given 10 minutes to present its case and five minutes for rebuttal. Notwithstanding the  
37 above, the employer, or carrier/administrator carrier, or administrator may waive the right to an informal hearing,

1 and proceed to a formal hearing by filing a request for hearing on a Form 33, 33 Request that Claim be Assigned for  
2 Hearing. A decision on the application shall be made within five days after the completion of the informal hearing.

3 (e)(g) Either party may appeal the Administrative Decision and Order of the Industrial Commission as provided by  
4 ~~4 NCAC 10A .0703. Rule .0703 of this Subchapter.~~ A Deputy Commissioner shall conduct a hearing which shall be  
5 a hearing de novo. The hearing shall be ~~peremptorily set [without delay]~~ and shall not require a Form 33, 33  
6 Request that Claim be Assigned for Hearing. The employer has the burden of producing evidence on the issue of  
7 the employer's application for termination or suspension of compensation. If the Deputy Commissioner reverses an  
8 order previously granting a Form 24 Application to Terminate or Suspend Payment of Compensation motion, the  
9 ~~employer employer, or carrier/administrator carrier, or administrator~~ shall promptly resume compensation or  
10 otherwise comply with the Deputy Commissioner's decision, notwithstanding any appeal or application for review to  
11 the Full Commission under G.S. § 97-85; G.S. 97-85.

12 (f)(h) ~~In the event~~ If the Industrial Commission is unable to reach a decision after an informal hearing, the Industrial  
13 Commission shall issue an order to that effect which ~~that~~ shall be in lieu of a Form 33 Request that Claim be  
14 Assigned for Hearing, and the case shall be placed on the formal hearing docket. If additional issues are to be  
15 addressed, the ~~employer employer, or carrier/administrator carrier, or administrator~~ shall be required within 30 days  
16 of the date of the Administrative Decision and Order to file a Form 33 Request that Claim be Assigned for Hearing  
17 or to notify the Industrial Commission that a formal hearing is not currently necessary. The effect of placing the  
18 case on the docket shall be the same as if the Form 24 Application to Terminate or Suspend Payment of  
19 Compensation were denied, and compensation shall continue until such time as the case is decided by a  
20 Commissioner or a Deputy Commissioner following a formal hearing.

21 (g)(i) The Commission shall mail Any any Administrative Decision and Order ~~shall be mailed~~ to the non-prevailing  
22 party by certified mail.

23 (h)(j) No order issued as a result of an informal Form 24 Application to Terminate or Suspend Payment of  
24 Compensation hearing shall terminate or suspend compensation retroactively to a date preceding the filing date of  
25 the Form 24, 24 Application to Terminate or Suspend Payment of Compensation. Compensation may be terminated  
26 retroactively without a formal hearing where there is agreement by the parties, where allowed by statute, or where  
27 the employee is incarcerated. Otherwise, retroactive termination or suspension of compensation to a date preceding  
28 the filing of a Form 24 Application to Terminate or Suspend Payment of Compensation may be ordered as a result of  
29 a formal hearing. Additionally, nothing shall impair an employer's right to seek a credit pursuant to ~~G.S. § 97-42;~~  
30 ~~[G.S. 97-49]~~ G.S. 97-42.

31 (k) Any Administrative Decision and Order or other Commission decision allowing the suspension of compensation  
32 on the grounds of noncompliance with medical treatment pursuant to G.S. 97-25 or G.S. 97-27, noncompliance with  
33 vocational rehabilitation pursuant to G.S. 97-25 or G.S. 97-32.2, or unjustified refusal to return to work pursuant to  
34 G.S. 97-32 must specify what action the employee must take to end the suspension and reinstate the compensation.

36 History Note: Authority ~~G.S. 97-18(e); G.S. 97-18(d); 97-18.1(c); 97-18.1(d); 97-32.2(g); 97-80(a);~~  
37 Eff. January 1, 1990;



*Amended Eff. January 1, 2013; June 1, 2000; March 15, 1995.*

04 NCAC 10A .0404A is amended with changes as published in 27:02 NCR 173 as follows:

**04 NCAC 10A .0404A TRIAL RETURN TO WORK**

(a) Except as provided in ~~subparagraph (7), Paragraph (g) of this Rule,~~ when compensation for total disability being paid pursuant to ~~G.S. § 97-29~~ G.S. 97-29 is terminated because the employee has returned to work for the same or a different employer, ~~such the~~ termination is subject to the ~~trial return to work~~ provisions of ~~G.S. § 97-32.1, G.S. 97-32.1 (trial return to work).~~ When compensation is terminated under these circumstances, the ~~employer employer, or carrier/administrator~~ carrier, or administrator shall, within 16 days of the termination of compensation, file a Form 28T *Notice of Termination of Compensation by Reason of Trial Return to Work* with the ~~Industrial~~ Commission and provide a copy of it to ~~the employee and the employee's attorney of record, if any; record or the employee, if unrepresented.~~

(b) If during the trial return to work period, the employee must stop working due to the injury for which compensation had been paid, the employee should ~~[shall]~~ may complete and file with the Industrial Commission a Form 28U, *28U Employee's Request that Compensation be Reinstated after Unsuccessful Trial Return to Work,* without regard to whether the ~~employer employer, or carrier/administrator~~ carrier or administrator has filed a Form 28T *Notice of Termination of Compensation by Reason of Trial Return to Work* as required by Paragraph ~~(1)~~ Paragraph (a) of this Rule above, and provide a copy of the completed form to the employer and ~~carrier/administrator, carrier or administrator.~~ A Form 28U *Employee's Request that Compensation be Reinstated after Unsuccessful Trial Return to Work* ~~shall contain~~ contains a section ~~which that~~ must shall be completed by the physician who imposed the restrictions or one of the employee's authorized treating physicians, certifying that the employee's injury for which compensation had been paid prevents the employee from continuing the trial return to work. If the employee returned to work with an employer other than the employer at the time of injury, the employee ~~must~~ [shall] may complete the "Employee's Release and Request For of Employment Information" section of a Form 28U, *28U Employee's Request that Compensation be Reinstated after Unsuccessful Trial Return to Work.* An employee's failure to provide a Form 28U *Employee's Request that Compensation be Reinstated after Unsuccessful Trial Return to Work* does not preclude a subsequent finding by the Commission that the trial return to work was unsuccessful.

(c) Upon receipt of a ~~properly~~ completed Form 28U, *28U Employee's Request that Compensation be Reinstated after Unsuccessful Trial Return to Work,* the employer, ~~or carrier/administrator~~ carrier, or administrator shall promptly resume payment of compensation for total disability. If the employee fails to provide the required certification of an authorized treating physician as specified in ~~subsection 2 above,~~ Paragraph (b) of this Rule, or if the employee fails to execute the "Employee's Release and Request" section of a Form 28U, *28U Employee's Request that Compensation be Reinstated after Unsuccessful Trial Return to Work,* if required pursuant to ~~Paragraph (2) above,~~ Paragraph (b) of this Rule, the employer, ~~or carrier/administrator~~ carrier, or administrator ~~shall is not be~~ required to resume payment of compensation. Instead, ~~in such circumstances,~~ the ~~employer employer, or carrier/administrator~~ carrier, or administrator shall promptly return a Form 28U *Employee's Request that Compensation be Reinstated after Unsuccessful Trial Return to Work* to ~~the employee and the employee's attorney~~

1 of record, if any, or the employee, if unrepresented, along with a statement explaining the reason the Form 28U  
2 Employee's Request that Compensation be Reinstated after Unsuccessful Trial Return to Work is being returned and  
3 the reason compensation is not being reinstated.

4 (d) The reinstated compensation shall be due and payable and subject to the provisions of G.S. § 97-18(g) G.S. 97-  
5 18(g) on the date and for the period commencing on the date the ~~employer~~ employer, or carrier/administrator ~~carrier,~~  
6 ~~or administrator~~ receives a properly completed Form 28U Employee's Request that Compensation be Reinstated  
7 after Unsuccessful Trial Return to Work certifying an unsuccessful return to work. Such resumption of  
8 compensation ~~shall~~ does not preclude the employee's right to seek, nor the ~~employer~~ employer's, or  
9 ~~carrier's/administrator's~~ carrier's, or administrator's right to contest, the payment of compensation for the period prior  
10 or subsequent to such ~~the~~ reinstatement. If it is thereafter determined by the Commission that any temporary total or  
11 temporary partial compensation, including the reinstated compensation, was not due and payable, a credit shall be  
12 given against any other compensation determined to be owed.

13 (e) When the ~~employer~~ employer, or carrier/administrator ~~carrier, or administrator~~ has received a properly  
14 completed Form 28U Employee's Request that Compensation be Reinstated after Unsuccessful Trial Return to Work  
15 and contests the employee's right to reinstatement of total disability compensation, ~~it~~ the employer, carrier, or  
16 ~~administrator~~ may suspend or terminate compensation only as provided in G.S. § 97-18.1 G.S. 97-18.1, and/or  
17 ~~pursuant to the provisions of G.S. § 97-83 G.S. 97-83 and or G.S. § 97-84. G.S. 97-84.~~

18 (f) Upon resumption of payment of compensation for total disability, the ~~employer~~ employer, or  
19 ~~carrier/administrator~~ carrier, or administrator shall complete and file a Form 62 Notice of Reinstatement or  
20 Modification of Compensation and/or or such other forms as may be required by the Workers' Compensation Act or  
21 by Industrial Commission rule. A copy of the Form 62 Notice of Reinstatement or Modification of Compensation  
22 shall be sent to ~~the employee and the employee's attorney of record, if any.~~ record or the employee, if unrepresented.

23 (g) The trial return to work provisions do not apply to the following:

- 24 (1) ~~"Medical-only" cases, defined as cases in which the employee is not absent from work for more~~  
25 ~~than one day and or in which medical expenses are less than two thousand dollars (\$2,000); the~~  
26 ~~amount periodically established by the Industrial Commission in its Minutes;~~
- 27 (2) ~~Cases~~ cases in which the employee has missed fewer than eight days from work;
- 28 (3) ~~Cases~~ cases wherein in which the employee has been released to return to work by an authorized  
29 treating physician as specified in ~~subsection 2 above~~ Paragraph (b) of this Rule without restriction  
30 or limitation except that if the physician, within 45 days of the employee's return to work date,  
31 determines that the employee is not able to perform the job duties assigned, then the ~~employer~~  
32 ~~employer, or carrier/administrator~~ carrier, or administrator ~~must~~ shall resume benefits. If within  
33 the same time period, the physician determines that the employee may work only with restrictions,  
34 then the employee is entitled to a resumption of benefits commencing as of the date of the report,  
35 unless the employer is able to offer employment consistent with the restrictions, in which case a  
36 trial return to work period shall be deemed to have commenced at the time of the employee's  
37 initial return to work;

1 (4) Cases ~~cases wherein in which~~ the employee has accepted or agreed to accept compensation for  
2 permanent partial disability pursuant to ~~G.S. § 97-31, G.S. 97-31~~, unless the trial return to work  
3 follows reinstatement of compensation for total disability under G.S. § 97-29; and

4 (5) ~~Claims claims~~ pending on or filed after 1 January 1995, when the ~~employer employer, or~~  
5 ~~carrier/administrator carrier, or administrator~~ contests a claim pursuant to G.S. § 97-18(d) within  
6 the time allowed thereunder.

7 (h) This Rule ~~became effective on 15 February 1995, and~~ applies to any employee who leaves work on or after  
8 February 15, 1995 ~~that date~~ due to a compensable injury.

9  
10 *History Note: Authority G.S. 97-18(h); 97-29; 97-32.1; 97-80(a);*

11 *Eff. February 15, 1995;*

12 *Amended Eff. January 1, 2013; August 1, 2006; June 1, 2000.*

Rule 04 NCAC 10A .0405 is amended as published on the OAH website for the public comment period beginning January 31 through February 26, 2014, with changes as follows:

#### **04 NCAC 10A .0405 REINSTATEMENT OF COMPENSATION**

~~(a) Amputation of any portion of the bone of a distal phalange of a finger or toe at or distal to the visible base of the nail will be considered as equivalent to the loss of one-fourth of such finger or toe.~~

~~(b) Amputation of any portion of the bone of the distal phalange of a finger or toe proximal to the visible base of the nail will be considered as equivalent to the loss of one-half of such finger or toe.~~

~~(c) Amputation through the forearm at a point so distal to the elbow as to permit satisfactory use of a prosthetic appliance with retention of full natural elbow function shall be considered amputation of the hand. Otherwise, it shall be considered amputation of the arm.~~

~~(d) Amputation through the lower leg at a point so distal to the knee as to permit satisfactory use of a prosthetic appliance with retention of full natural knee function shall be considered amputation of the foot. Otherwise, it shall be considered amputation of the leg.~~

(a) In a claim in which the employer, carrier, or administrator has admitted liability, when an employee seeks reinstatement of compensation pursuant to G.S. 97-18(k), the employee may notify the employer, carrier, or administrator, and the employer's, carrier's, or administrator's attorney of record, on a Form 23 [Application to Reinstatement of Disability Compensation] *Application to Reinstatement of Disability Compensation*, or by the filing of a Form 33 [Request that Claim be Assigned for Hearing] *Request that Claim be Assigned for Hearing*.

(b) When reinstatement is sought by the filing of a Form 23 [Application to Reinstatement of Disability Compensation] *Application to Reinstatement of Disability Compensation*, the original Form 23 [Application to Reinstatement of Disability Compensation] *Application to Reinstatement of Disability Compensation* and the attached documents shall be sent to the Commission at the same time and by the same method by which a copy of the Form 23 and attached documents are sent to the employer, carrier, or administrator and the employer's, carrier's, or administrator's attorney of record. The employee shall specify the grounds and the alleged facts supporting the application and shall complete the blank space in the "Important Notice to Employer" portion of Form 23 [Application to Reinstatement of Disability Compensation] *Application to Reinstatement of Disability Compensation* by inserting a date 17 days from the date the employee serves the completed Form 23 [Application to Reinstatement of Disability Compensation] *Application to Reinstatement of Disability Compensation* on the employer, carrier, or administrator and the attorney of record, if any. The Form 23 [Application to Reinstatement of Disability Compensation] *Application to Reinstatement of Disability Compensation* shall specify the number of pages of documents attached that are to be considered by the Commission. Within 17 days from the date the employee serves the completed Form 23 [Application to Reinstatement of Disability Compensation] *Application to Reinstatement of Disability Compensation* on the employer, carrier, or administrator and the attorney of record, if any, the employer, carrier, or administrator shall complete Section B of the Form 23 [Application to Reinstatement of Disability Compensation] *Application to Reinstatement of Disability Compensation* and send it to the Commission and to the employee, or the

1 employee's attorney of record, at the same time and by the same method by which the form is sent to the  
2 Commission.

3 (c) If the employer, carrier, or administrator does not object within the time allowed, the Commission shall review  
4 the Form 23 [~~Application to Reinstate Payment of Disability Compensation~~] *Application to Reinstate Payment of*  
5 *Disability Compensation* and attached documentation and, without an informal hearing, render an Administrative  
6 Decision [~~or~~] and Order as to whether there is sufficient basis under the Workers' Compensation Act to reinstate  
7 compensation. This Administrative Decision and Order shall be rendered within five days of the expiration of the  
8 time within which the employer, carrier, or administrator could have filed a response to the Form 23 [~~Application to~~  
9 ~~Reinstate Payment of Disability Compensation~~] *Application to Reinstate Payment of Disability Compensation.*  
10 Either party may seek review of the Administrative Decision and Order as provided by Rule .0703 of this  
11 [subchapter] Subchapter.

12 (d) If the employer, carrier, or administrator timely objects to the Form 23 [~~Application to Reinstate Payment of~~  
13 ~~Disability Compensation~~] *Application to Reinstate Payment of Disability Compensation*, the Commission shall  
14 conduct an informal hearing within 25 days of the receipt by the Commission of the Form 23 [~~Application to~~  
15 ~~Reinstate Payment of Disability Compensation~~] *Application to Reinstate Payment of Disability Compensation* unless  
16 the time is extended for good cause shown. The informal hearing may be conducted with the parties or their  
17 attorneys of record personally present with the Commission. The Commission shall make arrangements for the  
18 informal hearing with a view toward conducting the hearing in the most expeditious manner. The informal hearing  
19 shall be no more than 30 minutes, with each side being given 10 minutes to present its case and five minutes for  
20 rebuttal. Notwithstanding the foregoing, the employee may waive the right to an informal hearing and proceed to a  
21 formal hearing by filing a request for hearing on a Form 33 [~~Request that Claim be Assigned for Hearing~~] *Request*  
22 *that Claim be Assigned for Hearing.* Either party may appeal the Administrative Decision and Order of the  
23 Commission as provided by Rule .0703 of this [subchapter] Subchapter. A Deputy Commissioner shall conduct a  
24 hearing which shall be a hearing [~~de novo~~] *de novo*. The hearing shall be peremptorily set and shall not require a  
25 Form 33 [~~Request that Claim be Assigned for Hearing~~] *Request that Claim be Assigned for Hearing.* The employee  
26 has the burden of producing evidence on the issue of the employee's application to reinstate compensation. If the  
27 Deputy Commissioner reverses an order previously granting a Form 23 [~~Application to Reinstate Payment of~~  
28 ~~Disability Compensation~~] *Application to Reinstate Payment of Disability Compensation* motion, the employer shall  
29 promptly terminate compensation or otherwise comply with the Deputy Commissioner's decision, notwithstanding  
30 any appeal or application for review to the Full Commission under G.S. 97-85.

31 (e) If the Commission is unable to render a decision after the informal hearing, the Commission shall issue an order  
32 to that effect, that shall be in lieu of a Form 33 [~~Request that Claim be Assigned for Hearing~~] *Request that Claim be*  
33 *Assigned for Hearing*, and the case shall be placed on the formal hearing docket. If additional issues are to be  
34 addressed, the employee, employer, carrier, or administrator shall file a Form 33 [~~Request that Claim be Assigned~~  
35 ~~for Hearing~~] *Request that Claim be Assigned for Hearing* or notify the Commission that a formal hearing is not  
36 currently necessary, within 30 days of the date of the Administrative Decision or Order. The effect of placing the  
37 case on the docket shall be the same as if the Form 23 [~~Application to Reinstate Payment of Disability~~

1 ~~Compensation]~~ Application to Reinstate Payment of Disability Compensation was denied, and compensation shall  
2 not be reinstated until such time as the case is decided by a Commissioner or a Deputy Commissioner following a  
3 formal hearing.

4  
5 *History Note: Authority G.S. 97-18(k); 97-80(a);*  
6 *Eff. January 1, 1990;*  
7 *Amended Eff. April 1, 2014.*

04 NCAC 10A .0406 is amended with changes as published in 27:02 NCR 176 as follows:

**04 NCAC 10A .0406 DISCOUNT RATE TO BE USED IN DETERMINING COMMUTED VALUES**

~~The Industrial Commission in its discretion will designate the interest rate and methods of computation to be used in arriving at the commuted value of unaccrued compensation payments.~~

To ~~commute~~ compute the present value of unaccrued compensation payments, the parties shall utilize the Internal Revenue Service's Applicable Federal Rate or the discount rate that is:

- (1) used to determine the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest,
- (2) set monthly by the Internal Revenue Service for Section 7520 interest rates, and
- (3) found in the Index of Applicable Federal Rate (AFR) Rulings. The Index of AFR Rulings is hereby incorporated by reference and includes subsequent amendments and editions. A copy may be obtained at no charge from the Internal Revenue Service's website, <http://www.irs.gov/app/picklist/list/federalRates.html>, or upon request, at the offices of the Commission, located in the Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, between the hours of 8:00 a.m. and 5:00 p.m.

*History Note: Authority G.S. 97-40; 97-44; 97-80(a);  
Eff. January 1, 1990;  
Amended Eff. January 1, 2013.*



04 NCAC 10A .0407 is repealed as published in 27:02 NCR 176 as follows:

**04 NCAC 10A .0407      FEES FOR MEDICAL COMPENSATION**

*History Note:      Authority G.S. 97-18(i); 97-25.6; 97-26; 97-80(a); 138-6;*  
*Eff. January 1, 1990;*  
*Amended Eff. January 1, 2013; June 1, 2000; March 15, 1995.*

04 NCAC 10A .0408 is amended with changes as published in 27:02 NCR 177 as follows:

**04 NCAC 10A .0408 APPLICATION FOR OR STIPULATION TO ADDITIONAL MEDICAL  
COMPENSATION**

~~(a) The Industrial Commission may enter an order as contemplated by G.S. § 97-25.1 providing for additional medical compensation on its own motion or pursuant to a stipulation of the parties or by approval of an agreement of the parties for additional medical compensation reflected in a Form 21 or a Form 26.~~

~~(b)(a) If the parties have not reached an agreement regarding additional medical compensation, an~~ An ~~employee may file a claim an application for additional medical compensation with the Office of the Executive Secretary Industrial Commission for an order pursuant to the terms of G.S. § 97-25.1, for payment of additional medical compensation within two years of the date of the last payment of medical or indemnity compensation, whichever shall last occur. The claim An application may be made on a Form 18M *Employee's Application for Additional Medical Compensation*, or by written request request, or by filing a Form 33 *Request that Claim be Assigned for Hearing* to with the Industrial Commission. The filing of this claim tolls the time limit contained in this paragraph and in G.S. § 97-25.1. The original and one copy of the claim must be filed with the Industrial Commission's Office of the Executive Secretary, one copy must be provided to the employer or carrier/administrator, and one copy must be provided to the attorney of record, if any.~~

~~(c)(b) Upon receipt of the claim, application, the Industrial Commission will shall notify the employer employer, or carrier/administrator carrier, or administrator that the claim has been received by providing a copy of a the Form 18M *Employee's Application for Additional Medical Compensation* or a the written claim. request. The Within 30 days, the employer employer, or carrier/administrator carrier, or administrator shall, within 30 days, [shall] may send to the Industrial Commission and to the employee and the employee's attorney of record, if any, record or the employee, if unrepresented, a written statement as to whether the employee's request is accepted or denied. If the request is denied, the employer employer, or carrier/administrator carrier, or administrator shall may state in writing the grounds for the denial and shall attach any supporting documentation to the statement of denial.~~

~~(d) In cases where the employee's right to additional medical compensation is contested, the Form 18M, Request for Additional Medical Compensation, shall be treated as a Motion to the Executive Secretary for future medical compensation. Defendants shall have 30 days to respond. An administrative ruling shall thereafter be made subject to the right of either party to appeal such administrative decision by filing a Form 33, Request for Hearing, pursuant to the 15 day time limitations contained in 4 NCAC 10A .703. An appeal of the Administrative Decision shall have the effect of staying the decision, provided that the stay may be dissolved in the discretion of the Commission for good cause shown.~~

~~(c) The parties may, by agreement or stipulation [as] consistent with the Workers' Compensation Act, provide for additional medical compensation.~~

~~(e)(d) This Rule applies to injuries by accident occurring on or after July 5, 1994.~~

*History Note: Authority G.S. 97-25.1; 97-80(a);*

1                   *Eff. March 15, 1995;*  
2                   *Amended Eff. January 1, 2013; June 1, 2000.*  
3  
4

04 NCAC 10A .0409 is amended with changes as published in 27:02 NCR 177 as follows:

#### **04 NCAC 10A .0409 CLAIMS FOR DEATH BENEFITS**

##### **(a) ~~Report of Fatalities~~**

~~(1) — Any person claiming entitlement to death benefits under the Act shall give written notice to the employer of the occurrence of death allegedly arising out of and in the course of employment in accordance with G.S. § 97-22.~~

(2)(a) An employer shall notify the Commission of the occurrence of a death resulting from an injury or occupational disease allegedly arising out of and in the course of employment by timely filing a Form 19 Employer's Report of Employee's Injury or Occupational Disease to the Industrial Commission within five days of knowledge thereof. In addition, an employer ~~employer, or carrier/administrator carrier, or administrator~~ shall file with the Industrial Commission a Form 29, "Supplementary Report for Fatal Accidents," 29 Supplemental Report for Fatal Accidents, within 45 days of knowledge of a death or allegation of death resulting from an injury or occupational disease arising out of and in the course of employment.

##### **(b) ~~Identifying Beneficiaries~~**

~~(1)(b)~~ An employer ~~employer, or carrier/administrator carrier, or administrator~~ shall make a good faith effort to discover the names and addresses of decedent's beneficiaries under G.S. 97-38 and identify them on the Form 29, 29 Supplemental Report for Fatal Accident.

(2)(c) In all cases involving minors or incompetents who are potential beneficiaries, a guardian *ad litem* shall be appointed pursuant to 4 NCAC 10A .0604. Rule .0604 of this Subchapter.

~~(3)(d)~~ If an issue exists as to whether a person is a beneficiary under G.S. § 97-38, the employer, ~~or carrier/administrator carrier, administrator, and/or~~ or any person asserting a claim for benefits may file a Form 33 Request for Hearing Request that Claim be Assigned for Hearing for a determination by a Deputy Commissioner.

##### **(c) ~~Liability Accepted by Employer~~**

~~(1)(e)~~ If the employer, ~~or carrier/administrator carrier, or administrator~~ accepts liability for a claim involving an employee's death and there are no apparent issues necessitating a hearing for determination of beneficiaries and/or or their respective rights, the parties shall submit an agreement Agreement for Compensation for Death executed by all interested parties or their representatives ~~on Industrial to the Commission Form 30. Commission.~~ All agreements ~~must shall~~ be submitted to the Industrial Commission on a Form 30 Agreement for Compensation for Death as set forth in ~~4 NCAC 10A .501(4), (5), and (6).~~ Rule .0501 of this Subchapter.

(2)(f) Said ~~The~~ agreement shall be submitted along with all relevant supporting documents, including death certificate of the employee, any relevant marriage certificate and birth certificates for any dependents.

##### **(d) ~~Liability Denied by Employer~~**

~~(1)(g)~~ If the employer ~~employer, or carrier/administrator carrier, or administrator~~ denies liability for a claim involving an employee's death, the employer ~~employer, or carrier/administrator carrier, or administrator~~ shall send a letter of denial to all potential beneficiaries, their attorneys of record, if any, all known health care providers that have submitted bills to the employer ~~employer, or carrier/administrator carrier, or administrator,~~ and the Industrial

Commission. The denial letter shall specifically state the reasons for the denial and shall further advise of a right to hearing.

(2)(h) Any potential beneficiary, ~~or the employer, or carrier/administrator~~ the carrier, or the administrator may request a hearing as provided in Rule ~~602~~ .0602 of this Subchapter.

~~(e) Payment of Death Benefits~~

(1)(i) Upon approval ~~of by~~ the Industrial Commission of a Form 30, 30 Agreement for Compensation for Death, or the issuance of a final order of the Industrial Commission directing payment of death benefits pursuant to G.S. § ~~97-38~~ 97-38, payment ~~may~~ shall be made by the ~~employer~~ employer, or carrier/administrator carrier, or administrator directly to the beneficiaries, with the following exceptions:

(1) any applicable award of attorney fees shall be paid directly to the attorney; and

(2) benefits due to a minor or incompetent.

~~(A)(j) Subject to the discretion of the Industrial Commission, any~~ Any benefits due to a minor pursuant to G.S. § ~~97-38~~ G.S. 97-38 ~~may shall~~ be paid directly to the parent as natural guardian of the minor for the use and benefit of the minor if the minor remains in the physical custody of the parent as natural guardian. If the minor is not in the physical custody of the parent as natural guardian, ~~the Industrial Commission may order that payment shall be made through some other proper person appointed by a court of competent jurisdiction, jurisdiction or to such other person under such terms as the Commission finds is in the best interests of the parties. When a beneficiary reaches the age of 18, any remaining benefits shall be paid directly to the beneficiary.~~

~~(B)(k) In order to protect the interests of an incompetent beneficiary, a beneficiary who is incompetent, the Industrial Commission in its discretion may shall~~ order that benefits be paid to the beneficiary's duly appointed general guardian for the beneficiary's exclusive use and benefit, or to the Clerk of Court in the county in which ~~he~~ the beneficiary resides for the beneficiary's exclusive use and benefit as determined by the Clerk of Court.

~~(C)(l) Upon a change in circumstances, any interested party may request that the Industrial Commission amend the terms of any award with respect to a minor or incompetent to direct payment to another party on behalf of the minor or incompetent. When a beneficiary reaches the age of 18, any remaining benefits shall be paid directly to the beneficiary.~~

(2)(m) In the case of ~~commuted benefits~~ benefits commuted to present value, only those sums ~~which~~ that have not accrued at the time of the entry of the Order are subject to commutation.

~~(f) Procedure for Award of Death Benefits Based on Stipulated Facts~~

(1)(n) Where the parties seek a written opinion and award from the Commission regarding the payment of death benefits in uncontested cases in lieu of presenting testimony at a hearing before a Deputy Commissioner, the parties may make application to the Commission for a written opinion by filing a written request with the ~~Dockets~~ Docket Director.

(2)(o) The parties shall file ~~the following information, along with,~~ filed electronically, by joint stipulation, affidavit or certified document, a proposed opinion and award or order along with the following information:

(A)(1) a stipulation regarding all jurisdictional matters;

- (B)(2) the decedent's name, social security number, employer, insurance carrier or servicing agent, and the date of the injury giving rise to this claim;
- (C)(3) a Form 22 *Statement of Days Worked or Earnings of Injured Employee* or stipulation as to average weekly wage;
- (D)(4) any affidavits regarding dependents;
- (E)(5) the death certificate;
- (F)(6) I.C. a Form 29; *29 Supplemental Report for Fatal Accidents*;
- (G)(7) Guardian ~~ad Litem~~ *ad litem* forms, if any beneficiary is a minor or incompetent;
- (H)(8) proof of beneficiary status, such as marriage license, birth certificate, or divorce decree;
- (I)(9) medical records, if any;
- (J)(10) a statement of payment of medical expenses incurred, if any; and
- (K)(11) a funeral bill or stipulation as to payment of the funeral benefit.
- ~~(3) Upon receipt of said information and notice to potential beneficiaries, the Deputy Commissioner shall render a written Opinion and Award.~~
- (g)(p) Any attorney seeking fees for the representation of in an uncontested claim shall file an affidavit or itemized statement in support of an award of attorney's fees.

*History Note: Authority G.S. 97-38; 97-39; 97-80(a);*  
*Eff. June 1, 2000;*  
*Amended Eff. January 1, 2013; January 2, 2011.*

04 NCAC 10A .0410 is adopted with changes as published in 27:02 NCR 179 as follows:

**04 NCAC 10A .0410      COMMUNICATION FOR MEDICAL INFORMATION**

(a) When an employer seeks to communicate pursuant to G.S. 97-25.6(c)(2) with an employee's authorized ~~[healthcare]~~health care provider in writing, without the express authorization of the employee, to obtain relevant medical information not available in the employee's medical records under G.S. 97-25.6(c)(1), the employer may use the Commission's Medical Status Questionnaire.

(b) When an employee seeks a protective order under G.S. 97-25.6(d)(4) or G.S. 97-25.6(f), the employee shall provide the following to the Commission:

- (1) the proposed written communication and any proposed additional information from which the employee seeks a protective order;
- (2) description of any attempt to resolve the issue cooperatively;
- (3) grounds for the protective order; and
- (4) any alternative methods to discover the information.

(c) When responding to an employee's request under G.S. 97-25.6(d)(4) or G.S. 97-25.6(f), for a protective order, the employer shall provide the following to the Commission:

- (1) the statutory provision on which the proposed communication is based;
- (2) description of any attempts which have been made to resolve the issue cooperatively;
- (3) description of any other attempts which have been made to obtain the relevant medical information; and
- (4) justification for the communication.

(d) When an employer seeks the Commission's authorization for other forms of communication pursuant to G.S. 97-25.6(g), the employer shall follow the procedures for motions in Rule .0609 of this Subchapter.

*History Note:      Authority G.S. 97-25.6; 97-80(a);*

*Eff. January 1, 2013.*

1 Rule 04 NCAC 10A .0411 is adopted as published on the OAH website for the public comment period beginning  
2 January 31 through February 26, 2014, with changes as follows:

3  
4 **04 NCAC 10A .0411 SAFETY RULES**

5 ~~[ The safety rules or regulations adopted by an employer qualify as approved by the Commission within the meaning~~  
6 ~~of G.S. 97-12 if the following requirements are satisfied:] The process for the Commission to approve safety rules or~~  
7 ~~regulations adopted by an employer as set forth in G.S. 97-12 is as follows:~~

8 (1) ~~The rules [include] shall comply with the general provisions of the safety rules outlined by the~~  
9 ~~American National Standards Institute and the Occupational Safety and Health Act. These~~  
10 ~~standards can be purchased at <http://ansi.org/> and accessed free of charge at~~  
11 ~~<https://www.osha.gov/law-regs.html>, respectively.~~

12 (2) ~~The rules [have been] shall be filed by the employer in writing with the Commission's Safety~~  
13 ~~Education Director by mailing them to 4339 Mail Service Center, Raleigh, NC 27699-4339 or e-~~  
14 ~~mailing them to [safety@ic.nc.gov](mailto:safety@ic.nc.gov).~~

15 (3) ~~[A copy of the rules bearing a certificate of approval from the Commission has been returned to~~  
16 ~~the employer. The certificate of approval shall indicate that the rules have been reviewed and~~  
17 ~~found by the Safety Education Director of the Commission to be in compliance with the general~~  
18 ~~rules of the American National Standards Institute and the Occupational Safety and Health Act~~  
19 ~~and that the rules are approved by the Commission pursuant to G.S. 97-12.] The rules shall be~~  
20 ~~reviewed by the Safety Education Director of the Commission and approved if they are found to~~  
21 ~~be in compliance with Item 1 of this Rule. The Commission shall return to the employer a copy of~~  
22 ~~the rules bearing a certificate of approval from the Commission indicating that the rules have been~~  
23 ~~approved by the Commission pursuant to G.S. 97-12. An employer may revise and resubmit the~~  
24 ~~rules if not approved by the Safety Education Director of the Commission.~~

25  
26 *History Note:* Authority G.S. 97-12; 97-80(a);

27 *Eff. April 1, 2014.*



04 NCAC 10A .0501 is amended with changes as published in 27:02 NCR 179 as follows:

## SECTION .0500 – AGREEMENTS

### 04 NCAC 10A .0501 AGREEMENTS FOR PROMPT PAYMENT OF COMPENSATION

(a) To facilitate the ~~prompt~~ payment of compensation within the time prescribed in G.S. 97-18, the Industrial Commission ~~will~~ shall accept memoranda of agreements on Industrial Commission forms.

(b) No agreement for permanent disability ~~will~~ shall be approved until the ~~material~~ relevant medical and vocational records known to exist in the case have been filed with the Industrial Commission. When requested by the Industrial Commission, the parties shall file any additional documentation necessary to determine whether the employee is receiving the disability compensation to which he or she is entitled and that an employee qualifying for disability compensation under G.S. 97-29 or G.S. 97-30 G.S. 97-30, and G.S. 97-31 has the benefit of the more favorable remedy.

(c) All memoranda of agreements ~~must~~ shall be submitted to the Industrial Commission ~~Commission~~, ~~in triplicate on Industrial Commission forms, as specified in paragraph 6 below.~~ Agreements ~~in proper form and conforming to the provisions of the Workers' Compensation Act will~~ shall be approved by the Industrial Commission and a copy returned to the ~~employer~~ employer, or carrier/administrator, carrier, or administrator, and a copy sent to the employee, unless amended by an award, in which event ~~a copy of the award will be returned~~ the Commission shall return the award with the agreement.

(d) The ~~employer~~ employer, or carrier/administrator, carrier, administrator, or the attorney of record, if any, shall provide ~~the employee and the employee's attorney of record, if any, record or the employee, if unrepresented, a copy of a Form 21, 21 Agreement for Compensation for Disability, a Form 26, 26 Supplemental Agreement as to Payment of Compensation, a Form 26D, 26D Agreement for Payment of Unpaid Compensation in Unrelated Death Cases, and a Form 30, 30 Agreement for Compensation for Death,~~ when the employee or appropriate beneficiary signs said ~~the forms.~~ forms, and the employer or carrier/administrator will send a copy of a Form 28B to the employee and the employee's attorney of record, if any, within 16 days after the last payment of compensation for either temporary or permanent disability, pursuant to G.S. 97-18.

(e) All memoranda of agreements for cases ~~which that~~ are calendared for hearing before a Commissioner or Deputy Commissioner shall be sent directly to that Commissioner or Deputy Commissioner. Before a case is calendared, or once a case has been ~~continued,~~ continued or removed, or after the filing of an Opinion and Award, all memoranda of agreements shall be directed to the Claims Section of the Industrial Commission.

(f) After the employer, ~~or carrier/administrator~~ carrier, or administrator has received a memorandum of agreement ~~which that~~ has been signed by the employee and the employee's attorney of record, if any, it ~~the employer, carrier, or administrator shall have~~ has 20 days within which to submit the memorandum of agreement to the Industrial Commission for review and approval or within which to show good cause for not submitting the memorandum of agreement signed only by the employee. ~~employee; provided, however, that for good cause shown, the 20 day period may be extended.~~

1    *History Note:*    *Authority G.S. 97-18; 97-80(a); 97-82;*  
2                        *Eff. January 1, 1990;*  
3                        *Amended Eff. January 1, 2013; August 1, 2006.*

4

5

04 NCAC 10A .0502 is amended with changes as published in 27:02 NCR 179 as follows:

**04 NCAC 10A .0502      COMPROMISE SETTLEMENT AGREEMENTS**

~~(a) All compromise settlement agreements must be submitted to the Industrial Commission for approval. Only those agreements deemed fair and just and in the best interest of all parties will be approved.~~

~~(b)(a) No compromise agreement will be approved~~ The Commission shall not approve a compromise settlement agreement unless it contains the following language or its equivalent: information:

~~(1) — Where liability is admitted, that the employer or carrier/administrator undertakes to pay all medical expenses to the date of the agreement.~~

~~(2) — Where liability is denied, that the employer or carrier/administrator undertakes to pay all unpaid medical expenses to the date of the agreement. However, this requirement may be waived in the discretion of the Industrial Commission. When submitting an agreement for approval, the employee or employee's attorney, if any, shall advise the Commission in writing of the amount of the unpaid medical expenses.~~

~~(3)(1)~~ That the ~~The~~ employee knowingly and intentionally waives the right to further benefits under the Workers' Compensation Act for the injury ~~which that~~ is the subject of this agreement.

~~(4)(2)~~ That the ~~The employer employer, or carrier/administrator will~~ carrier or administrator [shall] will pay all costs incurred.

~~(5)(3)~~ That no ~~No~~ rights other than those arising under the provisions of the Workers' Compensation Act are compromised or ~~released; released by this agreement.~~

~~(6)(4)~~ That the ~~The~~ employee has, or has not, returned to a job or position at the same or a greater average weekly wage as was being earned prior to the injury or occupational disease.

~~(7)(5)~~ Where the employee has not returned to a job or position at the same or a greater wage as was being earned prior to the injury or occupational disease, that the employee has, or has not, returned to some other job or position, and, if so, the description of the particular job or position, the name of the employer, and the average weekly wage earned. This Paragraph Subparagraph of the Rule shall does not apply where the employee is represented by counsel or, even if the employee is not represented by counsel, where the employee or counsel certifies that partial wage loss due to an injury or occupational disease is not being claimed.

~~(8)(6)~~ Where the employee has not returned to a job or position at the same or a greater average weekly wage as was being earned prior to the injury or occupational disease, the agreement shall summarize a summary of the employee's age, educational level, past vocational training, past work experience, and any impairment, emotional, mental or physical, which that predates the current injury or occupational disease. This Subparagraph does not apply upon a showing of: The parties will be relieved of this duty only upon a showing that providing such information creates an

(A) unreasonable burden upon them the parties;:- This subsection of the Rule shall not apply where

(B) the employee is represented by counsel; or,

(C) even if the employee is not represented by counsel, where the employee or counsel certifies that total wage loss due to an injury or occupational disease is not being claimed.

~~(e)(b)~~ No compromise settlement agreement will shall be considered by the Commission unless the following additional requirements are met:

(1) The material-relevant medical, vocational, and rehabilitation reports known to exist, including but not limited to those pertinent to the employee's future earning capacity, must be submitted with the agreement to the Industrial Commission by the employer, the carrier/administrator, carrier, administrator, or the attorney for the employer.

(2) The parties and all attorneys of record must have signed the agreement.

(3) The settlement agreement must contain a list of all of the known medical expenses of the employee related to the injury to the date of the settlement agreement, including medical expenses that the employer or insurance carrier disputes, when the employer or carrier has not agreed to pay all medical expenses of the employee related to the injury up to the date of the settlement agreement. In a claim where liability is admitted or otherwise has been established, the employer, carrier, or administrator has undertaken to pay all medical expenses for the compensable injury to the date of the settlement agreement.

(4) If there are unpaid medical expenses which the employer or insurance carrier agree to pay under the settlement agreement, the agreement must contain a list of these unpaid medical expenses, if known, that will be paid by the employer or insurance carrier. [In a claim where liability is denied or the compensability of a particular medical condition is denied, the employer, carrier, or administrator shall undertake to pay all the disputed unpaid medical expenses to the date of the settlement agreement unless the Commission approves the non-payment of the unpaid medical bills by employer, carrier, or administrator due to the issues in dispute.]

~~(5)~~(4) The settlement agreement contains a list of all known medical expenses of the employee related to the injury to the date of the settlement agreement, including medical expenses that the employer, carrier, or administrator disputes, when the employer or insurer has not agreed to pay all medical expenses of the employee related to the injury up to the date of the settlement agreement.

~~(6)~~(5) The settlement agreement contains a list of the unpaid medical expenses, if known, that [shall] will be paid by the employer, carrier, or administrator, if there are unpaid medical expenses [which] that the employer or carrier has agreed to pay. The settlement agreement also contains a list of unpaid medical expenses, if known, that [shall] will be paid by the employee, if there are unpaid medical expenses that the employee has agreed to pay.

~~(7)~~(6) The settlement agreement provides that a party who has agreed to pay a disputed unpaid medical expense [shall] will notify in writing the unpaid [medical] health care provider of the party's responsibility to pay the unpaid medical expense. Other unpaid [medical] health care providers

1 [shall] will be notified in writing of the completion of the settlement by the party specified in the  
2 settlement ~~[agreement]~~ agreement:

3 (A) when the employee's attorney has notified the unpaid ~~medical~~ health care provider in  
4 writing under G.S. 97-90(e) not to pursue a private claim against the employee for the  
5 costs of medical treatment, or

6 (B) when the unpaid ~~medical~~ health care provider has notified in writing the employee's  
7 attorney of its claim for payment for the costs of medical treatment and has requested  
8 notice of a settlement.

9 ~~(8)(7)~~ Any obligation of any party to pay an unpaid disputed medical expense pursuant to a settlement  
10 agreement does not require payment of any medical expense in excess of the maximum allowed  
11 under G.S. 97-26.

12 ~~(5)(8)~~ The settlement agreement must ~~contain~~ contains a finding that the positions of the parties to the  
13 agreement are reasonable as to the payment of medical expenses.

14 ~~(d)(c)~~ When a settlement has been reached, the written agreement must shall be submitted to the Industrial  
15 Commission within a reasonable time: upon execution. All compromise settlement agreements which are currently  
16 calendared for hearing before a Commissioner or Deputy Commissioner shall be sent directly to that Commissioner  
17 or Deputy Commissioner at the Industrial Commission. Before a case is calendared, or once a case has been  
18 continued, or removed, or after the filing of an Opinion and Award, all All compromise settlement agreements shall  
19 be directed to the Office of the Executive Secretary of the Industrial Commission. for review or distribution for  
20 review in accordance with Paragraphs (a) and (b) of Rule .0609 of this Subchapter.

21 ~~(e)(d)~~ Once a compromise settlement agreement has been approved by the Industrial Commission, the employer  
22 employer, or carrier/administrator carrier, or administrator shall furnish an executed copy of said the agreement to  
23 the employee or his the employee's attorney of record, if any, record or the employee, if unrepresented.

24 ~~(f)(e)~~ An attorney seeking fees in connection with a Compromise Settlement Agreement shall submit to the  
25 Commission a copy of the fee agreement with the client.

26  
27 *History Note: Authority G.S. 97-17; 97-80(a); 97-82;*

28 *Eff. January 1, 1990;*

29 *Amended Eff. January 1, 2013; August 1, 2006; June 1, 2000; March 15, 1995.*

04 NCAC 10A .0503 is amended as published in 27:02 NCR 181 as follows:

**04 NCAC 10A .0503 NOTICE OF LAST PAYMENT FILING REQUIREMENT**

~~An agreement for the payment of compensation approved by the Industrial Commission shall thereupon become an award of the Industrial Commission and shall be a part of the record in any further proceedings in the matter.~~

The forms required to be provided by G.S. 97-18(h) are (1) Form 28B *Report of Employer or Carrier/Administrator of Compensation and Medical Compensation Paid and Notice of Right to Additional Medical Compensation* that requires a statement as to the last date of compensation, and (2) Form 28C *Report of Employer or Carrier/Administrator of Compensation and Medical Compensation Paid Pursuant to a Compromise Settlement Agreement* that requires a statement as to the final payment of compensation.

*History Note: Authority G.S. 97-18(h); 97-80(a);*

*Eff. January 1, 1990;*

*Amended Eff. January 1, 2013.*

Rule 04 NCAC 10A .0601 is amended as published on the OAH website for the public comment period beginning January 31 through February 26, 2014, with changes as follows:

#### SECTION .0600 – CLAIMS ADMINISTRATION AND PROCEDURES

##### 04 NCAC 10A .0601 EMPLOYER'S OBLIGATIONS UPON NOTICE; DENIAL OF LIABILITY; AND SANCTIONS

~~(a) The employer or its insurance carrier shall promptly investigate each injury reported or known to the employer and at the earliest practicable time shall admit or deny the employee's right to compensation or commence payment of compensation as provided in G.S. 97-18(b), (c), or (d).~~

~~(b)(a) When an~~ Upon the employee's employee files filing of a claim for compensation with the Commission, the Commission may order reasonable sanctions pursuant to G.S. 97-18(j) against the employer or its insurance carrier ~~which if it does not, within 30 days following notice from the Commission of the filing of the claim, or 90 days when a disease is alleged to be from exposure to chemicals, fumes, or other materials or substances in the workplace, or within such reasonable additional time as the Commission may allow, do one of the following:~~

- ~~(1) Notify~~ File a Form 60 *Employer's Admission of Employee's Right to Compensation* to notify the Commission and the employee in writing that it the employer is admitting the employee's right to compensation and, if applicable, satisfy the requirements for payment of compensation under G.S. ~~[97-18(b);] 97-18(b);~~
- ~~(2) Notify~~ File a Form 61 *Denial of Workers' Compensation Claim* to notify the Commission and the employee that it the employer denies the employee's right to compensation consistent with G.S. ~~[97-18(e);] 97-18(c);~~
- ~~(3) File a Form 63 Notice to Employee of Payment of Compensation Without Prejudice~~ Initiate payments without prejudice and without liability and satisfy the requirements of consistent with G.S. 97-18(d).

~~For purposes of this Rule, reasonable sanctions ordered pursuant to G.S. 97-18(j) shall not prohibit the employer or its insurance carrier from contesting the compensability of and its liability for the claim.~~

~~Requests for extensions of time to comply with G.S. 97-18(j) this rule may shall be addressed to the Executive Secretary, Claims Administration Section.~~

~~(c)(b) If the employer or insurance carrier denies~~ When liability in any case, case is denied, the employer or insurance carrier shall provide a detailed statement of the basis of denial must that shall be set forth in a letter of denial or Form 61, *Denial of Workers' Compensation Claim*, and which that shall be sent to the plaintiff or his employee's attorney of record, if any record or the employee, if unrepresented, all known health care providers which who have submitted bills and provided medical records to the employer/carrier, employer or carrier, and the Industrial Commission. ~~The detailed statement of the basis of denial shall set forth a statement of the facts, as alleged by the employer, concerning the injury or any other matter in dispute; a statement identifying the source, by~~

1 ~~name or date and type of document, of the facts alleged by the employer; and a statement explaining why the facts,~~  
2 ~~as alleged by the employer, do not entitle the employee to workers' compensation benefits.~~

3  
4 *History Note: Authority G.S. 97-18; 97-80(a); 97-81(a);*  
5 *Eff. January 1, 1990;*  
6 *Amended Eff. April 1, 2014; August 1, 2006; June 1, 2000.*



04 NCAC 10A .0602 is amended as published in 27:02 NCR 182 as follows:

**04 NCAC 10A .0602 REQUEST FOR HEARING**

(a) Contested claims shall be set on the hearing docket only upon the written request of one of the parties, unless the Industrial Commission orders on its own motion, parties for a hearing or rehearing of the case in dispute. The Any request for hearing shall contain the following:

- (1) The ~~the~~ basis of the disagreement between the parties, including a statement of the specific issues raised by the requesting party; party;
- (2) The ~~the~~ date of the injury; injury;
- (3) The ~~the~~ part of the body injured; injured;
- (4) The ~~the~~ city and county where the injury occurred; occurred;
- (5) The ~~the~~ names and addresses of all doctors and other expert witnesses whose testimony is needed by the requesting party; party;
- (6) The ~~the~~ names of all lay witnesses to be called to testify for the requesting party; party;
- (7) An ~~an~~ estimate of the time required for the hearing of the case; case; and
- (8) The ~~the~~ telephone number(s) number(s), and address(es) email address(es), and mailing address(es) of the party(ies) requesting the hearing; hearing and their legal counsel.

(b) A Form 33, ~~Request for Hearing~~, 33 Request that Claim be Assigned for Hearing, completed in full, shall constitute compliance with this Rule. ~~The request for a hearing shall be filed with the Docket Section of the Commission. A copy of the Request for Hearing shall be forwarded to the self-insured employer or insurance carrier if not represented, or to the defendant's attorney, if one has been retained. attorneys for all opposing parties, or to the opposing parties themselves, if unrepresented.~~

*History Note: Authority G.S. 97-80(a); 97-83;  
Eff. January 1, 1990;  
Amended Eff. January 1, 2013; June 1, 2000.*

Rule 04 NCAC 10A .0603 is amended as published on the OAH website for the public comment period beginning January 31 through February 26, 2014, with changes as follows:

**04 NCAC 10A .0603      RESPONDING TO A PARTY'S REQUEST FOR HEARING**

(a) No later than 45 days from receipt of the ~~Request~~ a request for Hearing, hearing from [an employee] a party, the self-insured employer, insurance carrier, or counsel for the defendant(s) the opposing party or parties shall file with the ~~Industrial~~ Commission a response to the ~~Request~~ request for Hearing, hearing.

(b) ~~This~~ The response shall contain the following:

(1) ~~The~~ the basis of the disagreement between the parties, including a statement of the ~~specific~~ issues raised by the plaintiff moving party ~~which~~ that are conceded and the ~~specific~~ issues raised by the plaintiff moving party ~~[which]~~ that are denied: denied;

(2) ~~The~~ the date of the injury, if it is contended to be different than that alleged by the plaintiff, moving party;

(3) ~~The~~ the part of the body injured, if it is contended to be different than that alleged by the plaintiff, moving party;

(4) ~~The~~ the city and county where the injury occurred, if they are ~~contended~~ contended to be different than that alleged by the plaintiff, moving party;

(5) ~~The [the] names and addresses of all doctors and other expert witnesses whose testimony is needed by the defendant(s).~~ [non-moving party;]

(6) ~~The [the] names of all lay witnesses known by the defendant(s) non-moving party whose testimony is to be taken.~~ [taken;]

~~(7)(5)~~ An an estimate of the time required for the hearing of the ~~case~~ case; and

~~(8)(6)~~ The the telephone ~~number(s)~~ number(s), and ~~address(es)~~ email address(es), and mailing address(es) of the party(ies) party or parties responding to the ~~Request for Hearing,~~ request for hearing and their legal counsel.

(c) ~~Utilization of a~~ A Form 33R, ~~Response to Request for Hearing,~~ 33R Response to Request that Claim be Assigned for Hearing, ~~which is completed in full and filed with the Docket Section of the Commission, shall be the sole means of constitute~~ compliance with this Rule. A copy of the Form 33R Response to Request that Claim be Assigned for Hearing ~~Response to Request for Hearing shall be forwarded to the attorneys for all opposing parties or attorneys, if such have been retained. the opposing parties themselves, if unrepresented. In the event of a request for hearing by a defendant, the employee shall not be required to respond. Extensions of time within which to file a response shall be granted for good cause shown.~~

*History Note:      Authority G.S. 97-80(a); 97-83;  
Eff. January 1, 1990;  
Amended Eff. April 1, 2014; June 1, 2000.*

04 NCAC 10A .0604 is amended with changes as published in 27:02 NCR 183 as follows:

**04 NCAC 10A .0604      APPOINTMENT OF GUARDIAN *AD LITEM***

(a) ~~In all cases where it is proposed that minors~~ Minors or incompetents shall ~~sue by~~ may bring an action only through their guardian *ad litem*; ~~litem.~~ the Industrial Commission shall appoint such guardian ~~ad litem~~ Upon the written application on a Form 42 *Application for Appointment of Guardian Ad Litem*, of a reputable person closely connected with such minor or incompetent; but if such person will not apply, then, upon the application of some reputable citizen; and the Industrial Commission shall make such appointment only after due inquiry as to the fitness of the person to be appointed. ~~the Commission shall appoint the person as guardian *ad litem*, if the Commission determines it to be in the best interest of the minor or incompetent. The Commission shall appoint the guardian *ad litem* only after due inquiry as to the fitness of the person to be appointed.~~

(b) ~~In no event, however, shall any~~ No compensation due or owed to the minor or incompetent shall be paid directly to the guardian *ad litem*. Rather, compensation payable to a minor or incompetent shall be paid as provided in N.C. Gen. Stat. § 97-48 and G.S. 97-49. ~~The use of the word "guardian" in N.C. Gen. Stat. § 97-49 does not mean a guardian *ad litem*. The Commission may assess a fee to be paid by the employer or the carrier, to an attorney who serves as a guardian *ad litem* for actual services rendered upon receipt of an affidavit of actual time spent in representation of the minor or incompetent.~~

(c) ~~[Consistent with G.S. 1A-1, Rule 17(b)(2), the]~~ The Commission may assess a fee to be paid by the employer or the insurance carrier to an attorney who serves as a guardian *ad litem* for actual services rendered upon receipt of an affidavit of actual time spent in representation of the minor or incompetent as part of the costs.

*History Note:*    Authority G.S. ~~1A-1, Rule 17~~; 97-50; 97-79(e); 97-80(a); ~~97-80(b)~~; 97-91;  
Eff. January, 1990;  
Amended Eff. January 1, 2013; January 1, 2011; June 1, 2000; March 15, 1995.

Rule 04 NCAC 10A .0605 is amended as published on the OAH website for the public comment period beginning August 20 through September 15, 2014, with changes as follows:

**04 NCAC 10A .0605      DISCOVERY**

In addition to depositions ~~and production of books and records~~ provided for in G.S. 97-80, parties may obtain discovery by the use of interrogatories and requests for production of documents as follows:

(1) Any party may serve upon any other parties written interrogatories, up to 30 in number, including subparts thereof, to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available from the party interrogated.

(a)(2) Interrogatories may, without leave of the Industrial Commission, be served upon any party after the filing of a Form 48, 18 Notice of Accident to Employer and Claim of Employee, Representative, or Dependent, Form 48B, 18B Claim by Employee, Representative, or Dependent for Benefits for Lung Disease, or Form 33, 33 Request that Claim be Assigned for Hearing, or after approval of Form 21, the acceptance of liability for a claim by the employer.

(b)(3) Each interrogatory shall be answered separately and ~~fully~~ in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers ~~are to~~ shall be signed by the person making them and the objections shall be signed by the party making them. The party on whom the interrogatories have been served shall serve a copy of the ~~answers~~, answers and objections, if any, within 30 days after service of the interrogatories. The parties may stipulate to an extension of time to respond to the interrogatories. A motion to extend the time to respond shall represent state that an attempt to reach agreement with the opposing party to informally extend the time for response has been unsuccessful and the opposing parties' party's position or that there has been ~~a reasonable~~ an attempt to contact the opposing party to ascertain its position.

(e)(4) If there is an objection to or other failure to answer an interrogatory, the party submitting the interrogatories may move the Industrial Commission for an order compelling answer. ~~If the Industrial Commission orders answer to an interrogatory within a time certain and no answer is made or the objection is still lodged, the Industrial Commission may issue an order with appropriate sanctions, [sanctions,] including but not limited to the sanctions specified in Rule 37 of the North Carolina Rules of Civil Procedure.~~

(2)(5) Interrogatories and requests for production of documents shall ~~may~~ relate to matters ~~which that~~ are not privileged privileged, ~~which that~~ are relevant to an issue ~~presently in dispute~~ dispute, or ~~which that~~ the requesting party reasonably believes may later be disputed. ~~Signature~~ The signature of a party or attorney serving interrogatories or requests for production of documents constitutes a certificate by such person that he or she has personally read each of the interrogatories and requests for production of documents, that no such interrogatory or request for production of

documents will oppress a party or cause any unnecessary expense or delay, that the information requested is not known or equally available to the requesting party, and that the interrogatory or requested document relates to an issue presently in dispute or which that the requesting party reasonably believes may later be in dispute. A party may serve an interrogatory, however, to obtain verification of facts relating relevant to an issue presently in dispute. Answers to interrogatories may be used to the extent permitted by the rules of evidence. Chapter ~~[08C]~~ 8C of the North Carolina General Statutes.

(6) ~~[Until a matter is calendared for a hearing, parties may serve requests for production of documents without leave of the Commission.]~~ The parties may serve requests for production of documents without leave of the Commission until 35 days prior to the date of hearing.

~~(3)~~(7) Additional methods of discovery as provided by the North Carolina Rules of Civil Procedure may be used only upon motion and approval by the Industrial Commission or by agreement of the parties. The Commission ~~[shall]~~ may approve the motion if it is shown to be in the interests of justice or to promote judicial economy.

~~(4)~~ Notices of depositions, discovery requests and responses pertinent to a pending motion, responses to discovery following a motion or order to compel, and responses shall be filed with the Commission, as well as served on the opposing party. Otherwise, discovery requests and responses, including interrogatories and requests for production of documents shall not be filed with the Commission.

~~(8)~~ Discovery requests and responses, including interrogatories and requests for production of documents, shall not be filed with the Commission, except for the following:

(a) notices of depositions;

(b) discovery requests and responses deemed by filing party to be pertinent to a pending motion;

(c) responses to discovery following a motion or order to compel; and

(d) post-hearing discovery requests and responses.

The above-listed documents shall be filed with the Commission, as well as served on the opposing party.

~~(5)~~(9) Sanctions may shall be imposed under this Rule for failure to comply with a Commission order compelling discovery; ~~[discovery;]~~ discovery unless the Commission excuses the failure based on an inability to comply with the order. A motion by a party or its attorney to compel discovery under this Rule and ~~4 NCAC 10A-.607~~ Rule .0607 of this Subchapter shall represent that informal means of resolving the discovery dispute have been attempted in good faith and state briefly the opposing parties' party's position or that there has been a reasonable attempt to contact the opposing party and ascertain its position.

History Note: Authority G.S. 97-80(a); 97-80(f); S.L. 2014-77;

1                   *Eff. January 1, 1990;*

2                   *Amended Eff. November 1, 2014; January 1, 2011; June 1, 2000.* .

04 NCAC 10A .0606 is amended with changes as published in 27:02 NCR 184 as follows:

**04 NCAC 10A .0606      DISCOVERY - POST HEARING**

Discovery may not be conducted after the initial hearing on the merits of a case unless allowed by order of a Commissioner or Deputy Commissioner. In determining whether to allow further discovery, the Commissioner or Deputy Commissioner shall consider whether further discovery is necessary in the interests of justice or to promote judicial economy.

~~{(1) to prevent manifest injustice;~~

~~(2) to promote judicial economy; or~~

~~(3) to expedite a decision in the public interest.}~~

*History Note: Authority G.S. 97-80(a); 97-80(f);*

*Eff. January 1, 1990;*

*Amended Eff. January 1, 2013.*

04 NCAC 10A .0607 is amended with changes as published in 27:02 NCR 184 as follows:

**04 NCAC 10A .0607      DISCOVERY OF RECORDS AND REPORTS**

(a) Upon written request, any party shall ~~furnish, without cost,~~ provide to the requesting party ~~without cost,~~ a copy of ~~any and all~~ medical, vocational and rehabilitation reports, employment records, Industrial Commission forms, and written communications with ~~medical health care~~ providers in its possession, within 30 days of the request, unless objection is made within that time period. ~~This obligation~~ The duty to respond exists whether or not a request for hearing has been ~~filed. This obligation~~ filed and is a continuing one, and any such reports and records ~~which that~~ come into the possession of a party after receipt of a request pursuant to this Rule shall be provided to the requesting party within 15 days from its ~~the party's~~ receipt of these reports and records. ~~Upon receipt of a request, an insurer or administrator for an employer's workers' compensation program shall inquire of the employer concerning the existence of records encompassed by the request.~~

(b) Upon receipt of a request, a carrier or administrator for an employer's workers' compensation program shall inquire of the employer concerning the existence of records encompassed by the request.

*History Note:      Authority G.S. 97-80(a); 97-80(b); 97-80(f);*

*Eff. January 1, 1990;*

*Amended Eff. January 1, 2013; June 1, 2000; March 15, 1995.*



1 Rule 04 NCAC 10A .0608 is amended as published on the OAH website for the public comment period beginning  
2 January 31 through February 26, 2014, with changes as follows:

3  
4 **04 NCAC 10A .0608 STATEMENT OF INCIDENT LEADING TO CLAIM**

5 (a) ~~At the outset of taking a statement, Upon the request of the employer or his or her agent to take a written or a~~  
6 recorded statement, the employer or his agent shall advise the employee that the statement ~~is being taken to~~ may be  
7 used ~~in part~~ to determine whether the claim will be paid or denied. Any plaintiff who gives his or her employer, ~~or~~  
8 its ~~carrier~~ carrier, or any agent either a written or recorded statement of the facts and circumstances surrounding his  
9 or her injury shall be furnished a copy of ~~such~~ the statement within 45 days after request. Further, any plaintiff who  
10 shall give a written or recorded statement of the facts and circumstances surrounding his or her injury shall, without  
11 request, be furnished a copy no less than 45 days from the filing of a Form 33 *Request that Claim be Assigned for*  
12 *Hearing.* ~~Such~~ The copy shall be furnished at the expense of the person, firm or corporation at whose direction the  
13 statement was taken.

14 (b) If any person, firm or corporation unreasonably fails to comply with this ~~rule,~~ Rule, then an order may be  
15 entered by a Commissioner or Deputy Commissioner prohibiting that person, firm or corporation, or its  
16 representative, from introducing the statement into evidence or using any part of it: the statement.

17  
18 *History Note: Authority G.S. 97-80(a);*

19 *Eff. January 1, 1990;*

20 *Amended Eff. April 1, 2014; June 1, 2000.*

04 NCAC 10A .0609 is amended with changes as published in 27:02 NCR 184 as follows:

### 04 NCAC 10A .0609 MOTIONS PRACTICE IN CONTESTED CASES

(a) ~~Motions brought before the a Deputy Commission Commissioner; shall be addressed as follows:~~

(1) ~~All motions in cases which that are currently calendared for hearing before a the Full Commission or Deputy Commissioner shall be sent by the filing party directly to the assigned Chair of the Full Commission panel or Deputy Commissioner Commissioner, before whom the case is pending.~~

(2) ~~to reconsider or amend an Opinion and Award, made prior to giving notice of appeal to the Full Commission, shall be directed by the filing party to the Deputy Commissioner who authored the Opinion and Award.~~

(b) ~~Motions filed before a case is calendared before a Deputy Commissioner, or once a case has been continued, or removed from a Deputy Commissioner Calendar, or after the filing of an Opinion and Award when the time for taking appeal has run, shall be directed sent by the filing party directly to the Office of the Executive Secretary Secretary of the Industrial Commission. Motions to reconsider or amend an Opinion and Award, made prior to giving notice of appeal to the Full Commission, shall be directed to the Deputy Commissioner who authored the Opinion and Award.~~

(1) ~~when a case is not calendared before a Deputy Commissioner;~~

(2) ~~once a case has been continued or removed from a Deputy Commissioner calendar; or~~

(3) ~~after the filing of an Opinion and Award when the time for taking appeal has run.~~

(c) Motions before the Full Commission:

(1) in cases calendared for hearing before the Full Commission shall be sent by the filing party directly to the Chair of the Full Commission panel.

(3)(2) Motions filed after notice of appeal to the Full Commission has been given but prior to the calendaring of the case shall be directed by the filing party to the Chair of the Industrial Commission.

(4)(3) If a in case has been cases continued from the Full Commission hearing docket, motions shall be directed by the filing party to the Chair of the panel of Commissioners who ordered the continuance.

(5)(4) Motions filed after the filing of an Opinion and Award by the Full Commission but prior to giving notice of appeal to the Court of Appeals shall be directed sent by the filing party directly to the Commissioner who authored the Opinion and Award.

~~(b)(d)~~ A motion shall state with particularity the grounds on which it is based, the relief sought, and a brief statement of the opposing party's position, if known. Service shall be made on all opposing attorneys of record, or on all opposing parties, parties if not represented.

~~(e)(e)~~ Motions to continue or remove a case from the hearing calendar on which the case is set must shall be made well in advance as much in advance as possible of the scheduled hearing and may be made in written or oral form.

In all cases cases, the moving party must shall provide just cause the basis for the motion and state that the other

1 parties have been advised of the motion and relate the position, if known, of the other parties regarding the motion.

2 Oral motions must shall be followed with a written ~~confirmation~~ motion from the moving party.

3 ~~(d)(f)~~ The responding party to a motion shall have 10 days after a motion is served during which to file and serve  
4 copies of response in opposition to the motion. The Industrial Commission may shorten or extend the time for  
5 responding to any ~~motion~~ motion ~~[to prevent manifest injustice, promote judicial economy, or expedite a decision in~~  
6 ~~the public interest]~~ in the interests of justice or to promote judicial economy.

7 ~~(e)(g)~~ Notwithstanding the provisions of Paragraph 4 of this Rule, a motion may be acted upon at any time by the  
8 Commission, despite the absence of notice to all parties, and without awaiting a response thereto. A party who has  
9 not received actual notice of ~~such~~ a motion or who has not filed a response at the time ~~such~~ action is taken and who  
10 is adversely affected by the action may request that it be reconsidered, vacated, or modified. Motions ~~will~~ shall be  
11 determined without oral argument, unless the Industrial Commission ~~orders otherwise.~~ determines that oral  
12 argument is necessary for a complete understanding of the issues.

13 ~~(f)(h)~~ In all cases where Where correspondence relative to a case before the Industrial Commission is sent to the  
14 Industrial Commission, copies of such correspondence shall be contemporaneously sent by the same method of  
15 transmission to the opposing party or, if represented, to opposing counsel. Written communications, whether  
16 addressed directly to the Commission or copied to the Commission, may not be used as an opportunity to introduce  
17 new evidence or to argue the merits of the case, with the exception of the following following instances:

- 18 (1) ~~Written~~ written communications, such as a proposed order or legal memorandum, prepared  
19 pursuant to the Commission's instructions;
- 20 (2) ~~Written~~ written communications relative to emergencies, changed circumstances, or scheduling  
21 matters that may affect the procedural status of a case such as a request for a continuance due to  
22 the health of a litigant or an attorney;
- 23 (3) ~~Written~~ written communications sent to the tribunal with the consent of the opposing lawyer or  
24 opposing ~~party~~ party, if unrepresented; and
- 25 (4) ~~Any~~ any other communication permitted by law or the rules Rules ~~or~~ procedures of the  
26 Commission.

27 ~~At no time may written communications, whether addressed directly to the Commission or copied to the~~  
28 ~~Commission, be used as an opportunity to cast the opposing party or counsel in a bad light.~~

29 ~~(g)(i)~~ All motions and responses thereto ~~made before the Industrial Commission must~~ shall include a proposed  
30 Order to be considered by the Industrial Commission.

31 ~~(h)~~ Except as otherwise expressly provided by statute, rule, or by order of the Commission, in computing any period  
32 of time prescribed or allowed by the Commission Rules, by order of the Commission, or by any applicable statute,  
33 the day of the act, event, or default after which the designated period of time begins to run is not to be included. The  
34 last day of the period so computed is to be included, unless it is a Saturday, Sunday, or a legal holiday, in which  
35 event the period runs until the end of the next day which is not a Saturday, Sunday or a legal holiday. When the  
36 period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and holidays shall be

1 | ~~excluded in the computation. Whenever a party has the right to do some act or take some proceedings within a~~  
2 | ~~prescribed period after the service of any document, three days shall be added to the prescribed period.~~

3 |  
4 | *History Note: Authority G.S. 97-79(b); 97-80(a); 97-84; 97-91;*  
5 | *Eff. January 1, 1990;*  
6 | *Amended Eff. January 1, 2013; June 1, 2000; March 15, 1995.*

Rule 04 NCAC 10A .0609A is amended as published on the OAH website for the public comment period beginning August 20 through September 15, 2014, with changes as follows:

**04 NCAC 10A .0609A MEDICAL MOTIONS AND EMERGENCY MEDICAL MOTIONS**

**(a) ~~Expedited Medical Motions:~~**

~~(1) Medical motions pursuant to N.C. Gen. Stat. §97-25 brought before the Office of the Executive Secretary for an administrative ruling shall comply with applicable provisions of Rule 609 and shall be submitted electronically to medicalmotions@ic.nc.gov, unless electronic submission is unavailable to the party.~~

~~(2) A party may file with the Deputy Commissioner Section a request for an administrative ruling on a medical motion. A party, also, may appeal an Order from the Executive Secretary's Office on an Expedited Medical Motion by giving notice of appeal to the Dockets Department within 15 days of receipt of the Order or receipt of the ruling on a Motion to Reconsider the Order filed pursuant to Rule 703(1). The Motion shall contain a designation as an administrative "Expedited Medical Motion", documentation in support of the request, including the most recent medical record/s and a representation that informal means of resolving the issue have been attempted in good faith, and the opposing party's position, if known.~~

~~(A) A Pre-Trial Conference will be held immediately to clarify the issues. Parties are encouraged to consent to a review of the contested issues by electronic mail submission of only relevant medical records and opinion letters.~~

~~(B) If depositions are deemed necessary by the Deputy Commissioner, only a brief period for taking the same will be allowed. Preparation of the transcript will be expedited and will initially be at the expense of defendants. Requests for independent medical examinations may be denied unless there is a demonstrated need for the evaluation.~~

~~(C) Written arguments and briefs shall be limited in length, and are to be filed within five days after the record is closed.~~

~~(3) A party may appeal an Order by a Deputy Commissioner on an Expedited Medical Motion by giving notice of appeal to the Full Commission within 15 days of receipt of the Order or receipt of the ruling on a Motion to Reconsider the Order filed pursuant to Rule 703(1).~~

~~(A) A letter expressing an intent to appeal a Deputy Commissioner's Order on an Expedited Medical Motion shall be considered notice of appeal to the Full Commission, provided that it clearly specifies the Order from which appeal is taken.~~

~~(B) After receipt of notice of appeal, the appeal will be acknowledged by the Dockets Department within three (3) days by sending an appropriate Order under the name of the Chair of the Panel to which the appeal is assigned. The parties may be permitted to file briefs on an abbreviated schedule in the discretion of the panel chair. The panel chair will also determine if oral arguments are to be by telephone, in person, or waived. All~~

correspondence, briefs, or motions related to the appeal shall be addressed to the panel chair with a copy to the law clerk of the panel chair.

(b) ~~Emergency Medical Motions:~~

(1) ~~Motions requesting emergency medical relief administratively shall contain the following:~~

~~(A) A boldface, or otherwise emphasized, designation as "Emergency Medical Motion."~~

~~(B) An explanation of the need for a shortened time period for review, including any hardship that warrants immediate attention/action by the Commission.~~

~~(C) A statement of the time-sensitive nature of the request, with specificity.~~

~~(D) Detailed dates and times related to the issue raised and to the date a ruling is requested.~~

~~(E) Documentation in support of the request, including the most recent medical records.~~

~~(F) A representation that informal means of resolving the issue have been attempted in good faith, and the opposing party's position, if known.~~

~~(2) A party may file an Emergency Medical Motion with the Executive Secretary's Office, the Chief Deputy Commissioner, or the Office of the Chair. A proposed Order shall be provided with the motion. The non-moving party(ies) will be advised regarding any time allowed for response and may be advised whether informal telephonic oral argument is necessary.~~

~~(3) Emergency Medical Motions and responses thereto shall be submitted electronically, unless electronic submission is unavailable to the party.~~

~~(A) Emergency Medical Motions and responses thereto filed with the Executive Secretary's Office shall be submitted to [medicalmotions@ic.nc.gov](mailto:medicalmotions@ic.nc.gov).~~

~~(B) Emergency Medical Motions filed with the Chief Deputy Commissioner shall be submitted electronically directly to the Chief Deputy Commissioner and his/her legal assistant.~~

~~(C) Emergency Medical Motions filed with the Chair of the Commission shall be submitted electronically to the Chair, his/her legal assistant, and his/her law clerk.~~

(a) Medical motions brought pursuant to G.S. 97-25, and responses thereto, shall be brought before either the Office of the Chief Deputy Commissioner or the Executive Secretary and shall be submitted electronically to [medicalmotions@ic.nc.gov](mailto:medicalmotions@ic.nc.gov). Motions and responses shall be submitted [simultaneously] contemporaneously to the Commission and the opposing party [and] or opposing party's counsel, if represented.

(b) [Once notification has been received by the parties that a medical motion has been assigned to a Deputy Commissioner, subsequent filings and communication shall be submitted directly to the Deputy Commissioner assigned.] Following receipt of a notice of hearing before a Deputy Commissioner on a medical motion or appeal, the parties shall submit all subsequent filings and communications electronically directly to the Deputy Commissioner assigned.

(c) [Upon receipt of a medical motion, carriers, third party administrators, and employers shall immediately send notification of the name, email address, telephone number and fax number of the attorney appearing on their behalf to [medicalmotions@ic.nc.gov](mailto:medicalmotions@ic.nc.gov).] [An] In addition to any notice of representation contained in a medical motion or

1 response, an attorney who is retained by a party [in any proceeding] to prosecute or defend a medical motion or  
2 appeal before the Commission shall [also] file a notice of representation with the Docket Director at  
3 dockets@ic.nc.gov and send a copy of the notice to all other counsel and all [other] unrepresented parties involved  
4 in the proceeding.

5 (d) Motions submitted pursuant to G.S. 97-25 and requesting medical relief other than emergency relief shall  
6 contain the following:

7 (1) a designation as a "Medical Motion" brought pursuant to G.S. 97-25 and [shall include] a  
8 statement directly underneath the case caption clearly indicating the request is for either an  
9 administrative ruling by the Executive Secretary or an expedited full evidentiary hearing before a  
10 Deputy Commissioner;

11 (2) the [claimant's] employee's name. If the [claimant] employee is unrepresented, [claimant's] the  
12 employee's [email address, telephone number, and fax number.] telephone number and, [to the  
13 extent] if available, the employee's email address and fax number. If the [claimant] employee is  
14 represented, the name, email address, telephone [number] number, and fax number of [claimant's]  
15 employee's counsel;

16 (3) the employer's name and employer code;

17 (4) the carrier or third party administrator's name, carrier code, [email address,] telephone [number  
18 and] number, fax [number,] number, and, to the extent available, email address;

19 (5) the adjuster's name, email address, telephone [number] number, and fax number if counsel for the  
20 employer and carrier has not been retained;

21 (6) [the counsel for employer and carrier's] if an attorney has been retained for the employer or  
22 carrier, the attorney's name, email address, telephone [number] number, and fax number;

23 (7) a statement of the treatment or relief requested;

24 (8) a statement of the medical diagnosis of the [claimant] employee [and the treatment  
25 recommendation] and the name of [the] any health care provider having made a diagnosis or  
26 treatment recommendation that is the basis for the motion;

27 (9) a statement as to whether the claim has been admitted on a Form 60, *Employer's Admission of*  
28 *Employee's Right to Compensation*, Form 63, *Notice to Employee of Payment of Compensation*  
29 *without Prejudice (G.S. 97-18(d)) or Payment of Medical Benefits Only without Prejudice (G.S.*  
30 *97-2(19) & 97-25), Form [24] 21, *Agreement for Compensation for Disability*, or is subject to a*  
31 prior Commission Opinion and Award or Order finding compensability, with supporting  
32 documentation attached;

33 (10) a statement of the time-sensitive nature of the request, if any;

34 (11) an explanation of opinions known and in the possession of the [employee] movant [of additional  
35 medical or other] by any relevant experts, independent medical examiners, and second opinion  
36 examiners;

1       (12) if the motion requests a second opinion examination pursuant to G.S. 97-25, the motion shall  
2       specify whether the [plaintiff] employee has made a prior written request to the defendants for the  
3       examination, as well as the date of the request and the date of the denial, if any;

4       (13) a representation that informal means of resolving the issue have been attempted in good faith, and  
5       the opposing party's position, if known; and

6       (14) a proposed Order.

7       (e) Motions submitted pursuant to G.S. 97-25 and requesting emergency medical relief shall contain the following:

8       (1) a boldface or otherwise emphasized, designation as "Emergency Medical Motion";

9       (2) the [claimant's] employee's name. If the [claimant] employee is unrepresented, [claimant's] the  
10       employee's [email address, telephone number, and fax number] telephone number and, [to the  
11       extent] if available, the employee's email address and fax number. If the [claimant] employee is  
12       represented, the name, email address, telephone [number] number, and fax number of [claimant's]  
13       the employee's counsel;

14       (3) the employer's name and employer code, if known;

15       (4) the carrier or third party administrator's name, carrier code, [email address,] telephone [number  
16       and] number, fax [number;] number, and, [to the extent] if available, email address;

17       (5) the adjuster's name, email address, telephone [number] number, and fax number if counsel for the  
18       employer/carrier has not been retained;

19       (6) the counsel for employer/carrier's name, email address, telephone [number] number, and fax  
20       number;

21       (7) an explanation of the medical diagnosis and treatment recommendation of the health care provider  
22       that requires emergency attention;

23       (8) a statement of the need for a shortened time period for review, including relevant dates and the  
24       potential for adverse consequences if the recommended [treatment] relief is not provided  
25       emergently;

26       (9) an explanation of opinions known and in the possession of the [employee] movant [of additional  
27       medical or other] by any relevant experts, independent medical examiner, and second opinion  
28       examiners;

29       (10) a representation that informal means of resolving the issue have been attempted in good faith, and  
30       the opposing party's position, if known;

31       (11) [documentation] documents known and in the possession of the [employee in support of] movant  
32       relevant to the request, including relevant medical records; and

33       (12) a proposed Order.

34       ~~[(f) The parties shall receive notice of the date and time of an initial informal telephonic conference to be conducted~~  
35       ~~by a Deputy Commissioner to determine whether the motion warrants an expedited or emergency hearing and to~~  
36       ~~clarify the issues presented. During the initial informal telephonic conference each party shall be afforded an~~



1 opportunity to state its position and discuss documentary evidence which shall be submitted electronically to the  
2 Deputy Commissioner prior to the initial informal telephone conference.

3 ~~(g) At or prior to the initial informal telephonic conference, the parties may consent to a review of the contested~~  
4 ~~issues by electronic mail submission of only relevant medical records and opinion letters.]~~

5 (f) Upon receipt of an emergency medical motion, the non-moving party(ies) shall be advised by the Commission of  
6 any time allowed for response and whether informal telephonic oral argument is necessary.

7 (g) A party may appeal an Order of the Executive Secretary on a motion brought pursuant to G.S. 97-25(f)(1) or  
8 receipt of a ruling on a motion to reconsider filed pursuant to Rule .0702(b) of this Subchapter by submitting notice  
9 of appeal electronically to medicalmotions@ic.nc.gov within 15 calendar days of receipt of the Order. A letter or  
10 motion expressing an intent to appeal a decision of the Executive Secretary shall be considered a request for an  
11 expedited hearing pursuant to G.S. 97-25 and G.S. 97-84. The letter or motion shall specifically identify the Order  
12 from which the appeal is taken and shall indicate that the appeal is from an administrative Order by the Executive  
13 Secretary entered pursuant to G.S. 97-25(f)(1). After receipt of a notice of appeal, the appeal shall be assigned to a  
14 Deputy Commissioner and an Order under the name of the Deputy Commissioner to which the appeal is assigned  
15 shall be issued within five days of receipt of the notice of appeal.

16 (h) [Depositions deemed necessary by the Deputy Commissioner] Depositions, if requested by the parties or  
17 ordered by the Deputy Commissioner, shall be taken on the Deputy Commissioner's order pursuant to G.S. 97-25,  
18 [within 35 days of the date the motion is filed. Transcripts of depositions shall be submitted electronically to the  
19 Commission within 40 days of the date of the filing of the motion.] In full evidentiary hearings conducted by a  
20 Deputy Commissioner pursuant to G.S. 97-25(f)(1) and (f)(2), depositions shall be completed and all transcripts,  
21 briefs, and proposed Opinion and Awards submitted to the Deputy Commissioner within 60 days of the filing of the  
22 motion or appeal. The Deputy Commissioner may reduce or enlarge the timeframe contained in this Paragraph for  
23 good cause [shown:] shown or upon agreement of the parties.

24 ~~(i) At the initial informal telephonic conference, each party shall notify the Commission and the other party as to~~  
25 ~~whether a second informal telephonic conference is necessary. This second informal telephonic conference does not~~  
26 ~~extend the time for resolution of the motion.~~

27 ~~(j) Upon receipt of an emergency medical motion, the non-moving party(ies) shall be advised by the Commission of~~  
28 ~~any time allowed for response and whether informal telephonic oral argument is necessary.~~

29 ~~(k)(i) A party may appeal a Deputy Commissioner's Order on a motion brought the decision of a Deputy~~  
30 ~~Commissioner filed pursuant to G.S. 97-25(f)(2) by giving notice of appeal to the Full Commission within 15~~  
31 ~~calendar days of receipt of the decision. Order or receipt of the ruling on a Motion to Reconsider the Order filed~~  
32 ~~pursuant to Rule .0703(b) of this Subchapter. A letter expressing an intent to appeal a Deputy Commissioner's~~  
33 ~~Order on a motion brought decision filed pursuant to G.S. 97-25 shall be considered notice of appeal to the Full~~  
34 ~~Commission, provided that the letter specifically identifies the decision from which appeal is taken and indicates~~  
35 ~~that the appeal is taken from a decision by a Deputy Commissioner pursuant to G.S. 97-25(f)(2). After receipt of~~  
36 ~~notice of appeal, the appeal shall be acknowledged by the Docket Section within three days by sending an Order~~  
37 ~~under the name of the Chair of the Panel to which the appeal is assigned. The Order shall [indicate whether the~~

1 parties may file briefs and] set the schedule for filing briefs. A Full Commission hearing on an appeal of a medical  
2 motion filed pursuant to G.S. 97-25 shall be held telephonically and shall not be recorded unless unusual  
3 circumstances arise and the Commission so orders. All correspondence, briefs, and motions related to the appeal  
4 shall be addressed to the Chair of the Panel with a copy to his or her law clerk.

5 (i) A party may appeal the administrative decision of the Chief Deputy Commissioner or the Chief Deputy  
6 Commissioner's designee filed pursuant to G.S. 97-25(f)(3) by submitting notice of appeal electronically to  
7 medicalmotions@ic.nc.gov within 15 calendar days of receipt of the Order. A letter or motion expressing an intent  
8 to appeal the Chief Deputy Commissioner or the Chief Deputy Commissioner's designee's Order filed pursuant to  
9 G.S. 97-25(f)(3) shall be considered a notice of appeal, provided that the letter specifically identifies the Order from  
10 which appeal is taken and indicates that the appeal is from an Order of a Deputy Commissioner entered pursuant to  
11 G.S. 97-25(f)(3). After receipt of notice of appeal, the appeal shall be acknowledged within five days by sending an  
12 Order under the name of the Deputy Commissioner to whom the appeal is assigned. The appeal of the administrative  
13 decision of the Chief Deputy Commissioner or the Chief Deputy Commissioner's designee shall be subject to  
14 G.S. 97-25(f)(2) and G.S. 97-84.

15 (h)(k) The Commission shall accept the filing of documents by non-electronic methods if electronic transmission is  
16 unavailable to the party.

17  
18 *History Note: Authority G.S. 97-25; 97-78(f)(2); 97-78(g)(2); 97-80(a); S.L. 2014-77;*  
19 *Eff. January 1, 2011;*  
20 *Amended Eff. November 1, 2014.*

04 NCAC 10A .0610 is amended with changes as published in 27:02 NCR 187 as follows:

**04 NCAC 10A .0610 PRE-TRIAL AGREEMENT**

~~(e)(a)~~ A Commissioner or a Deputy Commissioner may issue a Pre Trial Order requiring the parties to submit a Pre-Trial Agreement. A Pre-Trial Agreement shall be signed by the attorneys and submitted to the Commissioner or Deputy Commissioner before whom the case is pending 10 days before the hearing, unless a shorter time period is ordered upon agreement of the parties. [The parties] shall [have 15 days following the hearing within which to schedule the taking of medical depositions unless otherwise extended by the] Commission. [Commission in the interest of justice and judicial economy.]

(1) — If not specified in the Pre Trial Agreement, the parties shall file with the Deputy Commissioner within 15 days following the trial a list specifically identifying all expert witnesses to be deposed and the dates of their depositions.

(2) — Within ten days after each expert witness deposition, defendants' counsel shall submit to the Deputy Commissioner, via email, a request to approve such expert's fee. In these requests, counsel shall provide to the Deputy Commissioner, in a cover letter along with the invoice (if provided to counsel), the following: (1) the name of the expert deposed; (2) his/her practice's name; (3) his/her fax number; (4) his/her area of specialty and board certifications, if any; and (5) the exact length of the deposition and the length of time the expert spent preparing for the deposition. Counsel shall submit a proposed Order that shows the expert's name, practice name and fax number under the "Appearances" section. Failure to make prompt payment to an expert witness following the entry of a fee order will result in the assessment of a 10 percent penalty.

~~(3)(b)~~ The Pre-Trial Agreement shall be prepared in a form which substantially complies that conforms to with the Order on Final Pre-Trial Conference adopted in the North Carolina Rules of Practice for the Superior and District Courts. Should the parties fail to comply with a Pre-Trial Order, the Commissioner or Deputy Commissioner ~~may~~ shall remove the case from the hearing docket. docket if required [to prevent manifest injustice and] in the interests of justice or to promote judicial economy. Should the parties thereafter comply with the Pre-Trial Order after the removal of the case, the Pre-Trial Agreement ~~must~~ shall be directed to the Commissioner or Deputy Commissioner who removed the case from the docket; and the Commissioner or Deputy Commissioner ~~will~~ shall order the case returned to the hearing docket. as if a Request for Hearing had been filed on the date of the Order to return the case to the hearing docket. No new Form 33 *Request that Claim be Assigned for Hearing* is required.

~~(a)(c)~~ If the parties need a conference, A a Commissioner or Deputy Commissioner ~~may~~ shall order the parties to appear at participate in a pre-trial conference conference. to determine specific matters. This conference ~~may~~ shall be conducted at such place and by such method as the Commissioner or Deputy Commissioner deems appropriate, including conference telephone calls.

~~(b)(d)~~ Any party may request a pre-trial conference ~~when that party deems that such a conference would~~ to aid in settling the case or resolving some contested issues prior to trial. Requests for such pre-trial conferences shall be

1 | directed to the Commissioner or Deputy Commissioner before whom the claim has been ealendar~~ed~~, or to the Team  
2 | Coordinator for the geographical area, if any: ealendar~~ed~~.

3 |  
4 | *History Note: Authority G.S. 97-80(a); 97-80(b); 97-83;*  
5 | *Eff. January 1, 1990;*  
6 | *Amended Eff. January 1, 2013; January 1, 2011; June 1, 2000; March 15, 1995.*

04 NCAC 10A .0611 is amended with changes as published in 27:02 NCR 187 as follows:

**04 NCAC 10A .0611      HEARINGS BEFORE THE COMMISSION**

(a) ~~The Industrial Commission may, on its own motion, order a hearing or rehearing of any case in dispute. The Commission shall set a contested case for hearing in a location deemed convenient to witnesses and the Commission.~~

~~(b) The Industrial Commission shall set a contested case for hearing in a location deemed convenient to witnesses and the Industrial Commission, and conducive to an early and just resolution of disputed issues.~~

~~(e)(b)~~ In setting contested cases for hearing, cases in which the payment of workers' compensation benefits is at issue shall take ~~precedence~~ precedence, ~~over those cases in which the payment of workers' compensation benefits is not at issue.~~

~~(d)(c)~~ The Industrial Commission will shall give reasonable notice of hearings in every case. Postponement or continuance of a duly scheduled hearing ~~will rest entirely~~ shall be allowed only in the discretion of a Commissioner or Deputy Commissioner. ~~Commissioner before whom the case is set if required [to prevent manifest injustice] in the interests of justice or to promote judicial economy.~~ Where a party has not notified the Industrial Commission of the attorney representing the party prior to the mailing of calendars for hearing, notice to that party shall ~~constitute~~ constitutes notice to the party's attorney.

~~(e)(d)~~ The only parts of the Industrial Commission file in a contested case which are a part of the record on which a decision will be rendered are In a contested case, the record includes all prior Opinion and Awards, filed Commission forms, form agreements, awards, and orders of the Commission. Industrial Commission; provided, however, that if provisions of the Workers' Compensation Act designate other documents as part of the record, such documents shall also be a part of the record. Any other documents ~~which that~~ the parties wish to have included in the record ~~must shall~~ be introduced and received into evidence.

~~(f)(e)~~ Hearing costs shall be assessed in each case set for hearing, including those cases ~~which that~~ are settled after being calendared and notices mailed, and shall be payable upon receipt of a statement from the Industrial Commission.

~~(g)(f)~~ In the event of inclement weather or natural disaster, hearings set by the Commission shall be cancelled or delayed if the proceedings ~~in before~~ the General Court of Justice in the that county in which the hearings are set are ~~cancelled.~~ cancelled or delayed.

*History Note:      Authority G.S. 97-79; 97-80(a); 97-84; 97-91;  
                             Eff. January 1, 1990;  
                             Amended Eff. January 1, 2013; June 1, 2000.*

Rule 04 NCAC 10A .0612 is adopted as published on the OAH website for the public comment period beginning January 31 through February 26, 2014, with changes as follows:

#### **04 NCAC 10A .0612 DEPOSITIONS**

~~(a) When additional testimony is necessary to the disposition of a case, a Commissioner or Deputy Commissioner may order the deposition of witnesses to be taken on or before a day certain not to exceed 60 days from the date of the ruling; provided, the time allowed may be enlarged for good cause shown. The costs of such depositions shall be borne by the defendants for those medical witnesses who examined plaintiff at defendants' expense, in those instances in which defendants are requesting the depositions, and in any other case which, in the discretion of the Commissioner or Deputy Commissioner, it is deemed appropriate.~~

~~(b) In cases where a party, or an attorney for either party, refuses to stipulate medical reports and the case must be reset or depositions ordered for testimony of medical witnesses, a Commissioner or Deputy Commissioner may in his discretion assess the costs of such hearing or depositions, including reasonable attorney fees, against the party who refused the stipulation.~~

~~(c) Except under unusual circumstances, all lay evidence must be offered at the initial hearing. Lay evidence can only be offered after the initial hearing by order of a Commissioner or Deputy Commissioner. The costs of obtaining lay testimony by deposition shall be borne by the party making the request unless otherwise ordered by the Commission.~~

(a) [Prior to a hearing before a Deputy Commissioner, the parties shall confer to determine the methods by which medical evidence, if any, will be submitted. In doing so, absent a well-grounded objection, the parties shall stipulate to the admission of all relevant medical records, reports, and forms, as well as opinion letters from the employee's health care providers with the goal of minimizing the use of post-hearing depositions. When a Pre-Trial Agreement is required by the Commission, the parties shall certify in the Pre-Trial Agreement that the parties have conferred to determine the methods by which medical evidence, if any, will be submitted, and the parties shall state whether there is any disagreement about the stipulation of medical evidence. The parties shall state in the Pre-Trial Agreement all experts to be deposed post-hearing.] Prior to a hearing before a Deputy Commissioner, the parties shall confer to determine the methods by which medical evidence will be submitted. The parties shall stipulate in a Pre-Trial Agreement to the admission of all relevant medical records, reports, and forms, as well as opinion letters from the employee's health care providers with the goal of minimizing the use of post-hearing depositions. The parties shall state all experts to be deposed post-hearing. The parties shall certify that the parties have conferred to determine the methods by which medical evidence will be submitted. If there is a disagreement about the stipulation of medical evidence, the parties shall state the nature and basis of the disagreement.

(b) When medical or other expert testimony is requested by the parties for the disposition of a case, a Deputy Commissioner or Commissioner may order expert depositions to be taken on or before a day certain not to exceed 60 days from the date of the hearing; provided, however, the time allowed may be enlarged or shortened in the interests of justice or to promote judicial economy, or where required by the Act.

(c) The employer shall pay for the costs of up to two post-hearing depositions [selected] requested by the employee of health care providers who evaluated or treated the employee. [employee shall be borne by the employer.] The employer

1 shall also bear the costs of a deposition of a second opinion doctor selected jointly by the parties or ordered by the  
2 Commission pursuant to G.S. 97-25. [~~The employee shall designate the health care providers the employee will depose~~  
3 at employer's expense in the Pre Trial Agreement.]

4 (d) The parties may notice depositions of additional experts, and the costs thereof shall be borne by the party noticing the  
5 depositions; provided, however, if a ruling favorable to the employee is rendered and is not timely appealed by the  
6 employer, or the employer's appeal is dismissed or withdrawn, then the employer shall reimburse the employee the costs  
7 of such additional expert depositions. [~~Notwithstanding this provision, the parties may come to a separate agreement~~  
8 regarding reimbursement of deposition costs, which shall be submitted to the Commission for approval.]

9 (e) [~~Provided further, in (i)~~] In claims pursuant to G.S. 97-29(d) [and] or [(i)] cases involving exceptional, unique, or  
10 complex injuries or diseases, the Commission may allow additional depositions of experts to be taken at the employer's  
11 expense, when requested by the employee and when necessary to address the issues in dispute, in which case the  
12 employee shall state, and the Commission shall [~~consider, at a minimum,~~] consider [~~the following factors~~] when  
13 determining whether or not the employer shall bear the costs of such depositions such factors as:

14 (1) [~~The~~] the name and profession of the proposed deponent;

15 (2) [~~If~~] if the proposed deponent is a health care provider, whether the health care provider evaluated,  
16 diagnosed or treated the employee;

17 (3) [~~The~~] the issue to which the testimony is material, relevant and necessary;

18 (4) [~~The~~] the availability of alternate methods for submitting the evidence and the efforts made to utilize  
19 alternate methods;

20 (5) [~~The~~] the severity or complexity of the employee's condition;

21 (6) [~~The~~] the number and complexity of the issues in dispute;

22 (7) [~~Whether~~] whether the testimony is likely to be duplicative of other evidence; and

23 (8) [~~The~~] the opposing party's position on the request.

24 (f) The term "costs" as used in this [~~rule~~] Rule shall mean the expert's fee as approved by the Commission for the  
25 deposition, including the expert's time preparing for the deposition, if [~~applicable, and~~] applicable. The term shall include  
26 fees associated with the production and delivery of a transcript of the deposition to the Commission, including the court  
27 reporter's appearance [~~fee, but~~] fee. The term shall not include costs for a party to obtain his or her own copy of the  
28 deposition transcript, or attorney's fees associated with the deposition, unless so ordered by the Commission pursuant to  
29 G.S. 97-88.1.

30 (g) Notwithstanding (c) and (d) of this Rule, the parties may come to a separate agreement regarding reimbursement of  
31 deposition costs, which shall be submitted to the Commission for approval.

32 [(e)](h) If the claimant is unrepresented at the time of a full evidentiary hearing before a Deputy Commissioner, the  
33 Commission shall confer with the parties and determine the best method for presenting medical evidence, if necessary,  
34 and the party responsible for bearing associated costs.

35 [(d)](i) If a party [~~unreasonably~~] refuses to stipulate to relevant medical evidence, and as a result, the case is reset or  
36 depositions are ordered for testimony of medical or expert witnesses, a Deputy Commissioner or Commissioner may

1 assess the costs of such hearing or depositions, including reasonable attorney fees, against the party who refused the  
2 stipulation, pursuant to G.S. 97-88.1.

3 ~~[(e)](j)~~ All evidence and witnesses other than those tendered as an expert witness shall be offered at the hearing before  
4 the Deputy Commissioner. Non-expert evidence may be offered after the hearing before the Deputy Commissioner by  
5 order of a Deputy Commissioner or Commissioner. The costs of obtaining non-expert testimony by deposition shall be  
6 borne by the party making the request unless otherwise ordered by the Commission in the interests of justice or to  
7 promote judicial economy.

8  
9 *History Note: Authority G.S. 97-26.1; 97-80(a); 97-88; 97-88.1;*  
10 *Eff. June 1, 1990;*  
11 *Amended Eff. April 1, 2014; June 1, 2000.*



Rule 04 NCAC 10A .0613 is amended as published on the OAH website for the public comment period beginning January 31 through February 26, 2014, with changes as follows:

**04 NCAC 10A .0613      EXPERT WITNESSES AND FEES**

~~(a) Dismissals:~~

~~(1) — No claim filed under the Workers' Compensation Act shall be dismissed without prejudice at plaintiff's instance except upon order of the Industrial Commission and upon such terms and conditions as justice requires; provided, however, that no voluntary dismissal shall be granted after the record in a case is closed.~~

~~(2) — Unless otherwise ordered by the Industrial Commission, a plaintiff shall have one year from the date of the Order of Voluntary Dismissal to refile his claim.~~

~~(3) — Upon proper notice and an opportunity to be heard, any claim may be dismissed with or without prejudice by the Industrial Commission on its own motion or by motion of any party for failure to prosecute or to comply with these Rules or any Order of the Commission.~~

~~(b) Removals:~~

~~(1) — A claim may be removed from the hearing docket by motion of the party requesting the hearing or by the Industrial Commission upon its own motion.~~

~~(2) — Upon settlement of a case or approval of a form agreement, the parties shall submit a request for removal and/or a dismissal and proposed Order.~~

~~(3) — A removed case may be reinstated by motion of either party; provided that cases wherein the issues have materially changed since the Order of Removal or where the motion to reinstate is filed more than one year after the Order of Removal, a Form 33 Request for Hearing will be required.~~

~~(4) — When a plaintiff has not requested a hearing within two years of the filing of an Order of Removal requested by the plaintiff or necessitated by the plaintiff's conduct, and not pursued the claim, upon proper notice and an opportunity to be heard, any claim may be dismissed with prejudice by the Industrial Commission, in its discretion, on its own motion or by motion of any party.~~

(a) The parties shall file with the Deputy Commissioner or Commission within 15 days following the hearing, a list identifying all expert witnesses to be deposed and the deposition dates unless otherwise extended by the Commission in the interests of justice and judicial economy.

(b) ~~Within 10 days after~~ After the deposition of each expert, the party that noticed the deposition shall, within 10 days after receiving the expert's fee invoice, submit to the Deputy Commissioner or Commissioner, via email, a request to approve the costs related to the expert deposition. In these requests, the party shall provide to the Deputy Commissioner or Commissioner, in a cover letter along with the invoice (if available), the following:

(1) the name of the expert and the expert's practice;

(2) the expert's fax number;

(3) the expert's area of specialty and board certifications, if any;

(4) the length of the deposition;

- (5) the length of time the expert spent preparing for the deposition, excluding any time meeting with parties' counsel;
- (6) whether the Commission determined that the claim was filed pursuant to G.S. 97-29(d) or involved an exceptional, unique, or complex injury or disease;
- (7) whether the deponent was selected by the employee in the Pre-Trial Agreement as an expert to be deposed at employer's expense; and
- (8) the party initially responsible for payment of the deposition fee pursuant to [04 NCAC 10A] Rule .0612 of this Section.

At the time the request is made, the requesting party shall submit a proposed Order that shows the expert's name, practice name and fax number under the "Appearances" section. The proposed [order] Order shall also reflect the party initially responsible for payment of the deposition fee pursuant to [04 NCAC 10A] Rule .0612 of this Section.

(c) The Commission shall issue an order setting the deposition costs of the expert. The term "costs" as used in this [rule] Rule shall mean the expert's fee as approved by the Commission for the deposition, including the expert's time preparing for the deposition, if applicable. [applicable, and shall include fees associated with the production and delivery of a transcript of the deposition to the Commission, including the court reporter's appearance fee, but shall not include costs for a party to obtain his or her own copy of the deposition transcript, or attorney's fees associated with the deposition, unless so ordered by the Commission pursuant to G.S. 97-88.1]

(d) Failure to make payment to an expert witness within 30 days following the entry of a fee order shall result in an amount equal to 10 percent being added to the fee [ordered to be paid to the expert.] granted in the Order.

(e) A proposed fee for cancellation of a deposition within five days of scheduled deposition may be submitted to the Deputy Commissioner for consideration and approval if in the interest of justice and judicial economy.

(f) This [rule] Rule applies to all expert fees for depositions; provided, however, either party may elect to reimburse a retained expert that did not treat or examine the employee the difference between the fee awarded by the Commission and the contractual fee of the expert.

*History Note: Authority G.S. 97-26.1; 97-80(a); G.S. 97-80(d); ~~97-80(f)~~;*  
*Eff. January 1, 1990;*  
*Amended Eff. April 1, 2014; January 1, 2011; June 1, 2000.*

04 NCAC 10A .0614 is amended with changes as published in 27:02 NCR 189 as follows:

**04 NCAC 10A .0614 MEDICAL-HEALTH CARE PROVIDER FEE DISPUTE PROCEDURE**

~~(a) Any attorney who is retained by a party in a proceeding before the Industrial Commission shall immediately file a notice of appearance with the Industrial Commission. A copy of this notice shall be served on all other counsel and on all unrepresented parties. Thereafter, all notices required to be served on a party shall be served upon the attorney. No direct contact or communication concerning contested matters may be made with a represented party by the opposing party or any person on its behalf, without the attorney's permission except as permitted by law or Industrial Commission Rules.~~

~~(b) Any attorney who wishes to withdraw from representation in a proceeding before the Industrial Commission shall file with the Industrial Commission, in writing:~~

~~(1) A Motion to Withdraw which shall contain a statement of reasons for the request and that the request has been served on the client. The attorney shall make reasonable efforts to ascertain the last known address of the client and shall include this information in the motion.~~

~~(2) A Motion to Withdraw before an award is made shall state whether the withdrawing attorney requests an attorney fee from the represented party once an award of compensation is made or approved.~~

~~(c) An attorney may withdraw from representation only by written order of the Industrial Commission. The issuance of an award of the Industrial Commission does not release an attorney as the attorney of record.~~

(a) [Medical-]Health care providers seeking to resolve a dispute regarding payment of charges for medical compensation shall make an inquiry directly to the employer or employer's workers' compensation insurance carrier responsible for the payment of medical fees by using an Industrial Commission Form 26I Medical Provider Dispute Resolution Questionnaire.

(b) The Commission shall assist a [medical-]health care provider who has been unsuccessful in obtaining carrier contact information. No information regarding a specific claim shall be provided by the Commission to the [medical-]health care provider.

(c) When an employer or carrier does not respond to a [medical-]health care provider's Form 26I Medical Provider Dispute Resolution Questionnaire inquiry regarding a medical fee dispute within 20 days, or denies liability as a Form 26I Medical Provider Dispute Resolution Questionnaire response, the medical-health care provider may file a written request seeking assistance from the Commission regarding the fee dispute.

(d) The Commission shall conduct a conference between the medical-health care provider and the employer or carrier in an effort to resolve the dispute.

(e) When the medical-health care provider, with assistance from the Commission is unable to resolve the dispute, the medical-health care provider may request limited intervention in the workers' compensation claim for the sole purpose of resolving the fee dispute.

(f) A [medical-]health care provider seeking limited intervention in a workers' compensation claim shall file a motion to intervene with the Commission. The Motion to Intervene must include the following:

(1) the Commission file number, if known;

- (2) the employee's name, address, and last four digits of his or her social security number;
  - (3) the date of injury and a description of the workplace injury, including the body parts known to be affected;
  - (4) an itemized list of the medical fees in dispute, including CPT codes relating specific charges to the Workers' Compensation Medical Fee Schedule, and explanations directly relating each charge to the employee's workplace injury;
  - (5) a copy of the Form 26I *Medical Provider Dispute Resolution Questionnaire* submitted by the ~~Medical Provider~~ health care provider, including all accompanying materials, and any response received back by the Medical Provider from the employer or carrier contacted;
  - (6) a copy of the written request for assistance submitted to the Medical Fees Section of the Commission;
  - (7) a copy of the written summary by the Medical Fees Section of the informal resolution process and outcome;
  - (8) a sworn affidavit by the ~~Medical Provider~~ health care provider that states:
    - (A) the ~~Medical Provider~~ health care provider has treated the employee;
    - (B) the medical fees itemized by the ~~Medical Provider~~ health care provider are current and unpaid; and
    - (C) the ~~Medical Provider~~ health care provider reasonably believes that the employer or carrier named on the Form 26I *Medical Provider Dispute Resolution Questionnaire* is obligated to pay the fees under the Workers' Compensation Act; and
  - (9) a certification of service upon both the employee and the employer or carrier named on the Form 26I *Medical Provider Dispute Resolution Questionnaire*.
- (g) A ~~medical~~ health care provider who has been denied intervention may request a review by the Commission by filing a written request with the Docket Section of the Industrial Commission within 10 days of receipt of the order denying intervention.
- (h) The request for review by the Commission shall be served on all parties to the workers' compensation claim and include:
- (1) a statement of facts necessary to an understanding of the issue(s);
  - (2) a statement of the relief sought;
  - (3) a copy of the motion to intervene, including all attachments required by Paragraph (f) of this Rule;
  - and
  - (4) a copy of the order denying intervention.
- (i) Within 10 days after service of a request for review by the Commission, any party to the workers' compensation claim may file a response, including supporting affidavits or documentation not previously ~~file~~ filed with the Commission.
- (j) The Commission's determination shall be made on the basis of the request for review and any response(s), including supporting documentation. No briefs or oral argument are allowed by the Commission.

1 (k) In accordance with the G.S. 97-90.1[(b)], when a [medical-]health care provider is allowed to intervene by the  
2 Commission, the intervention is limited to the medical fee dispute.

3 (l) Following intervention, a [medical-]health care provider may request and obtain information from the  
4 Commission related to the medical fee. The request for information must be in writing, include a copy of the order  
5 allowing the [medical-]health care provider to intervene, and be directed to the Claims Section of the Commission.

6 (m) Discovery by a [medical-]health care provider shall be allowed following a Commission order allowing  
7 intervention but is limited to matters related to the medical fee dispute.

8 (n) A [medical-]health care provider who has intervened in a workers' compensation claim may obtain a hearing  
9 before the Commission on a medical fee dispute by filing an Industrial Commission Form 331 *Intervenor's Request*  
10 *that Claim be Assigned for Hearing* and paying a filing fee.

11 (o) Upon resolution of a medical fee dispute, costs shall be determined and assessed by the Commission and the  
12 [medical-]health care provider shall be dismissed from the claim. The [medical-]health care provider shall retain  
13 standing to request review of an order from the Commission.

14  
15 *History Note: Authority G.S. 97-26(i); 97-80(a);*

16 *Eff. January 1, 1990;*

17 *Amended Eff. January 1, 2013; January 1, 2011; June 1, 2000; March 15, 1995.*

04 NCAC 10A .0615 is amended with changes as published in 27:02 NCR 190 as follows:

**04 NCAC 10A .0615      CASES REMOVED FROM A HEARING CALENDAR**

~~In their discretion, Commissioners or Deputy Commissioners may recuse themselves from the hearing of any case before the Industrial Commission. For good cause shown, a majority of the Full Commission may remove a Commissioner or Deputy Commissioner from hearing a case.~~

(a) A claim may be removed from a hearing calendar by motion of the party requesting the hearing or by the Commission upon its own motion [to prevent manifest injustice, promote judicial economy, or expedite a decision in the public interest.] in the interests of justice or to promote judicial economy.

(b) Upon settlement of a case or approval of a form agreement, the parties shall submit a request to remove a case from a hearing calendar and a proposed Order.

(c) After a case has been removed from a hearing calendar, the case may be reset on a hearing calendar by Order of the Commission or filing of a Form 33 *Request that Claim be Assigned for Hearing* by the party requesting a hearing.

*History Note:      Authority G.S. 97-80(a); 97-84; 97-91;  
                         Eff. January 1, 1990;  
                         Amended Eff. January 1, 2013; June 1, 2000.*

04 NCAC 10A .0616 is amended with changes as published in 27:02 NCR 190 as follows:

**04 NCAC 10A .0616 DISMISSALS**

~~(a) Services of Foreign Language Interpreters Required—When a person who does not speak or understand the English language is called to testify in a hearing, other than in an informal hearing conducted pursuant to G.S. 97-18.1, the person, whether a party or a witness shall be assisted by a qualified foreign language interpreter.~~

~~(b) Qualifications of Interpreters—To qualify as a foreign interpreter, a person must possess sufficient experience and education, or a combination of experience and education, speaking and understanding English and the foreign language to be interpreted, to qualify as an expert witness pursuant to G.S. 1C-1, Rule 702. A person qualified as an interpreter under this Rule shall not be interested in the claim and must make a declaration under oath or affirmation to interpret accurately, truthfully and without any additions or deletions, all questions propounded to the witness and all responses thereto.~~

~~(c) Notice to Industrial Commission and Opposing Party of Need for Interpreter—Any party who is unable to speak or understand English, or who intends to call as a witness a person who is unable to speak or understand English, shall so notify the Industrial Commission and the opposing party, in writing, not less than 21 days prior to the date of the hearing. The notice shall state with specificity the language(s) that must be interpreted for the Commission.~~

~~(d) Designation of Interpreter—Upon receiving or giving the notice required in Paragraph (3) of this Rule, the employer or insurer shall retain a qualified, disinterested interpreter, either agreed upon by the parties or approved by the Industrial Commission, to appear at the hearing and interpret the testimony of all persons for whom the notice in Paragraph (3) of this Rule has been given or received.~~

~~(e) Interpreter Fees—The interpreter's fee shall constitute a cost as contemplated by G.S. 97-80. A qualified interpreter who interprets testimony for the Industrial Commission shall be entitled to payment of the fee agreed upon by the interpreter and employer or insurer that retained the interpreter. Except in cases where a claim for compensation has been prosecuted without reasonable ground, the fee agreed upon by the interpreter and employer or insurer shall be paid by the employer or insurer. Where it is ultimately determined by the Commission that the request for an interpreter was unfounded, attendant costs may be assessed against the movant.~~

~~(f) Interpreter Ethics—Foreign language interpreters shall abide by the code of ethical conduct for court interpreters promulgated by the North Carolina Administrative Office of the Courts and adopted by the Industrial Commission and shall interpret as word for word as is practicable, without editing, commenting, or summarizing, testimony or other communications.~~

(a) No claim filed under the Workers' Compensation Act shall be dismissed without prejudice, except upon order of the Commission in the interest of justice. No voluntary dismissal shall be granted after the record in a case is closed. Unless otherwise ordered by the Commission in the ~~[interest]~~ interests of justice, a plaintiff shall have one year from the date of the Order of Voluntary Dismissal Without Prejudice to refile his claim.

(b) Upon notice and opportunity to be heard, any claim may be dismissed with or without prejudice by the Commission on its own motion or by motion of any party if the Commission finds that the party failed to prosecute or to comply with the rules in this Subchapter or any Order of the Commission.

1 (c) In a denied claim, if ~~When~~ a plaintiff has not requested a hearing within two years of the filing of the Order  
2 removing the case from a hearing calendar and has not pursued the claim, upon notice and opportunity to be heard,  
3 any claim shall be dismissed with prejudice by the Commission, on its own motion or by motion of any party.  
4

5 *History Note: Authority G.S. 97-80(a); 97-84; 97-91;*  
6 *Eff. June 1, 2000;*  
7 *Amended Eff. January 1, 2013; January 1, 2011.*  
8



04 NCAC 10A .0617 is amended with changes as published in 27:02 NCR 191 as follows:

**04 NCAC 10A .0617 ATTORNEYS RETAINED FOR PROCEEDINGS**

~~Consistent with the provisions in ,G.S. 97-84, 97-85, and 97-86, the Commission shall establish guidelines for the electronic submission, including electronic mail and facsimile, of documents and communications.~~

(a) Any attorney who is retained by a party in a proceeding before the Commission shall comply with the applicable rules of the North Carolina State Bar. A copy of a notice of representation shall be served upon all other counsel and all unrepresented parties. Thereafter, all notices required to be served on a party shall be served upon the attorney. No direct contact or communication concerning contested matters may be made with a represented party by the opposing party or any person on its behalf, without the attorney's permission except as permitted by G.S. 97-32 or other applicable law.

(b) Any attorney who wishes to withdraw from representation in a proceeding before the Commission shall file with the Commission, in writing a Motion to Withdraw that contains a statement of reasons for the request and that the request has been served on the client. The attorney shall make reasonable efforts to ascertain the last known address of the client and shall include this information in the motion. A Motion to Withdraw before an award is made shall state whether the withdrawing attorney requests an attorney's fee from the represented party once an award of compensation is made or approved.

(c) An attorney may withdraw from representation only [for good cause shown and ]by written order of the Commission. The issuance of an award of the Commission does not release an attorney as the attorney of record.

(d) An attorney withdrawing from representation whose client wishes to appeal an Order, Decision, or Award to the Full Commission shall timely file a notice of appeal, as set out by this Subchapter, on behalf of his or her client either before or with his or her Motion to Withdraw.

(e) Motions to Withdraw shall be submitted electronically to attorneywithdrawals@ic.nc.gov, unless electronic submission is unavailable to the parties. The Motion to Withdraw shall include a proposed Order that includes, in the appearances, the last known address of any pro se party, or the contact information of new counsel, if such counsel has been retained. The proposed Order shall include fax numbers for all parties, if known.

*History Note: Authority G.S. 97-80(a); 97-90; 97-91;  
Eff. January 1, 2011;  
Amended Eff. January 1, 2013.*

04 NCAC 10A .0618 is adopted with changes as published in 27:02 NCR 191 as follows:

**04 NCAC 10A .0618      DISQUALIFICATION OF A COMMISSIONER OR DEPUTY COMMISSIONER**

Commissioners or Deputy Commissioners may recuse themselves from the hearing of any case before the Commission. In the ~~interest~~ interests of justice, a majority of the Full Commission may remove a Commissioner or Deputy Commissioner from the hearing of a case.

*History Note:      Authority G.S. 97-79(b); 97-80(a);*

*Eff. January 1, 2013.*

04 NCAC 10A .0619 is adopted as published in 27:02 NCR 191 as follows:

**04 NCAC 10A .0619 FOREIGN LANGUAGE INTERPRETERS**

(a) When a person who does not speak or understand the English language is called to testify in a hearing, other than in an informal hearing conducted pursuant to G.S. 97-18.1, the person, whether a party or a witness, shall be assisted by a qualified foreign language interpreter.

(b) To qualify as a foreign language interpreter, a person shall possess sufficient experience and education, or a combination of experience and education, speaking and understanding English and the foreign language to be interpreted, to qualify as an expert witness pursuant to G.S. 8C-1, Rule 702. A person qualified as an interpreter under this Rule shall not be interested in the claim and shall make a declaration under oath or affirmation to interpret accurately, truthfully and without any additions or deletions, all questions propounded to the witness and all responses thereto.

(c) Any party who is unable to speak or understand English, or who intends to call as a witness a person who is unable to speak or understand English, shall so notify the Commission and the opposing party, in writing, not less than 21 days prior to the date of the hearing. The notice shall state the language(s) that shall be interpreted for the Commission.

(d) Upon receiving or giving the notice required in Paragraph (c) of this Rule, the employer or insurer shall retain a disinterested interpreter, interpreter who possesses the qualifications listed in Paragraph (b) of this Rule, Rule to appear at the hearing and interpret the testimony of all persons for whom the notice in Paragraph (c) of this Rule has been given or received.

(e) The interpreter's fee shall constitute a cost as contemplated by G.S. 97-80. A qualified interpreter who interprets testimony for the Commission is entitled to payment of the fee agreed upon by the interpreter and employer or insurer that retained the interpreter. Except in cases where a claim for compensation has been prosecuted without reasonable ground, the fee agreed upon by the interpreter and employer or insurer shall be paid by the employer or insurer. Where the Commission ultimately determines that the request for an interpreter was unfounded, attendant costs shall be assessed against the movant.

(f) Foreign language interpreters shall abide by the Code of Conduct and Ethics of Foreign Language Interpreters and Translators, contained in Part 4 of Policies and Best Practices for the Use of Foreign Language Interpreting and Translating Services in the North Carolina Court System and promulgated by the North Carolina Administrative Office of the Courts, and shall interpret, as word for word as is practicable, without editing, commenting, or summarizing, testimony or other communications. The Code of Conduct and Ethics of Foreign Language Interpreters and Translators is hereby incorporated by reference and includes subsequent amendments and editions. A copy may be obtained at no charge from the North Carolina Administrative Office of the Court's website, <http://www.nccourts.org/Citizens/CPrograms/Foreign/Documents/guidelines.pdf>, or upon request, at the offices of the Commission, located in the Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, between the hours of 8:00 a.m. and 5:00 p.m.

1     *History Note:*     *Authority G.S. 97-79(b); 97-80(a);*  
2                         *Eff. January 1, 2013.*  
3

1 Rule 04 NCAC 10A .0701 is amended as published on the OAH website for the public comment period beginning  
2 August 20 through September 15, 2014, with changes as follows:

3  
4 **SECTION .0700 - APPEALS**  
5

6 **04 NCAC 10A .0701 REVIEW BY THE FULL COMMISSION**

7 ~~(a) A letter expressing an intent to appeal shall be considered notice of appeal to the Full Commission within the~~  
8 ~~meaning of N.C. Gen. Stat. §97-85, provided that it clearly specifies the Order or Opinion and Award from which appeal~~  
9 ~~is taken.~~

10 ~~(b) After receipt of notice of appeal, the Industrial Commission will supply to the appellant a Form 44 Application for~~  
11 ~~Review upon which appellant must state the grounds for the appeal. The grounds must be stated with particularity,~~  
12 ~~including the specific errors allegedly committed by the Commissioner or Deputy Commissioner and, when applicable,~~  
13 ~~the pages in the transcript on which the alleged errors are recorded. Failure to state with particularity the grounds for~~  
14 ~~appeal shall result in abandonment of such grounds, as provided in paragraph (3). Appellant's completed Form 44 and~~  
15 ~~brief must be filed and served within 25 days of appellant's receipt of the transcript or receipt of notice that there will be~~  
16 ~~no transcript, unless the Industrial Commission, in its discretion, waives the use of the Form 44. The time for filing a~~  
17 ~~notice of appeal from the decision of a Deputy Commissioner under these rules shall be tolled until a timely motion to~~  
18 ~~reconsider or to amend the decision has been ruled upon by the Deputy Commissioner.~~

19 ~~(c) Particular grounds for appeal not set forth in the application for review shall be deemed abandoned, and argument~~  
20 ~~thereon shall not be heard before the Full Commission.~~

21 ~~(d) Appellant's Form 44 and brief in support of his grounds for appeal shall be filed in triplicate with the Industrial~~  
22 ~~Commission, with a certificate indicating service on appellee by mail or in person, within 25 days after receipt of the~~  
23 ~~transcript, or receipt of notice that there will be no transcript. Thereafter, appellee shall have 25 days from service of~~  
24 ~~appellant's brief within which to file a reply brief in triplicate with the Industrial Commission, with written statement of~~  
25 ~~service of copy by mail or in person on appellant. When an appellant fails to file a brief, appellee shall file his brief~~  
26 ~~within 25 days after appellant's time for filing brief has expired. A party who fails to file a brief will not be allowed oral~~  
27 ~~argument before the Full Commission. If both parties appeal, they shall each file an appellant's and appellee's brief on~~  
28 ~~the schedule set forth herein. If the matter has not been calendared for hearing, any party may file with the Docket~~  
29 ~~Director a written stipulation to a single extension of time not to exceed 15 days. In no event shall the cumulative~~  
30 ~~extensions of time exceed 30 days.~~

31 ~~(e) After notice of appeal has been given to the Full Commission, any motions related to the issues before the Full~~  
32 ~~Commission shall be filed in triplicate with the Full Commission, with service on the other parties.~~

33 ~~(f) No new evidence will be presented to or heard by the Full Commission unless the Commission in its discretion so~~  
34 ~~permits.~~

35 ~~(g) Cases should be cited by North Carolina Reports, and, preferably, to Southeastern Reports. Counsel shall not discuss~~  
36 ~~matters outside the record, assert personal opinions or relate personal experiences, or attribute unworthy acts or motives~~  
37 ~~to opposing counsel.~~

1 (h) ~~The Industrial Commission or any one of the parties with permission of the Industrial Commission may waive oral~~  
2 ~~argument before the Full Commission. In the event of such waiver, the Full Commission will file a decision, based on the~~  
3 ~~record, assignments of error and briefs.~~

4 (i) ~~A plaintiff appealing the amount of a disfigurement award shall personally appear before the Full Commission to~~  
5 ~~permit the Full Commission to view the disfigurement.~~

6 (j) ~~Briefs to the Full Commission shall not exceed 35 pages, excluding attachments. No page limit shall apply to the~~  
7 ~~length of attachments. Briefs shall be prepared entirely using a 12 point font, shall be double spaced, and shall be~~  
8 ~~prepared with non-justified right margins. Each page of the brief shall be numbered at the bottom right of the page. When~~  
9 ~~quoting or paraphrasing testimony or other evidence in the transcript of the evidence, a parenthetical entry in the text, to~~  
10 ~~include the exact page number location within the transcript of the evidence of the information being referenced shall be~~  
11 ~~placed at the end of the sentence citing the information [Example: (T.p.38)]. When quoting or paraphrasing testimony or~~  
12 ~~other evidence in the transcript of a deposition, a parenthetical entry in the text to include the name of the person deposed~~  
13 ~~and exact page number location within the transcript of the deposition of the information being referenced shall be placed~~  
14 ~~at the end of the sentence citing the information. [Example: (Smith p.15)].~~

15 (a) Application for review shall be made to the Commission within 15 days from the date when notice of the Deputy  
16 Commissioner's Opinion and Award shall have been given. A letter expressing a request for review is considered an  
17 application for review to the Full Commission within the meaning of G.S. 97-85, provided that the letter specifies the  
18 Order or Opinion and Award from which appeal is taken.

19 (b) After receipt of a request for review, the Commission shall acknowledge the request for review by letter. The  
20 Commission shall prepare the official transcript and exhibits and provide them along with a Form 44 *Application for*  
21 *Review* to the parties involved in the appeal at no charge within 30 days of the acknowledgement letter. The official  
22 transcript and exhibits and a Form 44 *Application for Review* shall be provided to the parties electronically, where  
23 possible. In such cases, the Commission shall send an e-mail to the parties containing a link to the secure File Transfer  
24 Protocol (FTP) site where the official transcript and exhibits [can] may be downloaded. The e-mail shall also provide  
25 instructions for the submission of the parties' acknowledgement of receipt of the Form 44 *Application for Review* and the  
26 official transcript and exhibits to the Commission. Parties represented by counsel shall sign a joint certification  
27 acknowledging receipt of the Form 44 [Application for Review] *Application for Review* and the official transcript and  
28 exhibits and submit the certification within ten days of receipt of the Form 44 [Application for Review] *Application for*  
29 *Review* and the official transcript and exhibits. The certification shall stipulate the date the Form 44 [Application for  
30 Review] *Application for Review* and the official transcript and exhibits were received by the parties and shall note the  
31 date the appellant's brief is due. The Commission shall save a copy of the parties' acknowledgements in the file for the  
32 claim to serve as record of the parties' electronic receipt of the Form 44 *Application for Review* and the official transcript  
33 and exhibits. In cases where it is not possible to provide a party with the official transcript and exhibits electronically, the  
34 Commission shall provide the official transcript and exhibits and a Form 44 *Application for Review* via certified U.S.  
35 Mail, with return receipt requested. The Commission shall save a copy of the return receipt to serve as record of the  
36 party's receipt of the official transcript and exhibits and Form 44 *Application for Review*.

1 (c) A motion to reconsider or to amend the decision of a Deputy Commissioner shall be filed with the Deputy  
2 Commissioner within 15 days of receipt of notice of the award with a copy to the Docket Director. The time for filing a  
3 request for review from the decision of a Deputy Commissioner under the rules in this Subchapter shall be tolled until a  
4 motion to reconsider or to amend the decision has been ruled upon by the Deputy Commissioner. However, if either  
5 party files a letter ~~[expressing a request for]~~ requesting review as set forth in Paragraph (a) of this Rule, jurisdiction shall  
6 be transferred to the Full Commission, and the Docket Director shall notify the Deputy Commissioner. Upon transfer of  
7 jurisdiction to the Full Commission, any party who had a pending motion to reconsider or amend the decision of the  
8 Deputy Commissioner may file a motion with the Chairman of the Commission requesting remand to the Deputy  
9 Commissioner with whom the motion was pending. Within the Full Commission's discretion, the matter may be so  
10 remanded. Upon the Deputy Commissioner's ruling on the motion to reconsider or amend the decision, either party may  
11 thereafter file a letter ~~[expressing a request for]~~ requesting review of the Deputy Commissioner's decision as set forth in  
12 Paragraph (a) of this Rule.

13 (d) The appellant shall submit a Form 44 *Application for Review* upon which appellant shall state the grounds for the  
14 review. The grounds shall be stated with particularity, including the errors allegedly committed by the Commissioner or  
15 Deputy Commissioner and, when applicable, the pages in the transcript on which the alleged errors are recorded.  
16 Grounds for review not set forth in the Form 44 *Application for Review* are deemed abandoned, and argument thereon  
17 shall not be heard before the Full Commission.

18 (e) The appellant shall file the Form 44 *Application for Review* and brief in support of the grounds for review with the  
19 Commission with a certificate of service on the appellee within 25 days after receipt of the transcript or receipt of notice  
20 that there will be no transcript. The appellee shall have 25 days from service of the Form 44 *Application for Review* and  
21 appellant's brief to file a responsive brief with the Commission. The appellee's brief shall include a certificate of service  
22 on the appellant. When an appellant fails to file a brief, an appellee shall file its brief within 25 days after the appellant's  
23 time for filing the Form 44 *Application for Review* and appellant's brief has expired. A party who fails to file a brief shall  
24 not participate in oral argument before the Full Commission. If multiple parties request review, each party shall file an  
25 appellant's brief and appellee's brief on the schedule set forth in this Paragraph. If the matter has not been calendared for  
26 hearing, any party may file with the Docket Director a written stipulation to a single extension of time not to exceed 15  
27 days. In no event shall the cumulative extensions of time exceed 30 days.

28 (f) After a request for review has been submitted to the Full Commission, any motions related to the issues for review  
29 shall be filed with the Full Commission, with service on the other parties. Motions related to the issues for review  
30 including motions for new trial, to supplement the record, ~~[including, but not limited to,]~~ including documents from offers  
31 of proof, or to take additional evidence, filed during the pendency of a request for review to the Full Commission, shall  
32 be argued before the Full Commission at the time of the hearing of the request for review, except motions related to the  
33 official transcript and exhibits. The Full Commission, for good cause shown, may rule on such motions prior to oral  
34 argument.

35 (g) Case citations shall be to the North Carolina Reports, the North Carolina Court of Appeals Reports, or the North  
36 Carolina Reporter, and when possible, to the South Eastern Reporter. If no reporter citation is available at the time a  
37 brief is filed or if an unpublished decision is referenced in the brief, the party citing to the case shall attach a copy of the

1 case to its brief. Counsel shall not discuss matters outside the record, assert personal opinions or relate personal  
2 experiences, or attribute wrongful acts or motives to opposing counsel or members of the Commission.

3 (h) Upon the request of a party or on its own motion, the Commission may waive oral argument in the interests of justice  
4 or to promote judicial economy. In the event of such waiver, the Full Commission shall file an [award,] award based on  
5 the record and briefs.

6 (i) Briefs to the Full Commission shall not exceed 35 pages, excluding attachments. No page limit applies to the length  
7 of attachments. Briefs shall be prepared using a 12 point type, shall be double spaced, and shall be prepared with non-  
8 justified right margins. Each page of the brief shall be numbered at the bottom of the page. When a party quotes or  
9 paraphrases testimony or other evidence from the appellate record in the party's brief, the party shall include, at the end of  
10 the sentence in the brief that quotes or paraphrases the testimony or other evidence, a parenthetical entry that designates the  
11 source of the quoted or paraphrased material and the page number within the applicable source. The party shall use "T"  
12 to refer to the transcript of hearing testimony, "Ex" for exhibit, and "p" for page number. For example, if a party quotes  
13 or paraphrases material located in the hearing transcript on page 11, the party shall use the following format "(T p 11)."  
14 and if a party quotes or paraphrases material located in an exhibit on page 12, the party shall use the following format  
15 "(Ex p 12)." When a party quotes or paraphrases testimony in the transcript of a deposition in the party's brief, the party  
16 shall include the last name of the deponent and the page on which such testimony is located. For example, if a party  
17 quotes or paraphrases the testimony of John Smith, located on page 11 of such deposition, the party shall use the  
18 following format "(Smith p 11)."

19 (j) An employee appealing the amount of a disfigurement award shall personally appear before the Full Commission to  
20 permit the Full Commission to view the disfigurement.

21  
22 *History Note: Authority G.S. 97-80(a); 97-85; S.L. 2014-77;*

23 *Eff. January 1, 1990;*

24 *Amended Eff. November 1, 2014; January 1, 2011; August 1, 2006; June 1, 2000.*



1 Rule 04 NCAC 10A .0702 is amended as published on the OAH website for the public comment period beginning  
2 August 20 to September 15, 2014, with changes as follows:

3  
4 **04 NCAC 10A .0702 REVIEW OF ADMINISTRATIVE DECISIONS**

5 ~~(a) Except as otherwise provided in G.S. 97-86, in every case appealed to the North Carolina Court of Appeals, the~~  
6 ~~Rules of Appellate Procedure shall apply. The running of the time for filing and serving a notice of appeal is tolled~~  
7 ~~as to all parties by a timely motion filed by any party to amend, to make additional findings, or to reconsider the~~  
8 ~~decision, and the full time for appeal commences to run and is to be computed from the entry of an Order upon any~~  
9 ~~of these motions, in accordance with Rule 3 of the Rules of Appellate Procedure.~~

10 ~~(b) If the parties cannot agree on the record on appeal, appellant shall furnish the Chair of the Industrial~~  
11 ~~Commission, or his designee, one copy of the proposed record on appeal, objections and/or proposed alternative~~  
12 ~~record on appeal along with a timely request to settle the record on appeal. The hearing to settle the record on~~  
13 ~~appeal shall be held at the offices of the Industrial Commission or by telephone conference. The record on appeal~~  
14 ~~shall be settled in accordance with the provisions of Rule 18(d) of the North Carolina Rules of Appellate Procedure.~~

15 ~~(c) The amount of the appeal bond shall be set by the Chair, or his designee, and may be waived in accordance with~~  
16 ~~G.S. 97-86~~

17 (a) Administrative decisions include orders, decisions, and awards made in a summary manner, without findings of  
18 fact, including decisions on the following:

19 (1) applications to approve agreements to pay compensation and medical bills;

20 (2) applications to approve the termination or suspension or the reinstatement of compensation;

21 [(3) applications for change in treatment or providers of medical compensation;]

22 [(4)](3) applications to change the interval of payments; and

23 [(5)](4) applications for lump sum payments of compensation.

24 Administrative decisions shall be reviewed upon the filing of a Motion for Reconsideration with the Commission  
25 addressed to the Administrative Officer who made the [decisions] decision or may be reviewed by requesting a  
26 hearing within 15 days of receipt of the [decisions] decision or receipt of the ruling on a Motion to Reconsider.  
27 These issues may also be raised and determined at a subsequent hearing.

28 (b) Motions for Reconsideration shall not stay the effect of the order, [decision] decision, or award; provided that  
29 the Administrative Officer making the decision or a Commissioner may enter an order staying its effect pending the  
30 ruling on the Motion for Reconsideration or pending a decision by a Commissioner or Deputy Commissioner  
31 following a formal hearing. In determining whether or not to grant a stay, the Commissioner or Administrative  
32 Officer shall consider whether granting the stay will frustrate the purposes of the order, decision, or award. Motions  
33 to Stay shall not be filed with both the Administrative Officer and a Commissioner.

34 (c) Any request for a hearing to review an administrative decision shall be made to the Commission and filed with  
35 the Commission's Docket Director. The Commission shall designate a Commissioner or Deputy Commissioner to  
36 hear the review. The Commissioner or Deputy Commissioner hearing the matter shall consider all issues de novo,

1 and no issue shall be considered moot solely because the order has been fully executed during the pendency of the  
2 hearing.

3 (d) Orders filed by a single Commissioner, including orders dismissing reviews to the Full Commission or denying  
4 the right of immediate request for review to the Full Commission, are administrative orders and are not final  
5 determinations of the Commission. As such, an order filed by a single Commissioner is not appealable to the North  
6 Carolina Court of Appeals. A one-signature order filed by a single Commissioner may be reviewed by:

7 (1) filing a Motion for Reconsideration addressed to the Commissioner who filed the order; or

8 (2) requesting a review to a Full Commission panel by requesting a hearing within 15 days of receipt of the  
9 order or receipt of the ruling on a Motion for Reconsideration.

10 (e) This [rule] Rule shall not apply to medical motions filed pursuant to G.S. 97-25; provided, however, that a party  
11 may request reconsideration of an administrative ruling on a medical motion, or may request a stay, or may request  
12 an evidentiary hearing de novo, all as set forth in G.S. 97-25.

13  
14 History Note: *Authority G.S. 97-79(g); 97-80(a); 97-85; S.L. 2014-77;*

15 *Eff. January 1, 1990;*

16 *Amended Eff. November 1, 2014; January 1, 2011; June 1, 2000.*

04 NCAC 10A .0702A is repealed as published in 27:02 NCR 194 as follows:

**04 NCAC 10A .0702A REMAND FROM THE APPELLATE COURTS**

*History Note: Authority G.S. 97-80(a);*

*Repealed Eff. January 1, 2013.*

04 NCAC 10A .0703 is amended as published in 27:02 NCR 194 as follows:

**04 NCAC 10A .0703      APPEAL TO THE COURT OF APPEALS**

~~(a) Orders, Decisions, and Awards made in a summary manner, without detailed findings of fact, including Decisions on applications to approve agreements to pay compensation and medical bills, applications to approve the termination or suspension of compensation, applications for change in treatment or providers of medical compensation, applications to change the interval of payments, and applications for lump sum payments of compensation may be appealed by filing a Motion for Reconsideration with the Industrial Commission and addressed to the Administrative Officer who made the Decision or may be reviewed by requesting a hearing within 15 days of receipt of the Decision or receipt of the ruling on a Motion to Reconsider. These issues may also be raised and determined at a subsequent hearing.~~

~~(b) Motions for Reconsideration shall not stay the effect of the Order, Decision or Award; provided, that the Administrative Officer making the decision or a Commissioner may enter an Order staying its effect pending the ruling on the Motion for Reconsideration or pending a Decision by a Commissioner or Deputy Commissioner following a formal hearing. In determining whether or not to grant a stay, the Commissioner or Administrative Officer will consider whether granting the stay will frustrate the purposes of the Order, Decision, or Award.~~

~~(c) Any review made by requesting a hearing shall be made to the Industrial Commission and filed with the Industrial Commission's Docket Director. The Industrial Commission shall designate a Commissioner or Deputy Commissioner to hear the review. The Commissioner or Deputy Commissioner hearing the matter shall consider all issues de novo, and no issue shall be considered moot solely because the Order has been fully executed during the pendency of the hearing.~~

~~(d) Orders filed by a single Commissioner, including Orders dismissing appeals to the Full Commission or denying the right of immediate appeal to the Full Commission, are administrative orders and are not final determinations of the Industrial Commission. As such, an Order filed by a single Commissioner is not immediately appealable to the North Carolina Court of Appeals. A one signature Order filed by a single Commissioner may be reviewed by filing a Motion for Reconsideration addressed to the Commissioner who filed the Order or may be appealed to a Full Commission panel by requesting a hearing within 15 days of receipt of the Order or receipt of the ruling on a Motion for Reconsideration.~~

~~(a) The time to file a notice of appeal, and bonds therefrom, including in forma pauperis affidavits, to the North Carolina Court of Appeals from the Full Commission is governed by the provisions of G.S. 97-86.~~

~~(b) A motion to reconsider or to amend an award of the Full Commission shall be filed within 15 days of receipt of notice of the award. An award of the Full Commission is not final until the disposition is filed by the Commission on the pending motion to reconsider or to amend an award.~~

*History Note: Authority G.S. 97-80(a); 97-86;*

*Eff. March 15, 1995;*

*Amended Eff. January 1, 2013; January 1, 2011; June 1, 2000.*

1 Rule 04 NCAC 10A .0704 is adopted as published on the OAH website for the public comment period beginning  
2 January 31 through February 26, 2014, with changes as follows:

3  
4 **04 NCAC 10A .0704 REMAND FROM THE APPELLATE COURTS**

5 ~~[(a)]~~ When a case is remanded to the Commission from the appellate courts, each party may file a statement, with or  
6 without a brief, to the Full Commission setting forth its position on the actions or proceedings, including evidentiary  
7 hearings or depositions, required to comply with the court's decision. This statement shall be filed within 30 days of  
8 the issuance of the court's mandate and shall be filed with the Commissioner who authored the Full Commission  
9 decision or the Commissioner designated by the Chairman of the Commission if the Commissioner who authored  
10 the decision is no longer a member of the Industrial Commission. The deadline to submit the statement to the  
11 Commission shall be stayed automatically upon a party filing a petition for discretionary review or rehearing to the  
12 appellate courts. The stay shall be automatically lifted if the petition for discretionary review or rehearing is denied  
13 by the appellate courts.

14 ~~[(b)] Application may be made in the first instance to the Supreme Court for a writ of supersedeas to stay the~~  
15 ~~execution or enforcement of a judgment, order, or other determination mandated by the Court of Appeals when a~~  
16 ~~notice of appeal of right or a petition for discretionary review has been or will be timely filed, or a petition for~~  
17 ~~review by certiorari, mandamus, or prohibition has been filed to obtain review of the decision of the Court of~~  
18 ~~Appeals.]~~

19  
20 *History Note: Authority G.S. 97-80(a); 97-86;*  
21 *Eff. April 1, 2014.*

1 Rule 04 NCAC 10A .0801 is amended as published on the OAH website for the public comment period beginning  
2 January 31 through February 26, 2014, with changes as follows:

3  
4 **SECTION .0800 – RULES OF THE COMMISSION**  
5

6 **04 NCAC 10A .0801 WAIVER OF RULES**

7 ~~In the interest of justice, these rules may be waived by the Industrial Commission. The rights of any unrepresented~~  
8 ~~plaintiff will be given special consideration in this regard, to the end that a plaintiff without an attorney shall not be~~  
9 ~~prejudiced by mere failure to strictly comply with any one of these rules.~~

10 In the interests of justice or to promote judicial economy, the Commission may, except as otherwise provided by the  
11 [Rules] rules in this Subchapter, waive or vary the requirements or provisions of any of the rules in this Subchapter  
12 in a case pending before the Commission upon written application of a party or upon its own initiative only if the  
13 employee is not represented by counsel. Factors the Commission shall use in determining whether to grant the  
14 waiver are:

- 15 (1) the necessity of a waiver;  
16 (2) the party's responsibility for the conditions creating the need for a waiver;  
17 (3) the party's prior requests for a waiver;  
18 (4) the precedential value of such a waiver;  
19 (5) notice to and opposition by the opposing parties; and  
20 (6) the harm to the party if the waiver is not granted.

21  
22 *History Note: Authority G.S. 97-80(a);*  
23 *Eff. January 1, 1990;*  
24 *Amended Eff. April 1, 2014.*  
25

1 04 NCAC 10A .0802 is repealed as published in 27:02 NCR 194-95 as follows:

2  
3 **04 NCAC 10A .0802      SANCTIONS**

4  
5 *History Note:      Authority G.S. 1A-1, Rule 37; 97-18; 97-80(a); 97-88.1.*

6 *Repealed Eff. January 1, 2013.*

1 04 NCAC 10A .0803 is repealed as published in 27:02 NCR 195 as follows:

2

3 **04 NCAC 10A .0803      RULEMAKING**

4

5 *History Note:      Authority G.S. 97-80(a);*

6 *Repealed Eff. January 1, 2013.*

7



04 NCAC 10A .0901 is amended as published in 27:02 NCR 195 as follows:

## SECTION .0900 – REPORT OF EARNINGS

### 04 NCAC 10A .0901 CHECK ENDORSEMENT

If a self-insured employer, carrier or third party administrator places "check endorsement" language on the back of an employee's check, the following language (or similar language approved by the ~~Industrial Commission~~ Commission as equivalent) shall be used:

By endorsing this check, I certify that I have not worked for or earned wages from any business or individual during the period covered by this check, or that I have reported any earnings to the ~~employer/carrier~~ employer or carrier paying me workers' compensation benefits. I understand that making a false statement by endorsing this benefit check may result in civil ~~or~~ and criminal penalties.

*History Note: Authority G.S. 97-80(a); 97-88.2;*

*Eff. June 1, 2000;*

*Amended Eff. January 1, 2013.*

04 NCAC 10A .0902 is amended as published in 27:02 NCR 195 as follows:

**04 NCAC 10A .0902 NOTICE**

A self-insured employer, carrier or third party administrator shall not use check endorsement language on the back of an employee's workers' compensation benefit check unless the employee has been provided the following Notice sent by certified mail return receipt requested:

**NOTICE TO EMPLOYEE RECEIVING WORKERS' COMPENSATION BENEFITS**

This NOTICE is intended to advise you of important information you ~~need to~~ must know if you are receiving workers' compensation benefits.

Please TAKE NOTICE of the following:

(a) When you are receiving weekly workers' compensation benefits, you must report any earnings you receive to the insurance company (or employer if the employer is self-insured) that is paying you the benefits. "Earnings" include any cash, wages or salary received from self-employment or from any employment other than the employment where you were injured. Earnings also include commissions, bonuses, and the cash value for all payments received in any form other than cash (e.g., a building custodian receiving a rent-free apartment). ~~Commission bonuses, etc.,~~ Incentives, commissions, bonuses, or other compensation earned before disability but received during the time you are also receiving workers' compensation benefits do not constitute earnings that must be reported.

(b) You must report any work in any business, even if the business lost money or if profits or income were reinvested or paid to others.

(c) Your endorsement on a benefit check or deposit of the check into an account is your statement certification that you have not worked for or earned wages from any business or individual during the period covered by the check, or that you have reported any earnings to the employer or carrier paying you workers' compensation benefits and that believe that you are entitled to receive workers' compensation benefits. Your signature on a benefit check is a further affirmation certification that you have made no material false statement or concealed any material fact regarding your right to receive the benefit check.

(d) Making false statements for the purpose of obtaining workers' compensation benefits may result in civil and criminal penalties.

*History Note: Authority G.S. 97-80(a); 97-88.2;*

*Eff. June 1, 2000;*

*Amended Eff. January 1, 2013.*

04 NCAC 10A .0903 is amended as published in 27:02 NCR 195 as follows:

**04 NCAC 10A .0903      EMPLOYEE'S OBLIGATION TO REPORT EARNINGS**

(a) A self-insured employer, carrier or third-party administrator may require the employee who has filed a claim to complete a Form 90 *Report of Earnings* when reasonably necessary but not more than once every six months.

(b) The Form 90 *Report of Earnings* ~~must~~ shall be sent to the employee by certified mail, return receipt requested, and include a self-addressed stamped envelope for the return of the form. When the employee is represented by an attorney, the Form 90 *Report of Earnings* shall be sent to the attorney for the employee and not to the employee.

(c) The employee shall complete and return the Form 90 *Report of Earnings* within 15 days after receipt of a Form 90- ~~90~~ *Report of Earnings*. If the employee fails to complete and return the Form 90 Report of Earnings within 30 days of receipt of the form, the self-insured employer, carrier or third-party administrator may seek an order from the Executive Secretary allowing the suspension of benefits. The self-insured employer, carrier or third-party administrator shall not suspend benefits without Commission ~~approval~~ approval pursuant to the Workers' Compensation Act. If the Commission suspends benefits for failure to complete and return a Form 90 *Report of Earnings*, the self-insured employer, carrier or third-party administrator shall ~~immediately~~ reinstate benefits to the employee with back payment as soon as the Form 90 Report of Earnings is submitted by the employee. If benefits are not ~~immediately~~ reinstated, the employee ~~should~~ shall submit a written request for an Order from the Executive Secretary instructing the self-insured employer, carrier or third-party administrator to reinstate benefits. If the employee's earnings report does not indicate continuing eligibility for partial or total disability compensation, ~~then~~ the self-insured employer, carrier or third-party administrator may apply to the Commission to terminate or modify benefits ~~pursuant to Commission procedure, including by filing a Form 24, 24 Application to Terminate or Suspend Payment of Compensation 26, or 33, or Form 33 Request that Claim be Assigned for Hearing.~~

*History Note:*      *Authority* G.S. 97-80(a); 97-88.2;  
                             *Eff.* June 1, 2000;  
                             *Amended Eff.* January 1, 2013; August 1, 2006.

04 NCAC 10A .1001 is adopted with changes as published in 27:02 NCR 196 as follows:

## SECTION .1000 – PREAUTHORIZATION FOR MEDICAL TREATMENT

### 04 NCAC 10A .1001 PREAUTHORIZATION FOR SURGERY AND INPATIENT TREATMENT

(a) An insurer that requires preauthorization must establish a preauthorization review policy that describes the process for requesting preauthorization review. The policy must be publicly available on the insurer's website.

(b) As used in this Section:

(1) "insurer" means an insurance carrier, self-insured administrator, managed care organization, employer, or any other entity that conducts preauthorization review;

(2) "preauthorization" means the determination by an insurer that proposed surgical or inpatient treatment is medically necessary; and

(3) "preauthorization review" means a prospective review process conducted by an insurer to determine whether a proposed surgical or inpatient treatment is medically necessary.

~~(e) As used in this Section, "preauthorization" means the determination by an insurer that proposed surgical or inpatient treatment is medically necessary.~~

~~(d) As used in this Section "preauthorization review" means a prospective review process conducted by an insurer to determine whether a proposed surgical or inpatient treatment is medically necessary.~~

~~(e)~~ (c) Insurers shall, on an annual basis, electronically submit an electronic copy or link for any medical practice guidelines the insurer utilizes in the preauthorization review process to the Commission at the following electronic site (<ftp://ftp.ic.nc.gov>) by July 1 of each year.

~~(f)~~ (d) The insurer shall list in detail each surgical procedure and each inpatient service for which preauthorization review is required. These procedures and services shall be publicly available on the insurer's website.

~~(g)~~ (e) The preauthorization review policy shall include:

(1) procedures for requesting preauthorization, responding to and approving requests for preauthorization, and appealing a denial of preauthorization;

(2) procedures via telephone, fax and email for communicating with the preauthorization agent with decision making powers on a pending request for preauthorization (including Peer Review Physicians) on a continuous basis on every business day (which excludes weekends and holidays) between the hours of 8:00 a.m. and 8:00 p.m. eastern standard time;

~~(3) Delivery of a request for preauthorization to the claims adjuster or other designated Preauthorization Agent at the place (email address, fax number, telephone number) provided by the insurer shall constitute receipt of the preauthorization request by the claims adjuster;~~

(4) methods by which the insurer shall respond to requests for preauthorization and methods by which a health care provider, claimant, person, or entity requesting preauthorization may respond to inquiries or determinations by the insurer;

(5) ~~Upon receipt of a request for preauthorization, the insurer shall provide to the health care provider or person making the request the name, telephone number, fax number and email address of the Preauthorization Agent. The Preauthorization Agent must be available on a continuous basis, every business day (which excludes weekends and holidays) from 8:00 a.m. to 8:00 p.m. Eastern Standard Time to facilitate responses to insurer communications or determinations;~~

(6) a statement that the insurer shall provide a statement with supporting documentation of the substantive clinical justification for a denial of preauthorization, including the relevant clinical criteria upon which the denial is based. Denials based upon lack of information shall specify what information is needed to make a determination;

(7) an outline of the appeal rights and procedures with instructions on how to submit appeals by mail, email or fax;

(8) a statement that advises the appealing party of the right to seek authorization for any denied treatment from the Commission; and

(9) the name, title, address, telephone number, fax number, email address and other contact information for the person with authority over all decision-making for preauthorization determinations (in addition to the claims adjuster), and the normal business hours and time zone of this contact person.

(f) Delivery of a request for preauthorization to the claims adjuster or other designated Preauthorization Agent at the place (email address, fax number, telephone number) provided by the insurer shall constitute receipt of the preauthorization request by the claims adjuster.

~~(h)~~ ~~(f)~~ (g) Preauthorization agents shall acknowledge receipt of all communications within two business days of the request, and the acknowledgment shall satisfy G.S. 97-25.3(a)(2).

(h) Upon receipt of a request for preauthorization, the insurer shall provide to the health care provider or person making the request the name, telephone number, fax number and email address of the Preauthorization Agent. The Preauthorization Agent must be available on a continuous basis, every business day (which excludes weekends and holidays) from 8:00 a.m. to 8:00 p.m. Eastern Standard Time to facilitate responses to insurer communications or determinations.

~~(i)~~ ~~(g)~~ (i) Insurers that utilize a Peer Review Physician in making preauthorization decisions shall indicate in their preauthorization review policy the name, licensure, and specialty area of that Peer Review Physician and shall provide a profile ("Peer Review Physician Profile") of that Peer Review Physician. The Peer Review Physician shall be licensed in either North Carolina, South Carolina, Georgia, Virginia, or Tennessee and shall hold professional qualifications, certifications, and fellowship training in a like specialty that is at least equal to that of the treating provider who is requesting preauthorization of surgery or inpatient treatment.

1 ~~(j)-(h)(j)~~ Insurers shall, on an annual basis, electronically submit their Peer Review Physician Profiles to the  
2 Commission at the following electronic site (<ftp://ftp.ic.nc.gov>) by July 1 of each year.

3 ~~(k)~~ ~~(i)(k)~~ All requests for preauthorization by medical-health care providers, claimant's attorneys, or unrepresented  
4 claimants, and all preauthorization determinations made by insurers on the preauthorization requests ~~is-shall be~~  
5 submitted on Industrial Commission Form 25PR. The Preauthorization Agent ~~shall be~~ is responsible for providing  
6 the preauthorization review (PR) claim number and for forwarding medical records, communications, and  
7 preauthorization review determinations to the proper entities upon receipt, unless the insurer's Preauthorization Plan  
8 designates and identifies another person to perform this requirement.

9 ~~(+)(j)(l)~~ The failure of an insurer to make a determination on a request for preauthorization within seven business  
10 days as specified in G.S. 97-25.3 shall result in an automatic waiver of the insurer's right to contest the requested  
11 treatment, unless:

12 (1) an extension of time, not to exceed seven business days, is agreed upon by the insurer and the  
13 medical provider requesting preauthorization (or the claimant's attorney or unrepresented claimant,  
14 if no medical provider has requested preauthorization); or

15 (2) an additional extension of time is granted by the Commission pursuant to G.S. 97-25.3(a)(3).

16 ~~(m)~~ ~~(k)(m)~~ Requests made to the Commission for an extension of time shall be directed to the Office of the  
17 Executive Secretary, and shall be simultaneously copied to the requesting medical-health care provider, if any, and  
18 to the claimant's attorney or to the claimant, if unrepresented.

19 ~~(n)~~ ~~(+)(n)~~ In accordance with G.S. 97-18(i), insurers are obligated to pay for any surgery or inpatient treatment  
20 provided under G.S. 97-25.3, for which preauthorization was requested for an admitted condition after the right to  
21 contest the preauthorization request is waived.

22  
23 *History Note: Authority G.S. 97-25.3; 97-80(a);*

24 *Eff. January 1, 2013.*

04 NCAC 10C .0101 is amended with changes as published in 27:02 NCR 204 as follows:

**SUBCHAPTER 10C - NORTH CAROLINA INDUSTRIAL COMMISSION RULES FOR UTILIZATION  
OF REHABILITATION PROFESSIONALS IN WORKERS' COMPENSATION CLAIMS**

**SECTION .0100 – ADMINISTRATION**

**4 NCAC 10C .0101      APPLICABILITY OF THE RULES**

(a) ~~These rules~~ The Rules in this Subchapter apply to:

- (1) ~~All cases~~ in which the employer is obligated to provide ~~[provide,] or is providing~~ medical compensation, and the injured worker is obligated to accept medical compensation under the Workers' Compensation Act, or in which such compensation is provided by agreement, and during any period when the employer is paying temporary total disability benefits ~~"without prejudice,"~~ without prejudice in accordance with G.S. 97-18(d); and
- (2) any rehabilitation professional ~~any rehabilitation professional (hereinafter RP)~~ as defined in Item (1) of Rule .0103 of this Subchapter, who is assigned under the Workers' Compensation Act and approved by the Commission pursuant to Section VI. E. Rule .0105 of this Subchapter.

(b) Any ~~RP-rehabilitation professional~~ who is not assigned under the Workers' Compensation Act and approved by the Commission pursuant to Rule .0105 of this Subchapter must disclose his or her role to ~~(1) the medical health care provider at the time of the initial contact and (2) any other person from whom the non-approved RP rehabilitation professional seeks information about the case.~~

*History Note:*                      *Authority* G.S. 97-18(d); 97-25.4; 97-25.5; 97-32.2; 97-80;  
   *Eff.* January 1, 1996;  
   *Recodified from* 4 NCAC 10C .0103, *Eff.* April 17, 2000;  
   *Amended Eff.* January 1, 2013; June 1, 2000.

04 NCAC 10C .0102 is repealed as published in 27:02 NCR 204 as follows:

**4 NCAC 10C .0102      PURPOSE OF THE RULES**

*History Note:*                      *Authority* G.S. 97-25.4;  
   *Eff. January 1, 1996;*  
   *Repealed Eff. January 1, 2013.*



Rule 04 NCAC 10C .0103 is amended as published on the OAH website for the public comment period beginning January 31 through February 26, 2014, with changes as follows:

#### **04 NCAC 10C .0103      DEFINITIONS**

As used in this Subchapter:

(a)(1) ~~RPs are~~ "Rehabilitation professional" means a medical case managers and manager, a coordinators coordinator of medical rehabilitation services services, and/or or a vocational rehabilitation professional providing vocational rehabilitation services, including but not limited to, state, private, or carrier based, whether on site, telephonic, or in or out of state. RPs do not include direct care providers, e.g., physical therapists, occupational therapists, or speech therapists. Physical therapists, occupational therapists, speech therapists, and other direct care providers are not rehabilitation professionals under the Rules in this Subchapter.

~~(b) The "parties" are the worker, the worker's attorney, the employer, the workers' compensation carrier (including claims administrator, third party administrator), and the employer or carrier's attorney(s).~~

~~(c) "Physician" means medical doctor, chiropractor, other physician, and, where the context requires, other health care providers.~~

(d)(2) "Medical rehabilitation" refers to means the planning and coordination of health care services. services by a medical case manager or coordinator, with the goal of assisting an injured worker to be restored The goal of medical rehabilitation is to assist in the restoration of injured workers as nearly as possible to the workers' worker's pre-injury level of physical function. Medical case management may include but is not limited to includes:

(a) case assessment; assessment, including a personal interview with the injured worker;

(b) development, implementation and coordination of a care plan with health care providers providers, and with the worker worker, and his or her family;

(c) evaluation of treatment results;

(d) planning for community re-entry; re-entry and return to work work; with the employer of injury and/or and

(e) referral for further vocational rehabilitation services.

(e)(3) ~~"Vocational Rehabilitation"~~ "Vocational rehabilitation" refers to means the delivery and coordination of services under an individualized written plan, with the goal of assisting the injured workers worker to return to suitable employment. employment or participate in education or retraining, as defined by [subsection] Item (5) of this Rule or applicable statute.

~~(1) Specific vocational rehabilitation services may include, but are not limited to: vocational assessment, vocational exploration, counseling, job analysis, job modification, job development and placement, labor market survey, vocational or psychometric testing, analysis of transferable skills, work adjustment counseling, job seeking skills training, on-the-job training and retraining, and follow-up after re-employment.~~

1       (2) ~~The vocational assessment is based on the RP's evaluation of the worker's social, medical, and~~  
2       ~~vocational standing, along with other information significant to employment potential and on a~~  
3       ~~face-to-face interview between the worker and the RP, to determine whether the worker can~~  
4       ~~benefit from vocational rehabilitation services, and, if so, to identify the specific type and~~  
5       ~~sequence of appropriate services. It should include an evaluation of the worker's expectations in~~  
6       ~~the rehabilitation process, an evaluation of any specific requests by the worker for medical~~  
7       ~~treatment or vocational training, and a statement of the RP's conclusion regarding the worker's~~  
8       ~~need for rehabilitation services, benefits expected from services, and a description of the proposed~~  
9       ~~rehabilitation plan.~~

10       (3) ~~Job placement activities may be commenced after completion of a vocational assessment and~~  
11       ~~formulation of an individualized plan for vocational services which specifies its goals and the~~  
12       ~~priority for return to work options in each case. Placement shall only be directed toward~~  
13       ~~prospective employers offering the opportunity for suitable employment, as defined herein.~~

14       (f)(4) "Return to work" means placement of the injured worker into suitable employment, as defined  
15       ~~herein by Item (5) of this Rule or applicable statute. Return to work options generally should be~~  
16       ~~considered in the following priority:~~

17       (1) ~~Current job, current employer;~~

18       (2) ~~New job, current employer;~~

19       (3) ~~On-the-job training, current employer;~~

20       (4) ~~New job, new employer;~~

21       (5) ~~On-the-job training, new employer;~~

22       (6) ~~Formal vocational training to prepare worker for job with current or new employer.~~

23       (7) ~~Due to the high risk of small business failure, self-employment should be considered only when its~~  
24       ~~feasibility is documented with reference to worker's aptitudes and training, adequate~~  
25       ~~capitalization, and market conditions.~~

26       (g)(5) "Suitable employment" For claims arising before June 24, 2011, "suitable employment" means  
27       ~~employment in the local labor market or self-employment which that~~ is reasonably attainable and  
28       ~~which that~~ offers an opportunity to restore the worker as soon as possible and as nearly as  
29       ~~practicable to pre-injury wage, while giving due consideration to the worker's qualifications (age,~~  
30       ~~education, work experience, physical and mental capacities), impairment, vocational interests, and~~  
31       ~~aptitudes. No one factor shall be considered solely in determining suitable employment. For~~  
32       ~~claims arising on or after June 24, 2011, the statutory definition of "suitable employment," G.S.~~  
33       ~~97-2(22), applies.~~

34       (6) "Conditional rehabilitation professional" means a rehabilitation professional who has not met the  
35       ~~requirements for qualified rehabilitation professionals under Paragraph (d) of Rule .0105 of this~~  
36       ~~Subchapter and who desires to provide services as a rehabilitation professional in cases subject to~~  
37       ~~the [Rules] rules in this Subchapter.~~

1

2 *History Note: Authority G.S. 97-2(22); 97-25.4; 97-25.5; 97-32.2; 97-80;*

3 *Eff. January 1, 1996;*

4 *Recodified from 4 NCAC 10C .0101, Eff. April 17, 2000;*

5 *Amended Eff. April 1, 2014; June 1, 2000.*

04 NCAC 10C .0105 is amended with changes as published in 27:02 NCR 206 as follows:

#### **4 NCAC 10C .0105      QUALIFICATIONS REQUIRED**

(a) ~~RP~~s Rehabilitation professionals in cases subject to ~~these the~~ Rules in this Subchapter shall follow the Code of Ethics specific to their certification (~~i.e.~~ CRC, CDMS, CVE, CRRN, COHN, ONC, and CCM) as well as any statutes specific to their occupation.

(b) ~~RP~~s Rehabilitation professionals who are Registered Nurses providing medical rehabilitation services in North Carolina must have a North Carolina license to practice and are subject to the requirements of the North Carolina Nursing Practice Act. Rehabilitation professionals who are Registered Nurses providing medical rehabilitation services outside North Carolina must have a license to practice in the state in which the medical care is provided.

~~(c) RPs who are Licensed Professional Counselors are subject to the requirements of the North Carolina Licensed Professional Counselor's Act.~~

(c) To provide medical rehabilitation services and vocational rehabilitation services in cases subject to the Rules in this Subchapter, rehabilitation professionals must either be a qualified rehabilitation professional or a conditional rehabilitation professional as set forth in this Rule.

~~(d) RPs rendering services in cases subject to these Rules shall meet the following criteria, and shall upon request provide a resume of their qualifications and credentials during initial meetings with parties and health care providers.~~

(1) ~~Requirements for Qualified Rehabilitation Professionals (QRPs):~~

(A) ~~Two years of full-time work experience, or its equivalent, in workers' compensation case management, where a minimum of 30 percent of the time was spent in managing medical and/or vocational rehabilitation services to persons with disabling conditions or diseases. This experience should have been within the past 15 years; AND one of the following credentials, or a similar credential determined by the Industrial Commission as a substantial equivalent thereto:~~

- ~~(i) Certified Rehabilitation Counselor (CRC);~~
- ~~(ii) Certified Registered Rehabilitation Nurse (CRRN);~~
- ~~(iii) Certified Disability Management Specialist (CDMS);~~
- ~~(iv) Certified Vocational Evaluator (CVE);~~
- ~~(v) Certified Occupational Health Nurse (COHN);~~
- ~~(vi) Orthopaedic Nurse-Certified (ONC);~~
- ~~(vii) Certified Case Manager (CCM); or~~

~~(B) Employed within the North Carolina Department of Human Resources as a Vocational Rehabilitation Provider;~~

~~(C) The Commission may, through its Minutes, modify the list of credentials contained in subsection (a) above to add or delete appropriate credentials.~~

(2) ~~Requirements for Conditional Rehabilitation Professionals (CRPs):~~

(A) ~~A CRP is defined as a person who does not meet the requirements for QRP and who wishes to work as an RP in cases subject to this rule, including the following:~~

(i) ~~CRC, CRRN, CDMS, CVE, COHN, ONC or CCM without the workers' compensation case management experience required;~~

(ii) ~~A post-baccalaureate degree in a health-related field from an accredited institution, plus one year of experience in the provision of rehabilitation services to persons with disabling conditions or diseases;~~

(iii) ~~A baccalaureate degree in a health-related field from an accredited institution, plus two years experience in the provision of rehabilitation services to individuals with disabling conditions or diseases; or~~

(iv) ~~Current North Carolina licensure as a registered nurse and three years experience in clinical nursing providing care for adults with disabling conditions and diseases.~~

(B) ~~In order to work as an RP, a CRP will work under the direct supervision of a QRP until qualifications for a QRP are fulfilled. The supervisor must meet the requirements for providing workers' compensation case management services in North Carolina. Supervision shall include regular case staffing between the CRP and the QRP supervisor; detailed review by the QRP supervisor of all reports, and periodic meetings no less frequently than quarterly. The name, address and telephone number of the supervisor shall be on all documents identifying the CRP. The QRP is responsible to assure that the work of the CRP shall meet all requirements including those of this rule.~~

(C) ~~Once an RP meets certification eligibility requirements, an RP may maintain CRP status for a period of two years only~~

(d) To qualify as a qualified rehabilitation professional, a rehabilitation professional must:

(1) possess one of the following certifications:

(A) Certified Rehabilitation Counselor (CRC), as certified by the Commission on Rehabilitation Counselor Certification;

(B) Certified Registered Rehabilitation Nurse (CRRN), as certified by the Rehabilitation Nursing Certification Board;

(C) Certified Disability Management Specialist (CDMS), as certified by the Certification of Disability Management Specialists Commission;

(D) Certified Vocational Evaluator (CVE), as certified by the Commission on Rehabilitation Counselor Certification;

(E) Certified Occupational Health Nurse-Specialist (COHN-S), as certified by the American Board of Occupational Health Nurses;

(F) Certified Occupational Health Nurse (COHN), as certified by the American Board of Occupational Health Nurses;

(G) Orthopaedic Nurse Certified (ONC), as certified by the Orthopaedic Nurses Certification Board; or

(H) Certified Case Manager (CCM), as certified by the Commission for Case Manager Certification;; or

(2) have prior employment within the North Carolina Department of Health and Human Services as a vocational rehabilitation provider.

(c) A qualified rehabilitation professional must also:

(1) possess two years of full-time work experience, or its equivalent, in workers' compensation case management, where at least thirty percent of the rehabilitation professional's time was spent managing medical or vocational rehabilitation services to persons with disabling conditions or diseases within the past fifteen years; and

(2) complete the comprehensive course entitled, "Workers' Compensation Case Management in NC: A Basic Primer for Medical and Vocational Case Managers," provided by the Commission or the International Association of Rehabilitation Professionals of the Carolinas.

(f) To maintain "qualified" status, a rehabilitation professional shall attend a two-hour refresher course every five years, beginning with the date of the original course completion. Rehabilitation professionals who completed the course in its pilot phase prior to March 17, 2011 have until July 1, 2016 to meet the refresher program mandate.

(g) Effective July 1, 2013, any rehabilitation professional on the Commission's Registry of Workers' Compensation Rehabilitation Professionals who does not hold a certificate of completion for the mandated course shall lose "qualified" rehabilitation professional status and may to work as a conditional rehabilitation professional under supervision of a qualified rehabilitation professional for no longer than six months before completing the required course.

(h) After July 1, 2013, any rehabilitation professional who begins providing rehabilitation services in cases subject to the Rules in this Subchapter shall have six months to obtain a certificate of completion of the mandated course.

(i) The Commission shall oversee the implementation and ongoing administration of the mandated course and training.

(j) Conditional rehabilitation professionals permitted to provide services in cases subject to the Rules in this Subchapter include:

(1) individuals who ~~[possesses]~~ possess one of the certifications for qualified rehabilitation professionals listed in Subparagraph (d) and (e) of this Rule, but who ~~does~~ do not possess the workers' compensation case management experience required by the Rules in this Subchapter;

(2) individuals with a post-baccalaureate degree in a health-related field from an institution accredited by an agency recognized by the United States Department of Education and one year of experience providing rehabilitation services to persons with disabling conditions or diseases;

(3) individuals with a baccalaureate degree in a health-related field from an institution accredited by an agency recognized by the United States Department of Education and two years of experience providing rehabilitation services to individuals with disabling conditions or diseases; and

(4) individuals with current North Carolina licensure as a registered nurse and three years of experience in clinical nursing providing care for adults with disabling conditions and diseases.

(k) To provide services as a rehabilitation professional in cases subject to the Rules in this Subchapter, a conditional rehabilitation professional must work under the direct supervision of a qualified rehabilitation professional, who shall ensure that the conditional rehabilitation professional's work meets the requirements of the Rules in this Subchapter and any applicable statute, and whose name, address and telephone number shall be on all documents identifying the conditional rehabilitation professional.

(l) As used in this Rule, direct supervision includes regular case review between the conditional rehabilitation professional and the qualified rehabilitation professional supervisor, review by the qualified rehabilitation professional supervisor of all reports, and periodic meetings that occur at least on a quarterly basis.

(m) A rehabilitation professional may maintain conditional rehabilitation professional status for a period of two years only. To continue providing services as a rehabilitation professional in cases subject to the Rules in this Subchapter beyond the two year period, the conditional rehabilitation professional must obtain the qualifications for a qualified rehabilitation professional listed under Paragraph (d) of this Rule.

(n) Rehabilitation professionals shall, upon request, provide a resume of their qualifications and credentials during initial meetings with parties and health care providers.

*History Note:* Authority: G.S. 97-25.4; 97-32.2; 97-25.5; 97-80;  
*Eff. January 1, 1996;*  
*Amended Eff. January 1, 2013; June 1, 2000.*

04 NCAC 10C .0106 is amended with changes as published in 27:02 NCR 208 as follows:

**4 NCAC 10C .0106        PROFESSIONAL RESPONSIBILITY OF THE REHABILITATION  
PROFESSIONAL IN WORKERS' COMPENSATION CLAIMS**

(a) ~~The RP-A rehabilitation professional shall exercise independent professional judgment in making and documenting recommendations for medical and vocational rehabilitation for the an injured worker, including any alternatives for medical treatment and cost-effective return-to-work options, including retraining or retirement. The RP shall realize that the attending physician directs the medical care of an injured worker. It is not the role of the rehabilitation professional to direct medical care.~~

(b) ~~The RP-A rehabilitation professional shall inform the parties of his or her assignment and proposed role in the case. At the outset of the case, the RP-Upon assignment, a rehabilitation professional shall disclose to health care providers and the parties any possible conflict of interest, including any compensation and the carrier's or employer's ownership of or affiliation with the RP-rehabilitation professional.~~

(c) Subject to the provisions for medical care and treatment set forth in the Workers' Compensation Act, the medical RP-rehabilitation professional may explain the medical information to the worker, and shall discuss with the worker all treatment options appropriate to the worker's conditions, but shall not advocate any one specific source for treatment or change in treatment.

(d) As case consultants or expert witnesses, RPs-rehabilitation professionalshave an obligation to shall provide unbiased, objective opinions. The limits of their relationships shall be clearly defined through written or oral means in accordance with (CRCC) Code of Professional Ethics, Canon 2, Rule 2.4, or through similar provisions in the applicable code of ethics, if any. the following, applicable professional codes of ethics or professional conduct, which are hereby incorporated by reference, including subsequent amendments and editions:

(1) for Certified Rehabilitation Counselors and Certified Vocational Evaluators, the Commission on Rehabilitation Counselor Certification Code of Professional Ethics;

(2) for Certified Registered Rehabilitation Nurses and Orthopaedic Nurse Certifieds, the Code of Ethics for Nurses;

(3) for Certified Disability Management Specialists, the Certification of Disability Management Specialists Commission Code of Professional Conduct;

(4) for Certified Occupational Health Nurses and Certified Occupational Health Nurse-Specialists, the American Association of Occupational Health Nurses, Inc. Code of Ethics; and

(5) for Certified Case Managers, the Code of Professional Conduct for Case Managers.

(e) Copies of the codes of ethics or professional conduct listed in Subparagraphs (d)(1) through (d)(5) of this Rule may be obtained at no cost, either upon request at the offices of the Commission, located in the Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, between the hours of 8:00 a.m. and 5:00 p.m., or at one of the following applicable websites:



- (1) for Certified Rehabilitation Counselors and Certified Vocational Evaluators, the Commission on Rehabilitation Counselor Certification Code of Professional Ethics),  
<http://www.crc certification.com/filebin/pdf/CRCCCodeOfEthics.pdf>;
- (2) for Certified Registered Rehabilitation Nurses and Orthopaedic Nurse Certifieds, the Code of Ethics  
for Nurses,  
<http://www.nursingworld.org/MainMenuCategories/EthicsStandards/CodeofEthicsforNurses/Code-of-Ethics.pdf>;
- (3) for Certified Disability Management Specialists, the Certification of Disability Management Specialists Commission Code of Professional Conduct,  
<http://new.cdms.org/docs/CDMS%20Code%20of%20Professional%20Conduct%2008012011.pdf>;
- (4) for Certified Occupational Health Nurses and Certified Occupational Health Nurse-Specialists, the American Association of Occupational Health Nurses, Inc. Code of Ethics,  
[https://www.aao hn.org/dmdocuments/Code\\_of\\_Ethics\\_2009.pdf](https://www.aao hn.org/dmdocuments/Code_of_Ethics_2009.pdf); and
- (5) for Certified Case Managers, the Code of Professional Conduct for Case Managers  
[http://www.ccmcertification.org/sites/default/files/downloads/2012/CCMC\\_Code\\_of\\_Conduct%202-22-12.pdf](http://www.ccmcertification.org/sites/default/files/downloads/2012/CCMC_Code_of_Conduct%202-22-12.pdf).

~~(e)(f) There may be parts of the rehabilitation process for which an RP may not be qualified. The RP has the responsibility to refrain from those activities which do not fall within his or her qualifications. RPs Rehabilitation professionals shall practice only within the boundaries of their competence, based on their education, training, appropriate professional experience, and other professional credentials.~~

~~(f) Prohibited Conduct:~~

~~(1)(g) RPs A rehabilitation professional shall not conduct or assist any party in claims negotiation, negotiation or investigative activities, or perform any other non-rehabilitation activity; [activity during his or her assignment in the case.]~~

~~(2)(h) RPs A rehabilitation professional shall not advise the worker as to any legal matter including claims settlement options or procedures, monetary evaluation of claims, or the applicability to the worker of benefits of any kind under the Workers' Compensation Act during his or her assignment in the case. RPs The rehabilitation professional shall advise the nonrepresented non-represented worker to direct such questions to the Information Specialists at the Industrial Commission, and the represented worker to direct questions to his or her attorney.~~

~~(3)(i) RPs Rehabilitation professionals shall not accept any compensation or reward from any source as a result of settlement.~~

*History Note: Authority G.S. 97-25.4; 97-32.2; 97-25.5; 97-80;*  
*Eff. January 1, 1996;*  
*Amended Eff. January 1, 2013; June 1, 2000.*

04 NCAC 10C .0107 is amended with changes as published in 27:02 NCR 209 as follows:

**4 NCAC 10C .0107        COMMUNICATION**

(a) ~~The insurance carrier shall notify the Commission and all parties on a Form 25N *Notice to the Commission of Assignment of Rehabilitation Professional* when a rehabilitation professional is assigned to a case and identify the purpose of the rehabilitation involvement.~~

~~(a)(b) At their first the initial meeting, RPs the rehabilitation professional shall provide the injured worker with a copy of these rules the Rules in this Subchapter, or a summary of the rules approved by the Commission and shall inform the injured worker that the rehabilitation professional is required to share relevant medical and vocational rehabilitation information with the employer and insurance carrier and that the rehabilitation professional may be compelled to testify regarding any information obtained.~~

(b) ~~RPs~~ The rehabilitation professional shall timely inform injured workers that the RP-Rehabilitation Professional will share relevant and material information with the employer and insurance carrier and that the ~~RP-Rehabilitation Professional~~ may be compelled to testify regarding any information obtained.

(c) ~~In cases where the employer is paying medical compensation to a provider rendering treatment under the Workers' Compensation Act, the injured worker, if requested by an RPa rehabilitation professional, shall sign a Form 25C *Consent-Authorization for Rehabilitation Professional to Obtain Medical Records of Current Treatment* authorizing the RP-rehabilitation professional to obtain records of such the current treatment. Refusal to sign the consent may be deemed by the Commission to be noncompliance with rehabilitation and may result in the suspension of benefits.~~

(d) The rehabilitation professional shall provide copies of all correspondence and reports contemporaneously [electronically] to all parties [and by mail or facsimile to all parties without email on the same day] by the same mode of transmission.

~~(d)(c)~~ In preparing written and oral reports, the ~~RP-rehabilitation professional~~ shall present only information relevant and material to the worker's medical rehabilitation and/or and vocational rehabilitation and shall make every effort to avoid undue invasion of the worker's privacy.

~~(e) The carrier shall promptly notify the Industrial Commission and all parties on a Form 25N when an RP is assigned to a case and identify the purpose of the rehabilitation involvement.~~

~~(f) The RP shall provide copies of all correspondence simultaneously to all parties to the extent possible, making every effort to effectuate prompt service.~~

~~(g)(f)~~ The ~~RP-rehabilitation professional~~ shall make periodic written reports documenting accurately and completely the substance of all significant activity in the case, including the ~~rehabilitation activity~~ activity, defined above, which reports shall be provided to all parties at the same time. A worker not represented by counsel shall be furnished The rehabilitation professional shall furnish a worker who is unrepresented by counsel with a copy of each periodic report, or, in the alternative, the ~~RP rehabilitation professional~~ shall advise the worker either orally or in writing (at least as often as reports are produced) as to the plan for and progress of the case, and shall advise the

1 | worker that he or she the worker has the right to request a copy of the reports under Industrial Commission Rule 4  
2 | NCAC 10A .0607.

3 | ~~(h)(g)~~ Frequency and timing of periodic reports ~~will~~ shall be determined at the time of referral and ~~will~~ shall depend  
4 | ~~upon~~ on the type of service provided. However, ~~prompt~~ Communication of ~~signifieant~~ activity to all parties by  
5 | telephone, telecopier, ~~facsimile~~, electronic media, or letter ~~should~~ must occur when information ~~pertinent~~ relevant to  
6 | the rehabilitation process is obtained, ~~when~~ changes or revisions are recommended or occur in medical or vocational  
7 | treatment plans, or on any other occasion when the worker's understanding and cooperation is ~~important~~ critical to  
8 | the implementation of the rehabilitation plan.

9 | ~~(f)~~ Communication with worker's attorney.

10 | ~~(1)(h)~~ The first meeting of the worker and RP shall, If requested by the injured worker or his or her attorney, the  
11 | first initial meeting of the injured worker and RP rehabilitation professional shall, if requested, shall take place at the  
12 | office of the worker's attorney and shall occur within 20 days of the request. If this location is requested, it  
13 | shall not delay the meeting more than (20) calendar days.

14 | ~~(2)(i)~~ To promote cooperation among the parties, the RP The rehabilitation professional shall may coordinate  
15 | activities with the injured worker's attorney, and, at the employer or carrier's discretion, with the defense attorney. If  
16 | the RP believes that the worker is not cooperating with the provision of rehabilitation services, the RP shall advise  
17 | all parties and shall describe what cooperative action on the part of the worker is sought.

18 | (j) If the rehabilitation professional believes the injured worker is not complying with the provision of rehabilitation  
19 | services, the rehabilitation professional shall detail in writing the actions that the rehabilitation professional believes  
20 | the injured worker is required to take to return to compliance. In determining whether the injured worker is in  
21 | compliance with the provision of rehabilitation services, the rehabilitation professional shall rely on his or her  
22 | independent professional judgment and training and shall focus on the overall effect that the worker's actions or  
23 | inactions are having on the rehabilitation goals.

24 |  
25 | *History Note:* Authority G.S. 97-25.4; 97-25.5, 97-32.2, 97-2(19), 97-80;  
26 | *Eff. January 1, 1996;*  
27 | *Amended Eff. January 1, 2013; June 1, 2000.*  
28 |  
29 |

Rule 04 NCAC 10C .0108 is amended as published on the OAH website for the public comment period beginning January 31 through February 26, 2014, with changes as follows:

**04 NCAC 10C .0108      INTERACTION WITH PHYSICIANS**

(a) At the initial visit with a physician the RP-rehabilitation professional shall provide ~~professional~~ identification in the form of a company identification or business card and ~~shall~~ explain the RP's rehabilitation professional's role in the case.

(b) In all cases, the RP-rehabilitation professional shall advise the worker that ~~he or she~~ the worker has the right to a private examination by the ~~medical~~ health care provider outside of the presence of the RP-rehabilitation professional. If the worker prefers, he or she may request that the RP-rehabilitation professional accompany him or her during the examination. However, if the worker or the worker's attorney notifies the RP-rehabilitation professional in writing that the worker desires a private examination, no subsequent waiver of that right shall be effective unless the waiver is ~~revoked~~ made in writing by the worker or, if represented, by the worker's attorney.

(c) If the RP-rehabilitation professional ~~wishes~~ needs to have a ~~an~~ personal ~~in-person~~ conference with the physician following an examination, the RP-rehabilitation professional ~~should~~ shall reserve with the physician sufficient appointment time for ~~a~~ the conference. The worker ~~must~~ shall be offered the opportunity to attend ~~this~~ the conference with the physician. If the worker or the physician does not consent to a joint conference, or if in the physician's opinion it is medically contraindicated for the worker to participate in the conference, the RP rehabilitation professional will shall note this in his or her report, ~~and may in such case~~ communicate directly with the physician, and shall report the substance of the communication.

(d) When the RP-rehabilitation professional determines that it is necessary to communicate with a physician other than at a joint meeting, the RP-rehabilitation professional shall first notify the injured worker, or ~~his/her~~ his or her attorney if represented, of the RP's rehabilitation professional's intent to communicate and the reasons therefore. The RP-rehabilitation professional ~~need is not required to~~ obtain the injured worker's or his or her attorney's prior consent ~~for the following types of communication: if:~~

- (1) The communication is limited to scheduling issues or requests for time-sensitive medical records;
- (2) A medical emergency is involved;
- (3) The injured worker's health or medical treatment would either be adversely affected by a delay or benefited by immediate action;
- (4) The communication is limited to advising the physician of the employer or carrier approval for recommended testing or treatment;
- (5) The injured worker or attorney has consented to ~~such~~ the ~~communications~~ communications; ~~through a valid, current authorization;~~
- (6) The communication is initiated by the physician; or
- (7) The injured worker failed to show up for a scheduled appointment or arrived at a time other than the scheduled appointment time.

1 ~~Whenever an RP~~ When a rehabilitation professional communicates with a physician without the prior consent or  
2 presence of the injured worker, the RP rehabilitation professional must ~~promptly~~ document the reasons for and the  
3 substance of the communication and ~~promptly report such~~ the reasons and substance to the injured worker or his or  
4 her attorney, if represented, pursuant to Rule ~~VI-.0106~~ of this Subchapter.

5 ~~(e) The RP may assist in scheduling second opinions requested by the treating physician, as well as supporting~~  
6 ~~treatment. In such case, the worker shall receive at least 10 calendar days notice of an appointment for a second~~  
7 ~~opinion unless otherwise agreed by the parties or required by statute.~~

8 ~~(f) The RP may assist in obtaining from the treating physician an opinion as to the degree of permanent partial~~  
9 ~~impairment retained by the worker at maximum medical improvement. The decision to obtain a second physician's~~  
10 ~~opinion on the degree of impairment is not within the practice of rehabilitation. However, if requested by the party~~  
11 ~~who desires a second opinion, the RP may assemble information, schedule, coordinate, and, with the worker's~~  
12 ~~consent, attend the appointment with that physician.~~

13 ~~(g) If a party requests a second opinion or an independent medical examination, the RP's involvement is limited to~~  
14 ~~assembling and forwarding medical records and information, and scheduling, coordinating, and, with the worker's~~  
15 ~~consent, attending the appointment with that physician.~~

16 (e) The following requirements apply to interactions regarding impairment ratings, independent medical  
17 examinations, second opinions or consults:

18 (1) When a party or health care provider requests a consult, second opinion, or independent medical  
19 examination that is authorized or ordered, the rehabilitation professional [may] may, if requested,  
20 assemble and forward medical records and information, schedule and coordinate an appointment,  
21 and, if the worker consents, have a joint meeting with the health care provider and the worker after  
22 a private [exam, if requested.] exam.

23 (2) When any such exam is requested by the carrier, the worker shall receive at least 10 calendar days'  
24 notice of the appointment unless the parties agree otherwise or unless otherwise required by  
25 statute.

26 ~~(h)(f)~~ The RP-rehabilitation professional shall simultaneously send ~~copies~~ copies to the parties copies of all written  
27 communications ~~to with medical-health care providers, providers~~ and shall accurately and completely record and  
28 report all oral communications.

29  
30 *History Note: Authority G.S. 97-25.4; 97-25.5; 97-32.2; 97-80;*  
31 *Eff. January 1, 1996;*  
32 *Amended Eff. April 1, 2014; June 1, 2000.*

1 Rule 04 NCAC 10C .0109 is amended as published on the OAH website for the public comment period beginning  
2 August 20 through September 15, 2014, with changes as follows:

3  
4 **04 NCAC 10C .0109 VOCATIONAL REHABILITATION SERVICES AND RETURN TO WORK**

5 (a) When performing the vocational assessment and formulating and drafting the individualized written  
6 rehabilitation plan for the employee required by G.S. 97-32.2(c), the vocational rehabilitation professional shall  
7 follow G.S. 97-32.2.

8 (b) Job placement activities may not be commenced until after a vocational assessment and an individualized  
9 written rehabilitation plan for vocational rehabilitation services specifying the goals and the priority for return-to-  
10 work options have been completed in the case in accordance with G.S. 97-32.2. Job placement activities shall be  
11 directed [only toward prospective employers offering the opportunity for suitable employment,] as defined by Item  
12 (5) of Rule .0103 of this Subchapter or by applicable statute.

13 (c) Return-to-work options [shall] should be considered in the following order of priority:

14 (1) current job, current employer;

15 (2) new job, current employer;

16 (3) on-the-job training, current employer;

17 (4) new job, new employer;

18 (5) on-the-job training, new employer;

19 (6) formal education or vocational training to prepare the worker for a job with current or new  
20 employer; and

21 (7) self-employment, only when its feasibility is documented with reference to the employee's  
22 aptitudes and training, adequate capitalization, and market conditions.

23 (d) When an employee requests retraining or education as permitted in G.S. 97-32.2(a), the vocational rehabilitation  
24 professional shall provide a written assessment of the employee's request that includes an evaluation of:

25 (1) the retraining or education requested;

26 (2) the availability, location, cost, and identity of providers of the requested retraining or education;

27 (3) [the likely duration until completion of the requested retraining or education and the likely class  
28 schedules, class attendance requirements, and out-of-class time required for homework and study]  
29 the likely duration until completion of the requested retraining or education, the number of credits  
30 needed to complete the retraining or education, the course names and schedules for the retraining  
31 or education, and identification of which courses are available on-line versus in person;

32 (4) the current or projected availability of employment upon [completion,] completion of the  
33 requested retraining or education; and

34 (5) the anticipated pay range for employment upon [completion,] completion of the requested  
35 retraining or education.

36 ~~(a)(e) The RP shall obtain from the medical provider work restrictions which fairly address the demands of any~~  
37 ~~proposed employment. If ordered by a physician, the RP should obtain a Functional Capacity Evaluation (FCE) or~~

1 ~~Physical Capacity Evaluation (PCE). Any PCE or PCE obtained should measure the worker's capacities and~~  
2 ~~impairments. The rehabilitation professional shall obtain a list of work restrictions from the health care provider that~~  
3 ~~[address] addresses the demands of any proposed employment. If ordered by a physician, the rehabilitation~~  
4 ~~professional shall schedule an appointment with a third party provider to evaluate an injured [worker's] employee's~~  
5 ~~functional capacity, physical capacity, or impairments to work.~~

6 ~~(b)(f) The RP rehabilitation professional shall refer the worker only to opportunities for suitable employment, as~~  
7 ~~defined herein, by Item (5) of Rule .0103 of this Subchapter or by applicable statute.~~

8 ~~(e)(g) If the RP, rehabilitation professional intends to utilize written or videotaped job descriptions in the return-to-~~  
9 ~~work process, the RP, rehabilitation professional shall provide a copy of the description to all parties for review~~  
10 ~~before the job description is provided to the doctor. The worker employee or the worker's employee's attorney shall~~  
11 ~~have seven business days from the mailing of the description, job description to notify the RP rehabilitation~~  
12 ~~professional, all parties, and the physician of any objections or amendments to the job description, thereto. The job~~  
13 ~~description and the objections or amendments, if any, shall be submitted to the physician simultaneously. This~~  
14 ~~process may shall be expedited on occasions when job availability is critical. This waiting period does not apply if~~  
15 ~~the [worker] employee or the [worker's] employee's attorney has given prior approval to the job description.~~

16 ~~(d)(h) In preparing written job descriptions, the RP rehabilitation professional shall utilize standards including, but~~  
17 ~~not limited to, recognized standards which may include but not be limited to the Dictionary of Occupational Titles~~  
18 ~~and/or and the Handbook for Analyzing Jobs published by the U.S. United States Department of Labor. Labor,~~  
19 ~~which are recognized as national standard references for use in vocational rehabilitation. These standards can be~~  
20 ~~accessed at no cost at <http://www.oalj.dol.gov/LIBDOT.HTM> and [www.wopsr.net/etc/dot/RHAJ.pdf](http://www.wopsr.net/etc/dot/RHAJ.pdf), respectively.~~  
21 ~~The Handbook for Analyzing Jobs may also be purchased from major online booksellers for approximately \$85.00.~~

22 ~~(e) In identifying proposed employment for the injured worker, the RP should consider the worker's transportation~~  
23 ~~requirements.~~

24 ~~(f)(i) The rehabilitation professional may conduct follow-up after job placement may be carried out to verify the~~  
25 ~~appropriateness of the job placement.~~

26 ~~(g)(j) The RP, rehabilitation professional shall not initiate or continue placement activities which that do not appear~~  
27 ~~reasonably likely to result in placement of the injured worker in suitable employment. The RP rehabilitation~~  
28 ~~professional shall report to the parties when efforts to place the worker in suitable employment initiate or continue~~  
29 ~~placement activities do not appear reasonably likely to result in placement of the injured worker in suitable~~  
30 ~~employment.~~

31  
32 *History Note: Authority G.S. 97-2(22); 97-25.4; 97-25.5; 97-32.2; S.L. 2014-77, Section 6.(4);*

33 *Eff. January 1, 1996;*

34 *Amended Eff. November 1, 2014; June 1, 2000.*

04 NCAC 10C .0110 is amended with changes as published in 27:02 NCR 211 as follows:

**4 NCAC 10C .0110 CHANGE OF REHABILITATION PROFESSIONAL**

(a) By agreement or stipulation of the parties, the rehabilitation professional may be changed.

~~(a)(b) An RP-A rehabilitation professional may be removed from a case upon motion by either party for good cause shown or by the Industrial Commission in its own discretion [to prevent manifest injustice] for good cause. The motion shall be filed with the Executive Secretary's Office and served upon all parties and the RP-rehabilitation professional. Any party or the RP-rehabilitation professional may file a response to the motion within 10 days. The Industrial Commission shall then determine whether to remove the RP from the case. The parties are referred to Industrial Commission Rule 4 NCAC 10A .0609.~~

~~(b) If the employer/carrier chooses to do so and the worker consents, the employer/carrier may replace the RP, in which case the moving party shall notify the Industrial Commission that the motion does not need to be decided.~~

~~(c) For good cause, including ineffective delivery of rehabilitation services, failure to comply with applicable laws, rules or regulations, or failure to timely respond to lawful orders of the Commission or other regulatory authorities, the Commission may prohibit or restrict an RP, or group of RPs, further participation by particular workers, employers, or health care providers, groups or classes of them, or all of them. As provided in Industrial Commission Rule 4 NCAC 10A .0802, the Commission may impose appropriate sanctions for violation of these Rules.~~

~~(d)(c) A party or the rehabilitation professional may request reconsideration of a ruling or appeal from an order as provided in Rule 4 NCAC 10A .0703 .0702 or pursuant to G.S. 97-83; G.S. 97-83 and G.S. 97-84.~~

*History Note:* Authority G.S. 97-25.4; 97-25.5; 97-32.2; 97-80; 97-83 97-84;  
Eff. January 1, 1996;  
Amended Eff. January 1, 2013; June 1, 2000.



1 Rule 04 NCAC 10C .0201 is adopted as published on the OAH website for the public comment period beginning  
2 January 31 through February 26, 2014 with changes, as follows:

3  
4 **SECTION .0200 - RULES OF THE COMMISSION**

5  
6 **4 NCAC 10C .0201 WAIVER OF RULES**

7 In the interests of justice or to promote judicial economy the Commission may, except as otherwise provided by the  
8 [Rules] rules in this Subchapter, waive or vary the requirements or provisions of any of the rules in this Subchapter  
9 in a case pending before the Commission upon written application of a party or upon its own initiative only if the  
10 employee is not represented by counsel. Factors the Commission shall use in determining whether to grant the  
11 waiver are:

- 12 (1) the necessity of a waiver;  
13 (2) the party's responsibility for the conditions creating the need for a waiver;  
14 (3) the party's prior requests for a waiver;  
15 (4) the precedential value of such a waiver;  
16 (5) notice to and opposition by the opposing parties; and  
17 (6) the harm to the party if the waiver is not granted.

18  
19 *History Note: Authority G.S. 97-25.4; 97-80;*  
20 *Eff. April 1, 2014.*

1 04 NCAC 10C .0202 is repealed as published in 27:02 NCR 212 as follows:

2

3 **04 NCAC 10C .0202      SANCTIONS**

4

5 *History Note:      Authority G.S. 97-25.4; 97-25.5; 97-32.2; 97-80; 97-84.*

6 *Repealed Eff. January 1, 2013.*

7

1 Rule 04 NCAC 10E .0201 is adopted as published on the OAH website for the public comment period beginning  
2 January 31 through February 26, 2014, with changes as follows:

3  
4 **SECTION .0200 – FEES**  
5

6 **04 NCAC 10E .0201 DOCUMENT AND RECORD FEES**

7 (a) The fees in this Rule apply to all subject areas within the authority of the Commission.

8 (b) Upon written request, to the extent permitted by Article 1 of Chapter 97, Article 31 of Chapter 143, and Chapter  
9 132 of the North Carolina General Statutes, copies of documents and audio recordings of Commission hearings are  
10 available at the “actual cost” as defined by G.S. 132-6.2(b). The Commission shall provide the “actual cost” on the  
11 Commission’s website. Certification of documents in the Commission’s claim files is available upon request at a  
12 cost of one dollar (\$1.00) per certification in addition to the “actual cost” for the copies of the documents.  
13 Electronic copy certification is not available.

14 (c) Documents shall be sent via certified mail upon request at the actual cost established by the United States Postal  
15 Service.

16 ~~[(d) North Carolina sales tax shall be added if applicable.]~~

17  
18 *History Note: Authority G.S. ~~7A-305~~; 97-73; 97-79; 97-80; 132-6.2; 143-291.1; 143-291.2; 143-300;*  
19 *Eff. April 1, 2014.*

1 Rule 04 NCAC 10E .0202 is adopted as published on the OAH website for the public comment period beginning  
2 August 20 through September 15, 2014, with changes as follows:

3  
4 **04 NCAC 10E .0202 HEARING COSTS OR FEES**

5 (a) (Effective until July 1, 2015) The following hearing costs or fees apply to all subject areas within the authority  
6 of the Commission:

- 7 (1) one hundred twenty dollars (\$120.00) for a hearing before a Deputy Commissioner to be charged  
8 after the hearing has been held;
- 9 (2) one hundred twenty dollars (\$120.00) if a case is continued after the case is calendared for a  
10 specific hearing date, to be paid by the requesting party or parties;
- 11 (3) one hundred twenty dollars (\$120.00) if a case is withdrawn, removed, or dismissed after the case  
12 is calendared for a specific hearing date;
- 13 (4) two hundred twenty dollars (\$220.00) for a hearing before the Full Commission to be charged  
14 after the hearing has been held; and
- 15 (5) one hundred twenty dollars (\$120.00) if one of the following occurs after an appeal or request for  
16 review is scheduled for a specific hearing date before the Full Commission:
  - 17 (A) the appeal or request for review is withdrawn; or
  - 18 (B) the appeal or request for review is dismissed for failure to prosecute or perfect the appeal  
19 or request for review.

20 In workers' compensation cases, these fees shall be paid by the employer unless the Commission orders otherwise,  
21 except as specified in ~~subsection (2)~~ Subparagraph (a)(2) above.

22 (a) (Effective July 1, 2015) The following hearing costs or fees apply to all subject areas within the authority of the  
23 Commission other than workers' compensation cases:

- 24 (1) one hundred twenty dollars (\$120.00) for a hearing before a Deputy Commissioner to be charged  
25 after the hearing has been held;
- 26 (2) one hundred twenty dollars (\$120.00) if a case is continued after the case is calendared for a  
27 specific hearing date, to be paid by the requesting party or parties;
- 28 (3) one hundred twenty dollars (\$120.00) if a case is withdrawn, removed, or dismissed after the case  
29 is calendared for a specific hearing date;
- 30 (4) two hundred twenty dollars (\$220.00) for a hearing before the Full Commission to be charged  
31 after the hearing has been held; and
- 32 (5) one hundred twenty dollars (\$120.00) if one of the following occurs after an appeal or request for  
33 review is scheduled for a specific hearing date before the Full Commission:
  - 34 (A) the appeal or request for review is withdrawn; or
  - 35 (B) the appeal or request for review is dismissed for failure to prosecute or perfect the appeal  
36 or request for review.

~~[In workers' compensation cases, these fees shall be paid by the employer unless the Commission orders otherwise, except as specified in subsection (2) above.]~~

(b) The Commission may waive fees set forth in Paragraph (a) of this Rule, or assess such fees against a party or parties pursuant to G.S. 97-88.1 if the Commission determines that the hearing has been brought, prosecuted, or defended without reasonable ground.

*History Note:* Authority G.S. 97-73; 97-80; 97-88.1; 143-291.1; 143-291.2; 143-300; S.L. 2014-77; Eff. November 1, 2014.

1 Rule 04 NCAC 10E .0203 is adopted as published on the OAH website for the public comment period beginning  
2 August 20 to September 15, 2014, with changes as follows:

3  
4 **04 NCAC 10E .0203 FEES SET BY THE COMMISSION**

5 (a) (Effective until July 1, 2015) In workers' compensation cases, the Commission sets the following fees:

- 6 (1) four hundred dollars (\$400.00) for the processing of a compromise settlement agreement to be  
7 paid 50% by the employee and 50% by the employer(s) or the employer's carrier(s). ~~[Unless the~~  
8 ~~parties agree otherwise, the]~~ The employer(s) or the employer's carrier(s) shall pay such fee in full  
9 when submitting the agreement to the ~~[Commission, and]~~ Commission and, unless the parties  
10 agree otherwise, shall [then] be entitled to a credit for the employee's 50% share of such fee  
11 against settlement proceeds;
- 12 (2) three hundred dollars (\$300.00) for the processing of a Form 21 *Agreement for Compensation for*  
13 *Disability*, Form 26 *Supplemental Agreement as to Payment of Compensation*, or Form 26A  
14 *Employer's Admission of Employee's Right to Permanent Partial Disability* to be paid by the  
15 employee and the employer or the employer's carrier in equal shares. The employer or the  
16 employer's carrier shall pay such fee in full when submitting the agreement to the Commission.  
17 Unless the parties agree otherwise or the award totals \$3,000 or less, the employer and the  
18 employer's carrier shall be entitled to a credit for the employee's 50% share of such fee against the  
19 award;
- 20 (3) two hundred dollars (\$200.00) for the processing of a I.C. Form MSC5, *Report of Mediator*, to be  
21 paid 50% by the employee and 50% by the employer(s) or the employer's carrier(s). The  
22 employer(s) or the employer's carrier(s) shall pay such fee in full upon receipt of an invoice from  
23 the Commission and, unless the parties agree otherwise, shall be reimbursed for the employee's  
24 share of such fees when the case is concluded from any compensation that may be determined to  
25 be due to the employee. The employer(s) or the employer's carrier(s) may withhold funds from  
26 any award for this purpose; and
- 27 (4) a fee equal to the filing fee required to file of a civil action in the Superior Court division of the  
28 General Court of Justice for the processing of a Form 331 *Intervenor's Request that Claim be*  
29 *Assigned for Hearing*, to be paid by the intervenor.

30 (a) (Effective July 1, 2015) In workers' compensation cases, the Commission sets the following fees:

- 31 (1) four hundred dollars (\$400.00) for the processing of a compromise settlement agreement to be  
32 paid 50% by the employee and 50% by the employer(s) or the employer's carrier(s). [Unless the  
33 parties agree otherwise, the] The employer(s) or the employer's carrier(s) shall pay such fee in full  
34 when submitting the agreement to the [Commission, and] Commission and, unless the parties  
35 agree otherwise, shall [then] be entitled to a credit for the employee's 50% share of such fee  
36 against settlement proceeds;

1       ~~[(2) three hundred dollars (\$300.00) for the processing of a Form 21 *Agreement for Compensation for*~~  
2       ~~*Disability*, Form 26 *Supplemental Agreement as to Payment of Compensation*, or Form 26A~~  
3       ~~*Employer's Admission of Employee's Right to Permanent Partial Disability* to be paid by the~~  
4       ~~employee and the employer or the employer's carrier in equal shares. The employer or the~~  
5       ~~employer's carrier shall pay such fee in full when submitting the agreement to the Commission.~~  
6       ~~Unless the parties agree otherwise or the award totals \$3,000 or less, the employer and the~~  
7       ~~employer's carrier shall be entitled to a credit for the employee's 50% share of such fee against the~~  
8       ~~award;]~~

9       [(3)](2) two hundred dollars (\$200.00) for the processing of a I.C. Form MSC5, *Report of Mediator*, to be  
10       paid 50% by the employee and 50% by the employer(s) or the employer's carrier(s). The  
11       employer(s) or the employer's carrier(s) shall pay such fee in full upon receipt of an invoice from  
12       the Commission and, unless the parties agree otherwise, shall be reimbursed for the employee's  
13       share of such fees when the case is concluded from any compensation that may be determined to  
14       be due to the employee. The employer(s) or the employer's carrier(s) may withhold funds from  
15       any award for this purpose; and

16       [(4)](3) a fee equal to the filing fee required to file of a civil action in the Superior Court division of the  
17       General Court of Justice for the processing of a Form 331 *Intervenor's Request that Claim be*  
18       *Assigned for Hearing*, to be paid by the intervenor.

19       (b) In tort claims cases, the filing fee is an amount equal to the filing fee required to file a civil action in the  
20       Superior Court division of the General Court of Justice.

21  
22       History Note:     Authority G.S. 7A-305; 97-17; 97-26(i); 97-73; 97-80; 143-291.2; 143-300; S.L 2014-77;  
23       Eff. November 1, 2014.

Rule 04 NCAC 10L .0101 is adopted as published on the OAH website for the public comment period beginning August 20 through September 15, 2014, with changes as follows:

**SUBCHAPTER 10L – INDUSTRIAL COMMISSION FORMS**  
**SECTION .0100 – WORKERS’ COMPENSATION FORMS**

**04 NCAC 10L .0101      FORM 21 – AGREEMENT FOR COMPENSATION FOR DISABILITY**

(a) **(Effective until July 1, 2015)** The parties to a workers’ compensation claim shall use the following Form 21, *Agreement for Compensation for Disability*, for agreements regarding disability and payment of compensation therefor pursuant to G.S. 97-29 and 97-30. Additional issues agreed upon by the parties such as payment of compensation for permanent partial disability may also be included on the form. This form is necessary to comply with Rule 04 NCAC 10A .0501, where applicable. The Form 21, *Agreement for Compensation for Disability*, shall read as follows:

North Carolina Industrial Commission  
Agreement for Compensation for Disability  
(G.S. 97-82)

IC File # \_\_\_\_\_  
Emp. Code # \_\_\_\_\_  
Carrier Code # \_\_\_\_\_  
Carrier File # \_\_\_\_\_  
Employer FEIN \_\_\_\_\_

The Use Of This Form Is Required Under The Provisions of The Workers' Compensation Act

\_\_\_\_\_  
Employee’s Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City                                  State                                  Zip

\_\_\_\_\_  
Home Telephone                                  Work Telephone

Social Security Number: \_\_\_\_\_ Sex: ☐ M ☐ F Date of Birth: \_\_\_\_\_



\_\_\_\_\_  
Employer's Name Telephone Number

\_\_\_\_\_  
Employer's Address City State Zip

\_\_\_\_\_  
Insurance Carrier

\_\_\_\_\_  
Carrier's Address City State Zip

\_\_\_\_\_  
Carrier's Telephone Number Carrier's Fax Number

We, The Undersigned, Do Hereby Agree And Stipulate As Follows:

1. All parties hereto are subject to and bound by the provisions of the Workers' Compensation Act and \_\_\_\_\_ is the carrier/administrator for the employer.

2. The employee sustained an injury by accident or the employee contracted an occupational disease arising out of and in the course of employment on or by \_\_\_\_\_.

3. The injury by accident or occupational disease resulted in the following injuries: \_\_\_\_\_.

4. The employee ☐ was/ ☐ was not paid for the entire day when the injury occurred.

5. The average weekly wage of the employee at the time of the injury, including overtime and all allowances, was \$\_\_\_\_\_, subject to verification unless otherwise agreed upon in Item 9 below.

6. Disability resulting from the injury or occupational disease began on \_\_\_\_\_.

7. The employer and carrier/administrator hereby undertake to pay compensation to the employee at the rate of \$\_\_\_\_\_ per week beginning \_\_\_\_\_, and continuing for \_\_\_\_\_ weeks.

8. The employee ☐ has / ☐ has not returned to work for \_\_\_\_\_ on \_\_\_\_\_, at an average weekly wage of \$\_\_\_\_\_.

9. State any further matters agreed upon, including disfigurement, permanent partial, or temporary partial disability: \_\_\_\_\_.

10. If applicable, the Second Injury Fund Assessment is \$\_\_\_\_\_. Check ☐ is ☐ is not attached.

11. The date of this agreement is \_\_\_\_\_. Date of first payment: \_\_\_\_\_ Amount: \_\_\_\_\_.

12. IMPORTANT NOTICE TO EMPLOYEE: The Industrial Commission's fee for processing this agreement is \$300.00 to be paid in equal shares by the employee and the employer. You are not required to pay your portion of the fee in advance, and if your award is \$3,000.00 or less, you are not responsible for any portion of the fee. If your award is more than \$3,000.00, the employer shall deduct \$150.00 from your award, unless you and your employer agree otherwise.

Check one of the boxes below if the award is more than \$3,000.00:

☐ The employer will deduct \$150.00 from the amount to be paid pursuant to this agreement.

☐ The employee and employer have agreed that the employer will pay the entire fee.

~~THE INDUSTRIAL COMMISSION WILL NOT CHARGE A FEE FOR PROCESSING FORM 21  
AGREEMENTS FILED ON OR AFTER JULY 1, 2015.~~

\_\_\_\_\_  
Name Of Employer

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name Of Carrier / Administrator

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

By signing I enter into this agreement and certify that I have read the "Important Notices to Employee" printed on the Pages 1 and 2 of this form.

\_\_\_\_\_  
Signature of Employee

\_\_\_\_\_  
Address

\_\_\_\_\_  
Signature of Employee's Attorney

\_\_\_\_\_  
Address

North Carolina Industrial Commission

The Foregoing Agreement Is Hereby Approved:

\_\_\_\_\_  
Claims Examiner

\_\_\_\_\_  
Date

\_\_\_\_\_  
Attorney's Fee Approved

☐ Check Box If No Attorney Retained.

☐ Check Box If Employee Is In Managed Care.

#### IMPORTANT NOTICE TO EMPLOYEE CLAIMING ADDITIONAL WEEKLY CHECKS OR LUMP SUM PAYMENTS

Once your compensation checks have been stopped, if you claim further compensation, you must notify the Industrial Commission in writing within two years from the date of receipt of your last compensation check or your rights to these benefits may be lost.

#### IMPORTANT NOTICE TO EMPLOYEE INJURED BEFORE JULY 5, 1994 CLAIMING ADDITIONAL MEDICAL BENEFITS

1 If your injury occurred before July 5, 1994, you are entitled to medical compensation as long as it is reasonably  
2 necessary, related to your workers' compensation case, and authorized by the carrier or the Industrial Commission.

3  
4 IMPORTANT NOTICE TO EMPLOYEE INJURED ON OR AFTER JULY 5, 1994 CLAIMING ADDITIONAL  
5 MEDICAL BENEFITS

6 If your injury occurred on or after July 5, 1994, your right to future medical compensation will depend on several  
7 factors. Your right to payment of future medical compensation will terminate two years after your employer or  
8 carrier/administrator last pays any medical compensation or other compensation, whichever occurs last. If you think  
9 you will need future medical compensation, you must apply to the Industrial Commission in writing within two  
10 years, or your right to these benefits may be lost. To apply you may also use Industrial Commission Form 18M,  
11 Employee's Application for Additional Medical Compensation (G.S. 97-25.1), available at  
12 <http://www.ic.nc.gov/forms.html>.

13  
14 IMPORTANT NOTICE TO EMPLOYER

15  
16 The employee must be provided a copy when the agreement is signed by the employee. ~~Failure to file Form 28B,~~  
17 ~~Report Of Compensation And Medical Compensation Paid, within 16 days after last payment pursuant to this~~  
18 ~~agreement may subject the employer or carrier/administrator to a penalty.~~ Pursuant to Rule 04 NCAC 10A .0501,  
19 within 20 days after receipt of the agreement executed by the employee, the employer or carrier/administrator must  
20 submit the agreement to the Industrial Commission, or show cause for not submitting the agreement. The employer  
21 or carrier/administrator shall file a Form 28B, Report of Compensation and Medical Compensation Paid, within 16  
22 days after the last payment made pursuant to this agreement or be subject to a penalty.

23  
24 NEED ASSISTANCE?

25  
26 If you have questions or need help and you do not have an attorney, you may contact the Industrial Commission at  
27 (800) 688-8349.

28  
29 Form 21

30 11/2014

31  
32 Self-Insured Employer or Carrier, Mail to:

33 NCIC - Claims Section

34 4335 Mail Service Center

35 Raleigh, NC 27699-4335

36 Telephone: (919) 807-2502

37 Helpline: (800) 688-8349

Website: <http://www.ic.nc.gov/>

(a) (Effective July 1, 2015) The parties to a workers' compensation claim shall use the following Form 21, Agreement for Compensation for Disability, for agreements regarding disability and payment of compensation therefor pursuant to G.S. 97-29 and 97-30. Additional issues agreed upon by the parties such as payment of compensation for permanent partial disability may also be included on the form. This form is necessary to comply with Rule 04 NCAC 10A .0501, where applicable. The Form 21, Agreement for Compensation for Disability, shall read as follows:

North Carolina Industrial Commission  
Agreement for Compensation for Disability  
(G.S. 97-82)

IC File # \_\_\_\_\_  
Emp. Code # \_\_\_\_\_  
Carrier Code # \_\_\_\_\_  
Carrier File # \_\_\_\_\_  
Employer FEIN \_\_\_\_\_

The Use Of This Form Is Required Under The Provisions of The Workers' Compensation Act

\_\_\_\_\_  
Employee's Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City                      State                      Zip

\_\_\_\_\_  
Home Telephone                                      Work Telephone

Social Security Number:                      Sex: ☐ M ☐ F Date of Birth: \_\_\_\_\_

\_\_\_\_\_  
Employer's Name                                      Telephone Number

\_\_\_\_\_  
Employer's Address                                      City    State    Zip

\_\_\_\_\_  
Insurance Carrier

Carrier's Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Carrier's Telephone Number \_\_\_\_\_ Carrier's Fax Number \_\_\_\_\_

We, The Undersigned, Do Hereby Agree And Stipulate As Follows:

1. All parties hereto are subject to and bound by the provisions of the Workers' Compensation Act and \_\_\_\_\_ is the carrier/administrator for the employer.

2. The employee sustained an injury by accident or the employee contracted an occupational disease arising out of and in the course of employment on or by \_\_\_\_\_.

3. The injury by accident or occupational disease resulted in the following injuries: \_\_\_\_\_

4. The employee ☐ was/ ☐ was not paid for the entire day when the injury occurred.

5. The average weekly wage of the employee at the time of the injury, including overtime and all allowances, was \$ \_\_\_\_\_, subject to verification unless otherwise agreed upon in Item 9 below.

6. Disability resulting from the injury or occupational disease began on \_\_\_\_\_.

7. The employer and carrier/administrator hereby undertake to pay compensation to the employee at the rate of \$ \_\_\_\_\_ per week beginning \_\_\_\_\_, and continuing for \_\_\_\_\_ weeks.

8. The employee ☐ has / ☐ has not returned to work for \_\_\_\_\_ on \_\_\_\_\_, at an average weekly wage of \$ \_\_\_\_\_.

9. State any further matters agreed upon, including disfigurement, permanent partial, or temporary partial disability: \_\_\_\_\_.

10. If applicable, the Second Injury Fund Assessment is \$ \_\_\_\_\_. Check ☐ is ☐ is not attached.

11. The date of this agreement is \_\_\_\_\_. Date of first payment: \_\_\_\_\_ Amount: \_\_\_\_\_.

12. ~~IMPORTANT NOTICE TO EMPLOYEE: The Industrial Commission's fee for processing this agreement is \$300.00 to be paid in equal shares by the employee and the employer. You are not required to pay your portion of the fee in advance, and if your award is \$3,000.00 or less, you are not responsible for any portion of the fee. If your award is more than \$3,000.00, the employer shall deduct \$150.00 from your award, unless you and your employer agree otherwise.~~

~~Check one of the boxes below if the award is more than \$3,000.00:~~

~~☐ The employer will deduct \$150.00 from the amount to be paid pursuant to this agreement.~~

~~☐ The employee and employer have agreed that the employer will pay the entire fee.~~

Name Of Employer \_\_\_\_\_ Signature \_\_\_\_\_ Title \_\_\_\_\_

Name Of Carrier / Administrator \_\_\_\_\_ Signature \_\_\_\_\_ Title \_\_\_\_\_

1  
2 By signing I enter into this agreement and certify that I have read the "Important Notices to Employee" printed on  
3 the Pages 1 and Page 2 of this form.

4 \_\_\_\_\_  
5 Signature of Employee \_\_\_\_\_ Address

6 \_\_\_\_\_  
7 Signature of Employee's Attorney \_\_\_\_\_ Address

8  
9 North Carolina Industrial Commission

10 The Foregoing Agreement Is Hereby Approved:

11 \_\_\_\_\_  
12 Claims Examiner \_\_\_\_\_ Date

13 \_\_\_\_\_  
14 Attorney's Fee Approved

15  
16 ☐ Check Box If No Attorney Retained.

17 ☐ Check Box If Employee Is In Managed Care.

18  
19 IMPORTANT NOTICE TO EMPLOYEE CLAIMING ADDITIONAL WEEKLY CHECKS OR LUMP SUM  
20 PAYMENTS

21  
22 Once your compensation checks have been stopped, if you claim further compensation, you must notify the  
23 Industrial Commission in writing within two years from the date of receipt of your last compensation check or your  
24 rights to these benefits may be lost.

25  
26 IMPORTANT NOTICE TO EMPLOYEE INJURED BEFORE JULY 5, 1994 CLAIMING ADDITIONAL  
27 MEDICAL BENEFITS

28  
29 If your injury occurred before July 5, 1994, you are entitled to medical compensation as long as it is reasonably  
30 necessary, related to your workers' compensation case, and authorized by the carrier or the Industrial Commission.

31  
32 IMPORTANT NOTICE TO EMPLOYEE INJURED ON OR AFTER JULY 5, 1994 CLAIMING ADDITIONAL  
33 MEDICAL BENEFITS

34 If your injury occurred on or after July 5, 1994, your right to future medical compensation will depend on several  
35 factors. Your right to payment of future medical compensation will terminate two years after your employer or  
36 carrier/administrator last pays any medical compensation or other compensation, whichever occurs last. If you think  
37 you will need future medical compensation, you must apply to the Industrial Commission in writing within two

1 years, or your right to these benefits may be lost. To apply you may also use Industrial Commission Form 18M,  
2 Employee's Application for Additional Medical Compensation (G.S. 97-25.1), available at  
3 <http://www.ic.nc.gov/forms.html>.

4  
5 IMPORTANT NOTICE TO EMPLOYER

6  
7 The employee must be provided a copy when the agreement is signed by the employee. Failure to file Form 28B,  
8 Report Of Compensation And Medical Compensation Paid, within 16 days after last payment pursuant to this  
9 agreement may subject the employer or carrier/administrator to a penalty. Pursuant to Rule 04 NCAC 10A .0501,  
10 within 20 days after receipt of the agreement executed by the employee, the employer or carrier/administrator must  
11 submit the agreement to the Industrial Commission, or show cause for not submitting the agreement. The employer  
12 or carrier/administrator shall file a Form 28B, Report of Compensation and Medical Compensation Paid, within 16  
13 days after the last payment made pursuant to this agreement or be subject to a penalty.

14  
15 NEED ASSISTANCE?

16  
17 If you have questions or need help and you do not have an attorney, you may contact the Industrial Commission at  
18 (800) 688-8349.

19  
20 Form 21

21 7/2015

22  
23 Self-Insured Employer or Carrier, Mail to:

24 NCIC - Claims Section

25 4335 Mail Service Center

26 Raleigh, NC 27699-4335

27 Telephone: (919) 807-2502

28 Helpline: (800) 688-8349

29 Website: <http://www.ic.nc.gov/>

30  
31 (b) The copy of the form described in Paragraph (a) of this Rule can be accessed at  
32 <http://www.ic.nc.gov/forms/form21.pdf>. The form may be reproduced only in the format available at  
33 <http://www.ic.nc.gov/forms/form21.pdf> and may not be altered or amended in any way.

34  
35 *History Note: Authority G.S. 97-73; 97-80(a); 97-81(a); 97-82; S.L. 2014-77;*

36 *Eff. November 1, 2014.*

37 *Amended Eff. July 1, 2015, pursuant to S.L. 2014-77, by deleting Item 12. of subsection (a).*

Rule 04 NCAC 10L .0102 is adopted as published on the OAH website for the public comment period beginning August 20 through September 15, 2014, with changes as follows:

**04 NCAC 10L .0102      FORM 26 – SUPPLEMENTAL AGREEMENT AS TO PAYMENT OF  
COMPENSATION**

(a) (Effective until July 1, 2015) If the parties to a workers' compensation claim have previously entered into an approved agreement on a Form 21, *Agreement for Compensation for Disability*, or a Form 26A, *Employer's Admission of Employee's Right to Permanent Partial Disability*, they shall use the following Form 26, *Supplemental Agreement as to Payment of Compensation*, for agreements regarding ~~subsequent~~, subsequent additional disability and payment of compensation ~~therefor~~ pursuant to G.S. 97-29 and 97-30. Additional issues agreed upon by the parties such as payment of compensation for permanent partial disability may also be included on the form. This form is necessary to comply with Rule 04 NCAC 10A .0501, where applicable. The Form 26, *Supplemental Agreement as to Payment of Compensation*, shall read as follows:

North Carolina Industrial Commission  
Supplemental Agreement as to Payment  
of Compensation (G.S. §97-82)

IC File # \_\_\_\_\_  
Emp. Code # \_\_\_\_\_  
Carrier Code # \_\_\_\_\_  
Carrier File # \_\_\_\_\_  
Employer FEIN \_\_\_\_\_

The Use Of This Form Is Required Under The Provisions of The Workers' Compensation Act

\_\_\_\_\_  
Employee's Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City                      State                      Zip

\_\_\_\_\_  
Home Telephone                      Work Telephone

Social Security Number: \_\_\_\_\_ Sex: ☐ M ☐ F Date of Birth: \_\_\_\_\_



\_\_\_\_\_  
Employer's Name Telephone Number

\_\_\_\_\_  
Employer's Address City State Zip

\_\_\_\_\_  
Insurance Carrier

\_\_\_\_\_  
Carrier's Address City State Zip

\_\_\_\_\_  
Carrier's Telephone Number Carrier's Fax Number

We, The Undersigned, Do Hereby Agree and Stipulate As Follows:

1. Date of injury: \_\_\_\_\_

2. The employee ☐ returned to work / ☐ was rated on \_\_\_\_\_ (date), at a weekly wage of \$ \_\_\_\_\_.

3. The employee became totally disabled on \_\_\_\_\_.

4. Employee's average weekly wage ☐ was reduced / ☐ was increased on \_\_\_\_\_, from \$ \_\_\_\_\_  
per week to \$ \_\_\_\_\_ per week.

5. The employer and carrier/administrator hereby undertake to pay compensation to the employee at the rate  
of \$ \_\_\_\_\_ per week.

Beginning \_\_\_\_\_, and continuing for \_\_\_\_\_ weeks. The type of disability compensation is

6. State any further matters agreed upon, including disfigurement or temporary partial disability:

7. IMPORTANT NOTICE TO EMPLOYEE: The Industrial Commission's fee for processing this agreement  
is \$300.00 to be paid in equal shares by the employee and the employer. You are not required to pay your portion of  
the fee in advance, and if your award is \$3,000.00 or less, you are not responsible for any portion of the fee. If your  
award is more than \$3,000.00, the employer shall deduct \$150.00 from your award, unless you and your employer  
agree otherwise.

Check one of the boxes below if the award is more than \$3,000.00:

☐ The employer will deduct \$150.00 from the amount to be paid pursuant to this agreement.

☐ The employee and employer have agreed that the employer will pay the entire fee.

~~THE INDUSTRIAL COMMISSION WILL NOT CHARGE A FEE FOR PROCESSING FORM 26  
AGREEMENTS FILED ON OR AFTER JULY 1, 2015.~~

8. The date of this agreement is \_\_\_\_\_.

\_\_\_\_\_  
Name Of Employer

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

1 \_\_\_\_\_  
2 Name Of Carrier/Administrator

Signature

Title

3  
4 By signing I enter into this agreement and certify that I have read the "Important Notices to Employee" printed on  
5 Pages 1 and 2 of this form.

6 \_\_\_\_\_  
7 Signature of Employee

Address

8 \_\_\_\_\_  
9 Signature of Employee's Attorney

Address

10  
11 ☐ Check box if no attorney retained.

12  
13 North Carolina Industrial Commission

14 The Foregoing Agreement Is Hereby Approved:

15 \_\_\_\_\_  
16 Claims Examiner

Date

17 \_\_\_\_\_  
18 Attorney's fee approved

19  
20 IMPORTANT NOTICE TO EMPLOYEE CLAIMING ADDITIONAL WEEKLY CHECKS OR LUMP SUM  
21 PAYMENTS

22 Once your compensation checks have been stopped, if you claim further compensation, you must notify the  
23 Industrial Commission in writing within two years from the date of receipt of your last compensation check or your  
24 rights to these benefits may be lost.

25  
26 IMPORTANT NOTICE TO EMPLOYEE INJURED BEFORE 5 JULY 5, 1994 CLAIMING ADDITIONAL  
27 MEDICAL BENEFITS

28 If your injury occurred before 5 July 5, 1994, you are entitled to medical compensation as long as it is reasonably  
29 necessary, related to your workers' compensation case, and authorized by the carrier or the Industrial Commission.

30  
31 IMPORTANT NOTICE TO EMPLOYEE INJURED ON OR AFTER 5 JULY 5, 1994 CLAIMING ADDITIONAL  
32 MEDICAL BENEFITS

33 If your injury occurred on or after 5 July 5, 1994, your right to future medical compensation will depend on several  
34 factors. Your right to payment of future medical compensation will terminate two years after your employer or  
35 carrier/administrator last pays any medical compensation or other compensation, whichever occurs last. If you think  
36 you will need future medical compensation, you must apply to the Industrial Commission in writing within two  
37 years, or your right to these benefits may be lost. To apply you may also use Industrial Commission Form 18M,

Employee's Application for Additional Medical Compensation (G.S. 97-25.1), available at  
<http://www.ic.nc.gov/forms.html>.

#### IMPORTANT NOTICE TO EMPLOYER

This form ~~is to be used~~ shall be used only to supplement Form 21, *Agreement for Compensation for Disability* (G.S. 97-82), or an award in cases in which subsequent conditions require a modification of a former agreement or award. The employee must be provided a copy of the form when the agreement is signed by the employee. ~~Failure to file Form 28B, Report of Compensation and Medical Compensation Paid, within 16 days after last payment pursuant to this agreement may subject the employer or carrier/administrator to a penalty.~~ Pursuant to Rule 04 NCAC 10A .0501, within 20 days after receipt of the agreement executed by the employee, the employer or carrier/administrator must submit the agreement to the Industrial Commission, or show cause for not submitting the agreement. The employer or carrier/administrator shall file a Form 28B, Report of Compensation and Medical Compensation Paid, within 16 days after the last payment made pursuant to this agreement or be subject to a penalty.

#### NEED ASSISTANCE?

If you have questions or need help and you do not have an attorney, you may contact the Industrial Commission at (800) 688-8349.

Form 26  
11/2014

Self-Insured Employer or Carrier Mail to:  
NCIC - Claims Administration  
4335 Mail Service Center  
Raleigh, North Carolina 27699-4335  
Main Telephone: (919) 807-2500  
Helpline: (800) 688-8349  
Website: <http://www.ic.nc.gov/>

(a) (Effective July 1, 2015) If the parties to a workers' compensation claim have previously entered into an approved agreement on a Form 21, *Agreement for Compensation for Disability*, or a Form 26A, *Employer's Admission of Employee's Right to Permanent Partial Disability*, they shall use the following Form 26, *Supplemental Agreement as to Payment of Compensation*, for agreements regarding subsequent, subsequent additional disability and payment of compensation therefor pursuant to G.S. 97-29 and 97-30. Additional issues agreed upon by the parties such as payment of compensation for permanent partial disability may also be included on the form. This

1 form is necessary to comply with Rule 04 NCAC 10A .0501, where applicable. The Form 26, *Supplemental*  
2 *Agreement as to Payment of Compensation*, shall read as follows:

3  
4 North Carolina Industrial Commission

5 Supplemental Agreement as to Payment

6 of Compensation (G.S. §97-82)

7  
8 IC File #

9 Emp. Code #

10 Carrier Code #

11 Carrier File #

12 Employer FEIN

13  
14 The Use Of This Form Is Required Under The Provisions of The Workers' Compensation Act

15  
16 \_\_\_\_\_  
17 Employee's Name

18 \_\_\_\_\_  
19 Address

20 \_\_\_\_\_  
21 City \_\_\_\_\_ State \_\_\_\_\_ Zip

22 \_\_\_\_\_  
23 Home Telephone \_\_\_\_\_ Work Telephone

24 Social Security Number: \_\_\_\_\_ Sex: ☐ M ☐ F Date of Birth: \_\_\_\_\_

25  
26 \_\_\_\_\_  
27 Employer's Name \_\_\_\_\_ Telephone Number

28 \_\_\_\_\_  
29 Employer's Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip

30 \_\_\_\_\_  
31 Insurance Carrier

32 \_\_\_\_\_  
33 Carrier's Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip

34 \_\_\_\_\_  
35 Carrier's Telephone Number \_\_\_\_\_ Carrier's Fax Number

36  
37 We, The Undersigned, Do Hereby Agree and Stipulate As Follows:

The Foregoing Agreement Is Hereby Approved:

1 \_\_\_\_\_  
2 Claims Examiner \_\_\_\_\_ Date \_\_\_\_\_  
3 \_\_\_\_\_

4 Attorney's fee approved  
5

6 IMPORTANT NOTICE TO EMPLOYEE CLAIMING ADDITIONAL WEEKLY CHECKS OR LUMP SUM  
7 PAYMENTS

8 Once your compensation checks have been stopped, if you claim further compensation, you must notify the  
9 Industrial Commission in writing within two years from the date of receipt of your last compensation check or your  
10 rights to these benefits may be lost.

11  
12 IMPORTANT NOTICE TO EMPLOYEE INJURED BEFORE 5 JULY 5, 1994 CLAIMING ADDITIONAL  
13 MEDICAL BENEFITS

14 If your injury occurred before 5 July 5, 1994, you are entitled to medical compensation as long as it is reasonably  
15 necessary, related to your workers' compensation case, and authorized by the carrier or the Industrial Commission.

16  
17 IMPORTANT NOTICE TO EMPLOYEE INJURED ON OR AFTER 5 JULY 5, 1994 CLAIMING ADDITIONAL  
18 MEDICAL BENEFITS

19 If your injury occurred on or after 5 July 5, 1994, your right to future medical compensation will depend on several  
20 factors. Your right to payment of future medical compensation will terminate two years after your employer or  
21 carrier/administrator last pays any medical compensation or other compensation, whichever occurs last. If you think  
22 you will need future medical compensation, you must apply to the Industrial Commission in writing within two  
23 years, or your right to these benefits may be lost. To apply you may also use Industrial Commission Form 18M,  
24 Employee's Application for Additional Medical Compensation (G.S. 97-25.1), available at  
25 <http://www.ic.nc.gov/forms.html>.

26  
27  
28 IMPORTANT NOTICE TO EMPLOYER  
29

30 This form is to be used shall be used only to supplement Form 21, *Agreement for Compensation for Disability* (G.S.  
31 97-82), or an award in cases in which subsequent conditions require a modification of a former agreement or award.  
32 The employee must be provided a copy of the form when the agreement is signed by the employee. Failure to file  
33 Form 28B, *Report of Compensation and Medical Compensation Paid*, within 16 days after last payment pursuant to  
34 this agreement may subject the employer or carrier/administrator to a penalty. Pursuant to Rule 04 NCAC 10A  
35 .0501, within 20 days after receipt of the agreement executed by the employee, the employer or carrier/administrator  
36 must submit the agreement to the Industrial Commission, or show cause for not submitting the agreement. The

1 employer or carrier/administrator shall file a Form 28B, *Report of Compensation and Medical Compensation Paid*,  
2 within 16 days after the last payment made pursuant to this agreement or be subject to a penalty.

3  
4 NEED ASSISTANCE?

5  
6 If you have questions or need help and you do not have an attorney, you may contact the Industrial Commission at  
7 (800) 688-8349.

8  
9 Form 26

10 7/2015

11  
12 Self-Insured Employer or Carrier Mail to:

13 NCIC - Claims Administration

14 4335 Mail Service Center

15 Raleigh, North Carolina 27699-4335

16 Main Telephone: (919) 807-2500

17 Helpline: (800) 688-8349

18 Website: <http://www.ic.nc.gov/>

19  
20 (b) The copy of the form described in Paragraph (a) of this Rule can be accessed at  
21 <http://www.ic.nc.gov/forms/form26.pdf>. The form may be reproduced only in the format available at  
22 <http://www.ic.nc.gov/forms/form26.pdf> and may not be altered or amended in any way.

23  
24 *History Note: Authority G.S. 97-73; 97-80(a); 97-81(a); 97-82; S.L. 2014-77;*

25 *Eff. November 1, 2014;*

26 *Amended Eff. July 1, 2015, pursuant to S.L. 2014-77, by deleting Item 7. of subsection (a).*

Rule 04 NCAC 10L .0103 is adopted as published on the OAH website for the public comment period beginning August 20 through September 15, 2014, with changes as follows:

**04 NCAC 10L .0103      FORM 26A – EMPLOYER’S ADMISSION OF EMPLOYEE’S RIGHT TO  
PERMANENT PARTIAL DISABILITY**

(a) **(Effective until July 1, 2015)** The parties to a workers’ compensation claim shall use the following Form 26A, *Employer’s Admission of Employee’s Right to Permanent Partial Disability*, for agreements regarding the employee’s entitlement to and the employer’s payment of compensation for permanent partial disability pursuant to G.S. 97-31. Additional issues agreed upon by the parties, ~~including, but not limited to,~~ such as election of payment of temporary partial disability pursuant to G.S. ~~97-30~~ 97-30, may also be included on the form. This form is necessary to comply with Rule 04 NCAC 10A .0501, where applicable. The Form 26A, *Employer’s Admission of Employee’s Right to Permanent Partial Disability*, shall read as follows:

North Carolina Industrial Commission  
Employer’s Admission of Employee’s Right to Permanent Partial Disability  
(G.S. §97-31)

IC File # \_\_\_\_\_  
Emp. Code # \_\_\_\_\_  
Carrier Code # \_\_\_\_\_  
Carrier File # \_\_\_\_\_  
Employer FEIN \_\_\_\_\_

The Use Of This Form Is Required Under The Provisions of The Workers' Compensation Act

\_\_\_\_\_  
Employee’s Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City                      State                      Zip

\_\_\_\_\_  
Home Telephone                      Work Telephone

Social Security Number: \_\_\_\_\_ Sex: ☐ M ☐ F Date of Birth: \_\_\_\_\_



Employer's Name Telephone Number

Employer's Address	City	State	Zip
--------------------	------	-------	-----

Insurance Carrier

Carrier's Address	City	State	Zip
-------------------	------	-------	-----

Carrier's Telephone Number Carrier's Fax Number

WE, THE UNDERSIGNED, DO HEREBY AGREE AND STIPULATE AS FOLLOWS:

1. All the parties hereto are subject to and bound by the provisions of the Workers' Compensation Act and

is the Carrier/Administrator for the Employer.

2. The employee sustained an injury by accident or the employee contracted an occupational disease arising out of and in the course of employment on \_\_\_\_\_.

3. The injury by accident or occupational disease resulted in the following injuries:

4. The employee ☐ was ☐ was not paid for the 7 day waiting period.

If not, was salary continued? ☐ yes ☐ no. Was employee paid for the date of injury? ☐ yes ☐ no

5. The average weekly wage of the employee at the time of the injury, including overtime and all allowances, was \$ \_\_\_\_\_. This results in a weekly compensation rate of \$ \_\_\_\_\_.

6. The employee ☐ has ☐ has not returned full time to work for \_\_\_\_\_  
on \_\_\_\_\_, at an average weekly wage of \$\_\_\_\_\_.

7. Claimant was released ☐ with permanent restrictions ☐ without permanent restrictions.

8. Permanent partial disability compensation will be paid to the injured worker as follows:

weeks of compensation at rate of \$\_\_\_\_\_ per week for \_\_\_\_% rating to \_\_\_\_\_ (body part)

weeks of compensation at rate of \$\_\_\_\_\_ per week for \_\_\_\_% rating to \_\_\_\_\_ (body part)

\_\_\_\_\_ weeks of compensation at rate of \$\_\_\_\_\_ per week for \_\_\_\_\_% rating to \_\_\_\_\_ (body part)

Total amount of permanent partial disability compensation is \$ \_\_\_\_\_. Date of first payment: \_\_\_\_\_.

9. State any further matters agreed upon, including disfigurement, loss of teeth, election of temporary partial disability, waiting period or other:

10. An overpayment is claimed in the amount of \$\_\_\_\_\_. Overpayment was calculated as follows: \_\_\_\_\_.

If overpayment claimed, a Form 28B 28B, Report of Compensation and Medical Compensation Paid, is attached. ☐

yes ☐ no

1 11. If applicable, the Second Injury Fund Assessment is \$ \_\_\_\_\_. A check ☐ is ☐ is not  
2 included.

3 12. IMPORTANT NOTICE TO EMPLOYEE: The Industrial Commission's fee for processing this agreement  
4 is \$300.00 to be paid in equal shares by the employee and the employer. You are not required to pay your portion of  
5 the fee in advance, and if your award is \$3,000.00 or less, you are not responsible for any portion of the fee. If your  
6 award is more than \$3,000.00, the employer shall deduct \$150.00 from your award, unless you and your employer  
7 agree otherwise.

8 Check one of the boxes below if the award is more than \$3,000.00:

9 ☐ The employer will deduct \$150.00 from the amount to be paid pursuant to this agreement.

10 ☐ The employee and employer have agreed that the employer will pay the entire fee.

11 ~~THE INDUSTRIAL COMMISSION WILL NOT CHARGE A FEE FOR PROCESSING FORM 26A~~  
12 ~~AGREEMENTS FILED ON OR AFTER JULY 1, 2015.~~

13  
14 The undersigned hereby certify that the material medical and vocational reports related to the injury have been  
15 provided to the employee or his the employee's attorney and have been filed with the Industrial Commission for  
16 consideration pursuant to G.S. 97-82(a) and ~~Industrial Commission Rule 501(3)~~; Rule 04 NCAC 10A .0501.

17  
18 \_\_\_\_\_  
19 Name Of Employer Signature Title Date

20  
21 Name Of Carrier/Administrator Signature Direct Phone Number Title Date

22  
23 By signing I enter into this agreement and certify that I have read the "Important Notices to Employee"  
24 printed on pages 2 and 3 of this form.

25  
26 \_\_\_\_\_  
27 Signature of Employee Address Date

28  
29 Signature of Employee's Attorney Address \_\_\_\_\_ Date

30  
31 ☐ Check box if no attorney retained.

32  
33 North Carolina Industrial Commission

34 The Foregoing Agreement Is Hereby Approved:

35  
36 \_\_\_\_\_  
36 Claims Examiner Date

Attorney's fee approved

### IMPORTANT NOTICE TO EMPLOYEE CLAIMING ADDITIONAL WEEKLY CHECKS OR LUMP SUM PAYMENTS

Once your compensation checks have been stopped, if you claim further compensation, you must notify the Industrial Commission in writing within two years from the date of receipt of your last compensation check or your rights to these benefits may be lost.

### IMPORTANT NOTICE TO EMPLOYEE INJURED BEFORE JULY 5, 1994 CLAIMING ADDITIONAL MEDICAL BENEFITS

If your injury occurred before July 5, 1994, you are entitled to medical compensation as long as it is reasonably necessary, related to your workers' compensation case, and authorized by the carrier or the Industrial Commission.

### IMPORTANT NOTICE TO EMPLOYEE INJURED ON OR AFTER JULY 5, 1994 CLAIMING ADDITIONAL MEDICAL BENEFITS

If your injury occurred on or after July 5, 1994, your right to future medical compensation will depend on several factors. Your right to payment of future medical compensation will terminate two years after your employer or carrier/administrator last pays any medical compensation or other compensation, whichever occurs last. If you think you will need future medical compensation, you must apply to the Industrial Commission in writing within two years, or your right to these benefits may be lost. To apply you may also use Industrial Commission 18M, Employee's Application for Additional Medical Compensation (G.S. 97-25.1), available at <http://www.ic.nc.gov/forms.html>.

### IMPORTANT NOTICE TO EMPLOYER

The employee must be provided a copy when the agreement is signed by the employee. ~~Failure to file Form 28B, Report Of Compensation And Medical Compensation Paid, within 16 days after last payment pursuant to this agreement may subject the employer or carrier/administrator to a penalty.~~ Pursuant to Rule 04 NCAC 10A .0501, within 20 days after receipt of the agreement executed by the employee, the employer or carrier/administrator must submit the agreement to the Industrial Commission, or show cause for not submitting the agreement. The employer or carrier/administrator shall file a Form 28B, Report of Compensation and Medical Compensation Paid, within 16 days after the last payment made pursuant to this agreement or be subject to a penalty.

### NEED ASSISTANCE?

If you have questions or need help and you do not have an attorney, you may contact the Industrial Commission at (800) 688-8349.

Form 26A

1 11/2014

2  
3 Self-Insured Employer or Carrier Mail to:

4 NCIC - Claims Administration

5 4335 Mail Service Center

6 Raleigh, North Carolina 27699-4335

7 Main Telephone: (919) 807-2500

8 Helpline: (800) 688-8349

9 Website: <http://www.ic.nc.gov/>

10  
11 (a) (Effective July 1, 2015) The parties to a workers' compensation claim shall use the following Form 26A,  
12 Employer's Admission of Employee's Right to Permanent Partial Disability, for agreements regarding the  
13 employee's entitlement to and the employer's payment of compensation for permanent partial disability pursuant to  
14 G.S. 97-31. Additional issues agreed upon by the parties, including, but not limited to, such as election of payment  
15 of temporary partial disability pursuant to G.S. 97-30 97-30, may also be included on the form. This form is  
16 necessary to comply with Rule 04 NCAC 10A .0501, where applicable. The Form 26A, Employer's Admission of  
17 Employee's Right to Permanent Partial Disability, shall read as follows:

18  
19 North Carolina Industrial Commission

20 Employer's Admission of Employee's Right to Permanent Partial Disability

21 (G.S. §97-31)

22  
23 IC File # \_\_\_\_\_

24 Emp. Code # \_\_\_\_\_

25 Carrier Code # \_\_\_\_\_

26 Carrier File # \_\_\_\_\_

27 Employer FEIN \_\_\_\_\_

28  
29 The Use Of This Form Is Required Under The Provisions of The Workers' Compensation Act

30  
31 \_\_\_\_\_  
32 Employee's Name

33 \_\_\_\_\_  
34 Address

35 \_\_\_\_\_  
36 City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Home Telephone \_\_\_\_\_ Work Telephone \_\_\_\_\_

Social Security Number: \_\_\_\_\_ Sex: ☐ M ☐ F Date of Birth: \_\_\_\_\_

Employer's Name \_\_\_\_\_ Telephone Number \_\_\_\_\_

Employer's Address City State Zip

Insurance Carrier

Carrier's Address	City	State	Zip
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Carrier's Telephone Number Carrier's Fax Number

WE, THE UNDERSIGNED, DO HEREBY AGREE AND STIPULATE AS FOLLOWS:

1. All the parties hereto are subject to and bound by the provisions of the Workers' Compensation Act and \_\_\_\_\_ is the Carrier/Administrator for the Employer.
2. The employee sustained an injury by accident or the employee contracted an occupational disease arising out of and in the course of employment on \_\_\_\_\_.
3. The injury by accident or occupational disease resulted in the following injuries:  
\_\_\_\_\_.
4. The employee ☐ was ☐ was not paid for the 7 day waiting period.

If not, was salary continued? ☐ yes ☐ no. Was employee paid for the date of injury? ☐ yes ☐ no

5. The average weekly wage of the employee at the time of the injury, including overtime and all allowances,  
was \$ \_\_\_\_\_. This results in a weekly compensation rate of \$ \_\_\_\_\_.
6. The employee ☐ has ☐ has not returned full time to work for \_\_\_\_\_  
\_\_\_\_\_ , at an average weekly wage of \$ \_\_\_\_\_.

7. Claimant was released ☐ with permanent restrictions ☒ without permanent restrictions.

8. Permanent partial disability compensation will be paid to the injured worker as follows:

\_\_\_\_\_ weeks of compensation at rate of \$ \_\_\_\_\_ per week for \_\_\_\_\_ % rating to \_\_\_\_\_ (body part)

\_\_\_\_\_ weeks of compensation at rate of \$ \_\_\_\_\_ per week for \_\_\_\_\_ % rating to \_\_\_\_\_ (body part)

weeks of compensation at rate of \$ \_\_\_\_\_ per week for \_\_\_\_\_ % rating to \_\_\_\_\_ (body part)

Total amount of permanent partial disability compensation is \$\_\_\_\_\_. Date of first payment:\_\_\_\_\_.

9. State any further matters agreed upon, including disfigurement, loss of teeth, election of temporary partial disability, waiting period or other:

10. An overpayment is claimed in the amount of \$\_\_\_\_\_ . Overpayment was calculated as follows:\_\_\_\_\_.

If overpayment claimed, a Form 28B 28B, Report of Compensation and Medical Compensation Paid, is attached. ☐ yes ☐ no

11. If applicable, the Second Injury Fund Assessment is \$\_\_\_\_\_ . A check ☐ is ☐ is not included.

~~12. IMPORTANT NOTICE TO EMPLOYEE: The Industrial Commission's fee for processing this agreement is \$300.00 to be paid in equal shares by the employee and the employer. You are not required to pay your portion of the fee in advance, and if your award is \$3,000.00 or less, you are not responsible for any portion of the fee. If your award is more than \$3,000.00, the employer shall deduct \$150.00 from your award, unless you and your employer agree otherwise.~~

~~Check one of the boxes below if the award is more than \$3,000.00:~~

~~☐ The employer will deduct \$150.00 from the amount to be paid pursuant to this agreement.~~

~~☐ The employee and employer have agreed that the employer will pay the entire fee.~~

The undersigned hereby certify that the material medical and vocational reports related to the injury have been provided to the employee or his the employee's attorney and have been filed with the Industrial Commission for consideration pursuant to G.S. 97-82(a) and Industrial Commission Rule 501(3). Rule 04 NCAC 10A .0501.

\_\_\_\_\_  
Name Of Employer                      Signature                      Title                      Date

\_\_\_\_\_  
Name Of Carrier/Administrator                      Signature                      Direct Phone Number                      Title                      Date

By signing I enter into this agreement and certify that I have read the "Important Notices to Employee" printed on pages 2 and Page 3 of this form.

\_\_\_\_\_  
Signature of Employee                      Address                      Date

\_\_\_\_\_  
Signature of Employee's Attorney                      Address                      Date

☐ Check box if no attorney retained.

North Carolina Industrial Commission

The Foregoing Agreement Is Hereby Approved:

1     Claims Examiner \_\_\_\_\_ Date \_\_\_\_\_

2  
3     Attorney's fee approved

4  
5     IMPORTANT NOTICE TO EMPLOYEE CLAIMING ADDITIONAL WEEKLY CHECKS OR LUMP SUM  
6     PAYMENTS

7     Once your compensation checks have been stopped, if you claim further compensation, you must notify the  
8     Industrial Commission in writing within two years from the date of receipt of your last compensation check or your  
9     rights to these benefits may be lost.

10  
11     IMPORTANT NOTICE TO EMPLOYEE INJURED BEFORE JULY 5, 1994 CLAIMING ADDITIONAL  
12     MEDICAL BENEFITS

13     If your injury occurred before July 5, 1994, you are entitled to medical compensation as long as it is reasonably  
14     necessary, related to your workers' compensation case, and authorized by the carrier or the Industrial Commission.

15  
16     IMPORTANT NOTICE TO EMPLOYEE INJURED ON OR AFTER JULY 5, 1994 CLAIMING ADDITIONAL  
17     MEDICAL BENEFITS

18     If your injury occurred on or after July 5, 1994, your right to future medical compensation will depend on several  
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20     carrier/administrator last pays any medical compensation or other compensation, whichever occurs last. If you think  
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22     years, or your right to these benefits may be lost. To apply you may also use Industrial Commission 18M,  
23     Employee's Application for Additional Medical Compensation (G.S. 97-25.1), available at  
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Form 26A

7/2015

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NCIC - Claims Administration

4335 Mail Service Center

Raleigh, North Carolina 27699-4335

Main Telephone: (919) 807-2500

Helpline: (800) 688-8349

Website: <http://www.ic.nc.gov/>

(b) A copy of the form described in Paragraph (a) of this Rule can be accessed at <http://www.ic.nc.gov/forms/form26a.pdf>. The form may be reproduced only in the format available at <http://www.ic.nc.gov/forms/form26a.pdf> and may not be altered or amended in any way.

*History Note: Authority G.S. 97-30; 97-31; 97-73; 97-80(a); 97-81(a); 97-82; S.L. 2014-77;*

*Eff. November 1, 2014;*

*Amended Eff. July 1, 2015, pursuant to S.L. 2014-77, by deleting Item 12. of subsection (a).*