

1 04 NCAC 10A .0101 is amended as published in 27:02 NCR 168 as follows:

2
3 **CHAPTER 10 - INDUSTRIAL COMMISSION**

4
5 **SUBCHAPTER 10A - WORKERS' COMPENSATION RULES**

6
7 **SECTION .0100 - ADMINISTRATION**

8
9 **04 NCAC 10A .0101 LOCATION OF OFFICES AND HOURS OF BUSINESS**

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

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

17 *Eff. January 1, 1990;*

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

19

1 04 NCAC 10A .0103 is amended as published in 27:02 NCR 168 as follows:

2
3 **04 NCAC 10A .0103 NOTICE OF ACCIDENT AND CLAIM OF INJURY OR OCCUPATIONAL**
4 **DISEASE**

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

6 ~~Form 17—Workers' Compensation Notice~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 ~~Form UB-92—Hospital Bill~~

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

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

28 ~~Form 28—Return to Work Report~~

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

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

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

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

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

37 ~~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)~~

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

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

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

8
9 *History Note:* *Authority G.S. 97-22; 97-24; 97-58; 97-80(a); 97-81;*

10 *Eff. January 1, 1990*

11 *Amended Eff. January 1, 2013.*

12

1 04 NCAC 10A .0104 is amended as published in 27:02 NCR 169 as follows:

2
3 **04 NCAC 10A .0104 EMPLOYER'S REQUIREMENT TO FILE A FORM 19**

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

12 (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*
13 *Occupational Disease to the Industrial Commission.*

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

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

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

26
27 *History Note: Authority G.S. 97-80(a); 97-92;*

28 *Eff. March 15, 1995;*

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

30

1 04 NCAC 10A .0106 is adopted with changes as published in 27:02 NCR 170 as follows:

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3 **04 NCAC 10A .0106 FILING OF ANNUAL REPORT REQUIREMENT**

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

7

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

9

Eff. January 1, 2013.

10

1 04 NCAC 10A .0107 is adopted with changes as published in 27:02 NCR 170 as follows:

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3 **04 NCAC 10A .0107 COMPUTATION OF TIME**

4 Except as otherwise provided by statute~~;~~ or rule, in computing any period of time prescribed or allowed by the
5 Commission Rules, by order of the Commission, or by any applicable statute, the day of the act, event, or default
6 after which the designated period of time begins to run is not included. The last day of the period so computed is
7 included, unless it is a Saturday, Sunday, or a holiday established by the State Personnel Commission, in which
8 event the period runs until the end of the next day ~~which~~ **that** is not a Saturday, Sunday or a holiday established by
9 the State Personnel Commission. When the period of time prescribed or allowed is less than seven days,
10 intermediate Saturdays, Sundays, and holidays shall be excluded in the computation. Whenever a party has the right
11 to do some act or take some proceedings within a prescribed period after the service of any document, three days
12 shall be added to the prescribed period.

13

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

15 *Eff. January 1, 2013.*

16

1 04 NCAC 10A .0201 is amended as published in 27:02 NCR 170 as follows:

2
3 **SECTION .0200 – NOTICE OF ACT**
4

5 **04 NCAC 10A .0201 POSTING REQUIREMENT FOR EMPLOYERS**

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

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

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

- 15 ~~(1) name of insurer;~~
16 ~~(2) policy number; and~~
17 ~~(3) dates of coverage.~~

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

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21 *History Note: Authority G.S. 97-80(a); 97-93;*
22 *Eff. January 1, 1990;*
23 *Amended Eff. January 1, 2013; March 15, 1995.*

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2

1 04 NCAC 10A .0302 is amended with changes as published in 27:02 NCR 171 as follows:

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3 **04 NCAC 10A .0302 REQUIRED CONTACT INFORMATION FROM CARRIERS**

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

11

12 *History Note: Authority G.S. 97-80(a); 97-94;*

13 *Eff. January 1, 2011;*

14 *Amended Eff. January 1, 2013.*

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16

1 04 NCAC 10A .0401 is amended with changes as published in 27:02 NCR 171 as follows:

2
3 **SECTION .0400 – DISABILITY, COMPENSATION, FEES**
4

5 **04 NCAC 10A .0401 CALCULATING THE SEVEN-DAY WAITING PERIOD**

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

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

13 (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
14 day's wages due to injury, shall be counted in computing the waiting period even though the days may not be
15 consecutive, or regularly scheduled workdays, and even though these are not regularly scheduled workdays.

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

18
19 *History Note: Authority G.S. 97-28; 97-80(a);*
20 *Eff. January 1, 1990;*
21 *Amended Eff. January 1, 2013.*
22
23

1 04 NCAC 10A .0402 is amended with changes as published in 27:02 NCR 172 as follows:

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3 **04 NCAC 10A .0402 SUBMISSION OF EARNINGS STATEMENT REQUIRED**

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

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

10

11 *History Note: Authority G.S. 97-2(5); 97-18(b); 97-80(a); 97-81;*

12 *Eff. January 1, 1990;*

13 *Amended Eff. January 1, 2013.*

14

15

1 04 NCAC 10A .0403 is amended as published in 27:02 NCR 172 as follows:

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3 **04 NCAC 10A .0403 MANNER OF PAYMENT OF COMPENSATION**

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

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

11

12 *History Note: Authority G.S. 97-18; 97-80(a);*
13 *Eff. January 1, 1990;*
14 *Amended Eff. January 1, 2013; June 1, 2000.*

15

16

1 04 NCAC 10A .0404A is amended with changes as published in 27:02 NCR 173 as follows:

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3 **04 NCAC 10A .0404A TRIAL RETURN TO WORK**

4 (a) Except as provided in ~~subparagraph (7), Paragraph (g) of this Rule,~~ when compensation for total disability being
5 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
6 different employer, ~~such~~ the termination is subject to the ~~trial return to work~~ provisions of ~~G.S. § 97-32.1,~~ G.S. 97-
7 32.1 (trial return to work). When compensation is terminated under these circumstances, the ~~employer employer, or~~
8 ~~carrier/administrator carrier, or administrator~~ shall, within 16 days of the termination of compensation, file a Form
9 28T Notice of Termination of Compensation by Reason of Trial Return to Work with the ~~Industrial~~ Commission and
10 provide a copy of it to ~~the employee and the employee's attorney of record, if any.~~ record or the employee, if
11 unrepresented.

12 (b) If during the trial return to work period, the employee must stop working due to the injury for which
13 compensation had been paid, the employee ~~should~~ [shall] may complete and file with the ~~Industrial~~ Commission a
14 Form ~~28U,~~ 28U Employee's Request that Compensation be Reinstated after Unsuccessful Trial Return to Work,
15 without regard to whether the ~~employer employer, or carrier/administrator carrier or administrator~~ has filed a Form
16 28T Notice of Termination of Compensation by Reason of Trial Return to Work as required by ~~Paragraph (1)~~
17 Paragraph (a) of this Rule ~~above,~~ and provide a copy of the completed form to the employer and
18 ~~carrier/administrator, carrier or administrator.~~ A Form 28U Employee's Request that Compensation be Reinstated
19 after Unsuccessful Trial Return to Work ~~shall contain~~ contains a section ~~which that must shall~~ be completed by the
20 physician who imposed the restrictions or one of the employee's authorized treating physicians, certifying that the
21 employee's injury for which compensation had been paid prevents the employee from continuing the trial return to
22 work. If the employee returned to work with an employer other than the employer at the time of injury, the
23 employee ~~must~~ [shall] may complete the "Employee's Release and Request For of Employment Information" section
24 of a Form ~~28U,~~ 28U Employee's Request that Compensation be Reinstated after Unsuccessful Trial Return to Work.
25 An employee's failure to provide a Form 28U Employee's Request that Compensation be Reinstated after
26 Unsuccessful Trial Return to Work does not preclude a subsequent finding by the Commission that the trial return to
27 work was unsuccessful.

28 (c) Upon receipt of a ~~properly~~ completed Form ~~28U,~~ 28U Employee's Request that Compensation be Reinstated
29 after Unsuccessful Trial Return to Work, the employer, ~~or carrier/administrator carrier, or administrator~~ shall
30 ~~promptly~~ resume payment of compensation for total disability. If the employee fails to provide the required
31 certification of an authorized treating physician as specified in ~~subsection 2 above,~~ Paragraph (b) of this Rule, or if
32 the employee fails to execute the "Employee's Release and Request" section of a Form ~~28U,~~ 28U Employee's
33 Request that Compensation be Reinstated after Unsuccessful Trial Return to Work, if required pursuant to ~~Paragraph~~
34 ~~(2) above,~~ Paragraph (b) of this Rule, the employer, ~~or carrier/administrator carrier, or administrator~~ ~~shall is not be~~
35 required to resume payment of compensation. Instead, ~~in such circumstances,~~ the ~~employer employer, or~~
36 ~~carrier/administrator carrier, or administrator~~ shall ~~promptly~~ return a Form 28U Employee's Request that
37 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, ~~if 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.*
13
14

1 04 NCAC 10A .0407 is repealed as published in 27:02 NCR 176 as follows:

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3 **04 NCAC 10A .0407 FEES FOR MEDICAL COMPENSATION**

4

5 *History Note: Authority G.S. 97-18(i); 97-25.6; 97-26; 97-80(a); 138-6;*

6 *Eff. January 1, 1990;*

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

8

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.~~

~~(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~~

~~(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.

~~(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.

~~(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~~

~~(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.

~~(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~~

~~(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

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

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

5 ~~(e) Payment of Death Benefits~~

6 ~~(+)(i)~~ Upon approval ~~of by the Industrial Commission~~ of a Form ~~30, 30~~ Agreement for Compensation for Death, or
7 the issuance of a final order of the ~~Industrial Commission~~ directing payment of death benefits pursuant to ~~G.S. § 97-~~
8 ~~38, G.S. 97-38~~, payment ~~may~~ shall be made by the ~~employer employer, or carrier/administrator carrier, or~~
9 ~~administrator~~ directly to the beneficiaries, with the following exceptions:

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

11 (2) benefits due to a minor or incompetent.

12 ~~(A)(j)~~ ~~Subject to the discretion of the Industrial Commission, any~~ Any benefits due to a minor pursuant to ~~G.S. §~~
13 ~~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
14 the minor if the minor remains in the physical custody of the parent as natural guardian. If the minor is not in the
15 physical custody of the parent as natural guardian, ~~the Industrial Commission may order that~~ payment shall be made
16 through some other ~~proper~~ person appointed by a court of competent ~~jurisdiction, jurisdiction or to such other person~~
17 under such terms as the Commission finds is in the best interests of the parties. When a beneficiary reaches the age
18 of 18, any remaining benefits shall be paid directly to the beneficiary.

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

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

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

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

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

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

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

1 | ~~(B)~~(2) the decedent's name, social security number, employer, insurance carrier or servicing agent, and
2 | the date of the injury giving rise to this claim;

3 | ~~(C)~~(3) a Form 22 Statement of Days Worked or Earnings of Injured Employee or stipulation as to average
4 | weekly wage;

5 | ~~(D)~~(4) any affidavits regarding dependents;

6 | ~~(E)~~(5) the death certificate;

7 | ~~(F)~~(6) ~~I.C. a Form 29;~~ 29 Supplemental Report for Fatal Accidents;

8 | ~~(G)~~(7) Guardian ~~ad Litem~~ ad litem forms, if any beneficiary is a minor or incompetent;

9 | ~~(H)~~(8) proof of beneficiary status, such as marriage license, birth certificate, or divorce decree;

10 | ~~(I)~~(9) medical records, if any;

11 | ~~(J)~~(10) a statement of payment of medical expenses incurred, if any; and

12 | ~~(K)~~(11) a funeral bill or stipulation as to payment of the funeral benefit.

13 | ~~(3) Upon receipt of said information and notice to potential beneficiaries, the Deputy Commissioner shall~~
14 | ~~render a written Opinion and Award.~~

15 | ~~(g)(p)~~ Any attorney seeking fees for the representation of in an uncontested claim shall file an affidavit or itemized
16 | statement in support of an award of attorney's fees.

17 |
18 | *History Note: Authority G.S. 97-38; 97-39; 97-80(a);*

19 | *Eff. June 1, 2000;*

20 | *Amended Eff. January 1, 2013; January 2, 2011.*

1 04 NCAC 10A .0410 is adopted with changes as published in 27:02 NCR 179 as follows:

2 **04 NCAC 10A .0410 COMMUNICATION FOR MEDICAL INFORMATION**

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

7 (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
8 provide the following to the Commission:

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

14 (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,
15 the employer shall provide the following to the Commission:

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

21 (d) When an employer seeks the Commission's authorization for other forms of communication pursuant to G.S. 97-
22 25.6(g), the employer shall follow the procedures for motions in Rule _0609 of this Subchapter.

23

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

25 *Eff. January 1, 2013.*

26

1 04 NCAC 10A .0501 is amended with changes as published in 27:02 NCR 179 as follows:

2
3 **SECTION .0500 – AGREEMENTS**
4

5 **04 NCAC 10A .0501 AGREEMENTS FOR PROMPT PAYMENT OF COMPENSATION**

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

8 (b) No agreement for permanent disability ~~will~~ shall be approved until the ~~material~~ relevant medical and vocational
9 records known to exist in the case have been filed with the ~~Industrial~~ Commission. When requested by the
10 ~~Industrial~~ Commission, the parties shall file any additional documentation necessary to determine whether the
11 employee is receiving the disability compensation to which he or she is entitled and that an employee qualifying for
12 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
13 favorable remedy.

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

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

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

32 (f) After the employer, ~~or carrier/administrator~~ carrier, or administrator has received a memorandum of agreement
33 ~~which~~ that has been signed by the employee and the employee's attorney of record, if any, ~~it~~ the employer, carrier, or
34 administrator shall have has 20 days within which to submit the memorandum of agreement to the ~~Industrial~~
35 Commission for review and approval or within which to show ~~good~~ cause for not submitting the memorandum of
36 agreement signed only by the employee. ~~employee; provided, however, that for good cause shown, the 20 day period~~
37 ~~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~~

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

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

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

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

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

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

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

25 ~~(5)~~(4) The settlement agreement contains a list of all known medical expenses of the employee related to
26 the injury to the date of the settlement agreement, including medical expenses that the employer,
27 carrier, or administrator disputes, when the employer or insurer has not agreed to pay all medical
28 expenses of the employee related to the injury up to the date of the settlement agreement.

29 ~~(6)~~(5) The settlement agreement contains a list of the unpaid medical expenses, if known, that ~~shall~~ will
30 be paid by the employer, carrier, or administrator, if there are unpaid medical expenses ~~which~~
31 ~~that the~~ employer or carrier has agreed to pay. The settlement agreement also contains a list of
32 unpaid medical expenses, if known, that ~~shall~~ will be paid by the employee, if there are unpaid
33 medical expenses that the employee has agreed to pay.

34 ~~(7)~~(6) The settlement agreement provides that a party who has agreed to pay a disputed unpaid medical
35 expense ~~shall~~ will notify in writing the unpaid ~~medical~~ health care provider of the party's
36 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 ~~(4)~~(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.*
30

1 04 NCAC 10A .0503 is amended as published in 27:02 NCR 181 as follows:

2

3 **04 NCAC 10A .0503 NOTICE OF LAST PAYMENT FILING REQUIREMENT**

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

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

11

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

13 *Eff. January 1, 1990;*

14 *Amended Eff. January 1, 2013.*

15

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

1 04 NCAC 10A .0606 is amended with changes as published in 27:02 NCR 184 as follows:

2

3 **04 NCAC 10A .0606 DISCOVERY - POST HEARING**

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

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

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

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

11

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

13 *Eff. January 1, 1990;*

14 *Amended Eff. January 1, 2013.*

15

1 04 NCAC 10A .0610 is amended with changes as published in 27:02 NCR 187 as follows:

2
3 **04 NCAC 10A .0610 PRE-TRIAL AGREEMENT**

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

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

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

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

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

35 ~~(b)(d)~~ Any party may request a pre-trial conference ~~when that party deems that such a conference would to~~ aid in
36 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 ~~calendared, or to the Team~~
2 | ~~Coordinator for the geographical area, if any.~~ calendared.

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.*

7

1 04 NCAC 10A .0611 is amended with changes as published in 27:02 NCR 187 as follows:

2
3 **04 NCAC 10A .0611 HEARINGS BEFORE THE COMMISSION**

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

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

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

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

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

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

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

30
31 *History Note:* Authority G.S. 97-79; 97-80(a); 97-84; 97-91;
32 Eff. January 1, 1990;
33 Amended Eff. January 1, 2013; June 1, 2000.
34

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;~~

- 1 (2) the employee's name, address, and last four digits of his or her social security number;
- 2 (3) the date of injury and a description of the workplace injury, including the body parts known to be
- 3 affected;
- 4 (4) an itemized list of the medical fees in dispute, including CPT codes relating specific charges to the
- 5 Workers' Compensation Medical Fee Schedule, and explanations directly relating each charge to
- 6 the employee's workplace injury;
- 7 (5) a copy of the Form 26I *Medical Provider Dispute Resolution Questionnaire* submitted by the
- 8 [Medical Provider]health care provider, including all accompanying materials, and any response
- 9 received back by the Medical Provider from the employer or carrier contacted;
- 10 (6) a copy of the written request for assistance submitted to the Medical Fees Section of the
- 11 Commission;
- 12 (7) a copy of the written summary by the Medical Fees Section of the informal resolution process and
- 13 outcome;
- 14 (8) a sworn affidavit by the [Medical Provider]health care provider that states:
- 15 (A) the [Medical Provider]health care provider has treated the employee;
- 16 (B) the medical fees itemized by the [Medical Provider]health care provider are current and
- 17 unpaid; and
- 18 (C) the [Medical Provider]health care provider reasonably believes that the employer or
- 19 carrier named on the Form 26I *Medical Provider Dispute Resolution Questionnaire* is
- 20 obligated to pay the fees under the Workers' Compensation Act; and
- 21 (9) a certification of service upon both the employee and the employer or carrier named on the Form
- 22 26I *Medical Provider Dispute Resolution Questionnaire*.

23 (g) A [medical-]health care provider who has been denied intervention may request a review by the Commission by

24 filing a written request with the Docket Section of the Industrial Commission within 10 days of receipt of the order

25 denying intervention.

26 (h) The request for review by the Commission shall be served on all parties to the workers' compensation claim and

27 include:

- 28 (1) a statement of facts necessary to an understanding of the issue(s);
- 29 (2) a statement of the relief sought;
- 30 (3) a copy of the motion to intervene, including all attachments required by Paragraph (f) of this Rule;
- 31 and
- 32 (4) a copy of the order denying intervention.

33 (i) Within 10 days after service of a request for review by the Commission, any party to the workers' compensation

34 claim may file a response, including supporting affidavits or documentation not previously ~~file~~ filed with the

35 Commission.

36 (j) The Commission's determination shall be made on the basis of the request for review and any response(s),

37 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 33I *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.*

1 04 NCAC 10A .0615 is amended with changes as published in 27:02 NCR 190 as follows:

2
3 **04 NCAC 10A .0615 CASES REMOVED FROM A HEARING CALENDAR**

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

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

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

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

15
16 *History Note: Authority G.S. 97-80(a); 97-84; 97-91;*
17 *Eff. January 1, 1990;*
18 *Amended Eff. January 1, 2013; June 1, 2000.*
19

1 04 NCAC 10A .0617 is amended with changes as published in 27:02 NCR 191 as follows:

2
3 **04 NCAC 10A .0617 ATTORNEYS RETAINED FOR PROCEEDINGS**

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

6 (a) Any attorney who is retained by a party in a proceeding before the Commission shall comply with the applicable
7 rules of the North Carolina State Bar. A copy of a notice of representation shall be served upon all other counsel
8 and all unrepresented parties. Thereafter, all notices required to be served on a party shall be served upon the
9 attorney. No direct contact or communication concerning contested matters may be made with a represented party
10 by the opposing party or any person on its behalf, without the attorney's permission except as permitted by G.S. 97-
11 32 or other applicable law.

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

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

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

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

27
28 *History Note: Authority G.S. 97-80(a); 97-90; 97-91;*

29 *Eff. January 1, 2011;*

30 *Amended Eff. January 1, 2013.*

31

1 04 NCAC 10A .0618 is adopted with changes as published in 27:02 NCR 191 as follows:

2

3 **04 NCAC 10A .0618 DISQUALIFICATION OF A COMMISSIONER OR DEPUTY COMMISSIONER**

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

7

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

9

Eff. January 1, 2013.

10

1 04 NCAC 10A .0619 is adopted as published in 27:02 NCR 191 as follows:

2
3 **04 NCAC 10A .0619 FOREIGN LANGUAGE INTERPRETERS**

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

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

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

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

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

27 (f) Foreign language interpreters shall abide by the Code of Conduct and Ethics of Foreign Language Interpreters
28 and Translators, contained in Part 4 of Policies and Best Practices for the Use of Foreign Language Interpreting and
29 Translating Services in the North Carolina Court System and promulgated by the North Carolina Administrative
30 Office of the Courts, and shall interpret, as word for word as is practicable, without editing, commenting, or
31 summarizing, testimony or other communications. The Code of Conduct and Ethics of Foreign Language
32 Interpreters and Translators is hereby incorporated by reference and includes subsequent amendments and editions.
33 A copy may be obtained at no charge from the North Carolina Administrative Office of the Court's website,
34 <http://www.nccourts.org/Citizens/CPrograms/Foreign/Documents/guidelines.pdf>, or upon request, at the offices of
35 the Commission, located in the Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, between the
36 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 04 NCAC 10A .0702A is repealed as published in 27:02 NCR 194 as follows:

2

3 **04 NCAC 10A .0702A REMAND FROM THE APPELLATE COURTS**

4

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

6 Repealed Eff. January 1, 2013.

7

1 04 NCAC 10A .0703 is amended as published in 27:02 NCR 194 as follows:

2
3 **04 NCAC 10A .0703 APPEAL TO THE COURT OF APPEALS**

4 ~~(a) Orders, Decisions, and Awards made in a summary manner, without detailed findings of fact, including~~
5 ~~Decisions on applications to approve agreements to pay compensation and medical bills, applications to approve the~~
6 ~~termination or suspension of compensation, applications for change in treatment or providers of medical~~
7 ~~compensation, applications to change the interval of payments, and applications for lump sum payments of~~
8 ~~compensation may be appealed by filing a Motion for Reconsideration with the Industrial Commission and~~
9 ~~addressed to the Administrative Officer who made the Decision or may be reviewed by requesting a hearing within~~
10 ~~15 days of receipt of the Decision or receipt of the ruling on a Motion to Reconsider. These issues may also be~~
11 ~~raised and determined at a subsequent hearing.~~

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

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

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

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

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

34
35 *History Note: Authority G.S. 97-80(a); 97-86;*
36 *Eff. March 15, 1995;*
37 *Amended Eff. January 1, 2013; January 1, 2011; June 1, 2000.*

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.*

7

8

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

1 04 NCAC 10A .0901 is amended as published in 27:02 NCR 195 as follows:

2

3

SECTION .0900 – REPORT OF EARNINGS

4

04 NCAC 10A .0901 CHECK ENDORSEMENT

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

9

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

15

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

17 *Eff. June 1, 2000;*

18 *Amended Eff. January 1, 2013.*

19

1 04 NCAC 10A .0902 is amended as published in 27:02 NCR 195 as follows:

2
3 **04 NCAC 10A .0902 NOTICE**

4 A self-insured employer, carrier or third party administrator shall not use check endorsement language on the back
5 of an employee's workers' compensation benefit check unless the employee has been provided the following Notice
6 sent by certified mail return receipt requested:
7

8 NOTICE TO EMPLOYEE RECEIVING WORKERS' COMPENSATION BENEFITS
9

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

12 Please TAKE NOTICE of the following:

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

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

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

31 (d) Making false statements for the purpose of obtaining workers' compensation benefits may
32 result in civil and criminal penalties.
33

34 *History Note: Authority G.S. 97-80(a); 97-88.2;*
35 *Eff. June 1, 2000;*
36 *Amended Eff. January 1, 2013.*
37

1 04 NCAC 10A .0903 is amended as published in 27:02 NCR 195 as follows:

2
3 **04 NCAC 10A .0903 EMPLOYEE'S OBLIGATION TO REPORT EARNINGS**

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

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

9 (c) The employee shall complete and return the Form 90 *Report of Earnings* within 15 days after receipt of a Form
10 ~~90.~~ 90 *Report of Earnings*. If the employee fails to complete and return the Form 90 *Report of Earnings* within 30
11 days of receipt of the form, the self-insured employer, carrier or third-party administrator may seek an order from
12 the Executive Secretary allowing the suspension of benefits. The self-insured employer, carrier or third-party
13 administrator shall not suspend benefits without Commission ~~approval~~approval pursuant to the Workers'
14 Compensation Act. If the Commission suspends benefits for failure to complete and return a Form 90 *Report of*
15 *Earnings*, the self-insured employer, carrier or third-party administrator shall ~~immediately~~ reinstate benefits to the
16 employee with back payment as soon as the Form 90 *Report of Earnings* is submitted by the employee. If benefits
17 are not ~~immediately~~ reinstated, the employee ~~should~~ shall submit a written request for an Order from the Executive
18 Secretary instructing the self-insured employer, carrier or third-party administrator to reinstate benefits. If the
19 employee's earnings report does not indicate continuing eligibility for partial or total disability compensation, ~~then~~
20 the self-insured employer, carrier or third-party administrator may apply to the Commission to terminate or modify
21 benefits ~~pursuant to Commission procedure, including by filing a Form 24, 24 *Application to Terminate or Suspend*~~
22 *Payment of Compensation* 26, or 33, or Form 33 *Request that Claim be Assigned for Hearing*.

23
24 *History Note:* Authority G.S. 97-80(a); 97-88.2;
25 Eff. June 1, 2000;
26 Amended Eff. January 1, 2013; August 1, 2006.

27

1 04 NCAC 10A .1001 is adopted with changes as published in 27:02 NCR 196 as follows:

2
3 **SECTION .1000 – PREAUTHORIZATION FOR MEDICAL TREATMENT**
4

5 **04 NCAC 10A .1001 PREAUTHORIZATION FOR SURGERY AND INPATIENT TREATMENT**

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

8 (b) As used in this Section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 ~~(i)-(g)(i)~~ Insurers that utilize a Peer Review Physician in making preauthorization decisions shall indicate in their
29 preauthorization review policy the name, licensure, and specialty area of that Peer Review Physician and shall
30 provide a profile ("Peer Review Physician Profile") of that Peer Review Physician. The Peer Review Physician
31 shall be licensed in either North Carolina, South Carolina, Georgia, Virginia, or Tennessee and shall hold
32 professional qualifications, certifications, and fellowship training in a like specialty that is at least equal to that of
33 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 ~~(l)~~ ~~(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)~~ ~~(l)~~(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.*

25

1 04 NCAC 10B .0101 is amended with changes as published in 27:02 NCR 197 as follows:

2
3 **SUBCHAPTER 10B – TORT CLAIMS RULES**

4
5 **SECTION .0100 – ADMINISTRATION**

6
7 **04 NCAC 10B .0101 LOCATION OF OFFICES AND HOURS OF BUSINESS**

8 For purposes of this Subchapter, ~~The~~ the offices of the North Carolina Industrial Commission (Commission)
9 (hereinafter “Industrial Commission”) are located in the Dobbs Building, 430 North Salisbury Street, ~~in~~ Raleigh,
10 North Carolina. ~~The General Mailing Address is North Carolina Industrial Commission, 4319 Mail Service Center,~~
11 ~~Raleigh, NC 27699 4319. The same office hours will be observed by the Industrial Commission as are, or may be,~~
12 ~~observed by other State offices in Raleigh. The offices are open between Documents [which] that are not being filed~~
13 ~~electronically may be filed between the hours of 8:00 a.m. and 5:00 p.m. to accept documents for filing only.~~
14 Documents related to tort claims are permitted to be filed electronically until 11:59 p.m. on the required filing date.

15
16 *History Note: Authority G.S. 143-291; 143-300;*
17 *Eff. January 1, 1989;*
18 *Amended Eff. January 1, 2013; May 1, 2000.*
19

1 04 NCAC 10B .0102 is amended with changes as published in 27:02 NCR 197 as follows:

2

3 **04 NCAC 10B .0102 OFFICIAL FORMS**

4

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

7 (a) Copies of the Commission's rules, forms, and minutes regarding tort claims can be obtained by contacting the
8 Commission in person, by written request mailed to 4340 Mail Service Center, Raleigh, NC 27699-4340, or from
9 the Commission's website.

10 (b) The use of any printed forms other than those provided by the Commission is prohibited, except that insurance
11 carriers, self-insureds, attorneys and other parties may reproduce [approved]forms for their own use, provided:

12 (1) No statement, question, or information blank contained on the Commission form is omitted from
13 the substituted form.

14 (2) The substituted form is identical in size and format with the Commission form.

15

16 *History Note: Authority G.S. 143-300;*

17 *Eff. January 1, 1989;*

18 *Amended Eff. January 1, 2013; May 1, 2000.*

19

1 04 NCAC 10B .0103 is amended as published in 27:02 NCR 197 as follows:

2
3 **04 NCAC 10B .0103 FILING FEES**

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

5 ~~(1) Form T 1, Claim for Damages Under Tort Claims Act, N.C. Gen. Stat. § 143-297.~~

6 ~~(2) Form T 3, Release of Tort Claim Under N.C. Gen. Stat. § 143-297, et seq.~~

7 ~~(3) Form T44, Application for Review. N.C.G.S. 143-292~~

8 ~~(4) Such other forms relating to Tort Claims which, from time to time, may be promulgated by the Industrial~~
9 ~~Commission.~~

10 ~~(b) The use of any printed forms other than those approved and adopted by the Industrial Commission is prohibited.~~
11 ~~However, a claim for damages under the Tort Claims Act, and an answer or other responsive pleading by a~~
12 ~~defendant, may be filed by way of an original typed claim or answer and other responsive pleading which is similar~~
13 ~~in format to a civil pleading in the General Courts of Justice, and which is verified.~~

14 ~~(a) No tort claim shall be accepted for filing with the Commission unless the claim is accompanied by an attorney's~~
15 ~~check, certified check, money order, or electronic transfer of funds in payment of a filing fee in an amount equal to~~
16 ~~the filing fee required for the filing of a civil action in the Superior Court division of the General Court of Justice.~~

17 ~~(b) The provisions of Paragraph (a) of this Rule notwithstanding, a tort claim that is accompanied by a Petition to~~
18 ~~Sue as an Indigent shall be accepted for filing upon the date of its receipt.~~

19 ~~(c) A Petition to Sue as an Indigent shall consist of an affidavit sufficient to satisfy the provisions of G.S. 1-110,~~
20 ~~stating that plaintiff is unable to comply with Paragraph (a) of this Rule.~~

21 ~~(d) If the Commission determines the plaintiff is able to pay all or any part of the fees assessed under this Rule, an~~
22 ~~Order shall be issued directing payment of all or any part of that fee, and the plaintiff shall, within 30 days from his~~
23 ~~receipt of the Order, forward to the Commission an attorney's check, certified check, money order, or electronic~~
24 ~~fund transfer for the full amount required to be paid. Failure to submit the required amount of the filing fee within~~
25 ~~this time shall result in the tort claim being dismissed without prejudice.~~

26 ~~(e) Upon consideration of a prison inmate's Petition to Sue as an Indigent, the Commission may determine that the~~
27 ~~inmate's tort claim is frivolous and dismiss the claim pursuant to G.S. 1-110. Appeals from the dismissal of a tort~~
28 ~~claim pursuant to this statute shall proceed directly to the Full Commission and shall be decided without oral~~
29 ~~argument. The Commission shall forward a copy of the file to the Attorney General's Office without cost upon~~
30 ~~plaintiff's notice of appeal to the Full Commission.~~

31
32 *History Note: Authority G.S. 143-291.2; 143-300;*

33 *Eff. January 1, 1989;*

34 *Amended Eff. January 1, 2013; May 1, 2000*

35

1 04 NCAC 10B .0104 is amended as published in 27:02 NCR 198 as follows:

2

3 **04 NCAC 10B .0104 FILING BY FACSIMILE TRANSMISSION**

4 Filing documents pertaining to tort claims by ~~telefacsimile-facsimile~~ transmission is permitted.~~shall be allowed~~
5 ~~when specific permission is granted by the Dockets Director or by the person designated by the Chair to determine~~
6 ~~matters related to the Tort Claims Act or by the Chair. If a Any filing fee is required, it must required shall be~~
7 received by the ~~Industrial~~ Commission contemporaneously with the ~~telefacsimile-facsimile~~ either by electronic
8 transfer of funds. ~~funds or other procedure accepted by the Commission. The Industrial Commission may adopt~~
9 ~~procedures for filing by telefacsimile transmission in other instances.~~

10

11 *History Note: Authority G.S. 143-300; 143-291; 143-291.2; 143-297;*

12 *Eff. May 1, 2000;*

13 *Amended Eff. January 1, 2013.*

14

1 04 NCAC 10B .0201 is amended as published in 27:02 NCR 198 as follows:

2
3 **SECTION .0200 - CLAIMS PROCEDURES**
4

5 **04 NCAC 10B .0201 RULES OF CIVIL PROCEDURE**

6 ~~(a) The Rules of Civil Procedure as provided in N.C.G.S. G.S. 1A-1 shall apply in tort claims before the Industrial~~
7 ~~Commission, to the extent that such Rules—the Rules of Civil Procedure~~ are not inconsistent with the Tort Claims
8 Act. In the event of such ~~an inconsistency, a conflict with the Rules of Civil Procedure,~~ the Tort Claims Act and
9 ~~these the Rules in this Subchapter~~ shall control.

10 ~~(b) In medical malpractice cases filed by or on behalf of prison inmates where the plaintiff is alleging that a health~~
11 ~~care provider as defined in G.S. § 90-21.11 failed to comply with the applicable standard of care under G.S. § 90-~~
12 ~~21.12 and the defendant has filed a Motion to Dismiss the claim, all discovery is stayed until the following occurs:~~

13 (1) ~~An informal recorded telephonic hearing or other similar method of informal hearing as~~
14 ~~determined appropriate by the Industrial Commission is held before a Deputy Commissioner for~~
15 ~~the purpose of determining~~

16 (A) ~~whether a claim for medical malpractice has been stated;~~

17 (B) ~~whether expert testimony is necessary for the plaintiff to prevail; and~~

18 (C) ~~if expert testimony is deemed necessary, whether the plaintiff will be able to produce~~
19 ~~such testimony on the applicable standard of care.~~

20 (2) ~~Upon receipt of a Motion to Dismiss and Request for Telephonic Hearing from the defendant, the~~
21 ~~Industrial Commission shall issue an order setting the motion on a hearing docket and the case~~
22 ~~will be assigned to a Deputy Commissioner. Thereafter, the parties shall have 30 days to submit~~
23 ~~medical records applicable to the claim to the Dockets Director or to the Deputy Commissioner~~
24 ~~before whom the case is set.~~

25 (3) ~~If the defendant's Motion to Dismiss is granted, an appeal lies to the Full Commission. If~~
26 ~~defendant's Motion to Dismiss is denied, the case will proceed as any other Tort Claims case.~~

27
28 *History Note: Authority G.S. 143-300;*

29 *Eff. January 1, 1989;*

30 *Amended Eff. January 1, 2013; January 1, 2011; May 1, 2000*

31

1 04 NCAC 10B .0202 is amended with changes as published in 27:02 NCR 198 as follows:

2
3 **04 NCAC 10B .0202 MEDICAL MALPRACTICE CLAIMS BY PRISON INMATES**

4 ~~(a) No claim shall be accepted for filing with the Industrial Commission which is not accompanied by an attorney's~~
5 ~~check, certified check, money order, or electronic transfer of funds in payment of a filing fee in an amount equal to~~
6 ~~the filing fee required for the filing of a civil action in the Superior Court division of the General Court of Justice.~~

7 ~~(b) The provisions of Paragraph (a) of this Rule notwithstanding, a claim which is accompanied by a Petition to Sue~~
8 ~~as an Indigent shall be accepted for filing upon the date of its receipt.~~

9 ~~(c) A Petition to Sue as an Indigent shall consist of the following:~~

10 ~~(1) — An affidavit sufficient to satisfy the provisions of, stating that plaintiff is unable to comply with Paragraph~~
11 ~~(a) of this Rule.~~

12 ~~(b) If the plaintiff is an inmate in the North Carolina Department of Correction, a report by the Department of~~
13 ~~Correction stating the balance of plaintiff's prison trust account, together with an accounting of all credits to and~~
14 ~~withdrawals from that trust account during the prior six months.~~

15 ~~(d) The granting or denial of permission to sue as an indigent shall be in the sole discretion of the Industrial~~
16 ~~Commission.~~

17 ~~(e) If, in the discretion of the Industrial Commission, it is determined that plaintiff is able to pay all or any part of~~
18 ~~the fees assessed under this Rule, an Order shall be issued directing payment of all or any part of that fee, and the~~
19 ~~plaintiff shall, within 30 days from his receipt of the Order, forward to the Industrial Commission an attorney's~~
20 ~~check, certified check money order, or electronic fund transfer for the full amount which is required to be paid.~~
21 ~~Failure to submit the required amount of the filing fee within this time shall result in the claim being dismissed~~
22 ~~without prejudice.~~

23 ~~(f) Upon consideration of an inmate's petition to sue as an indigent, the Industrial Commission may determine that~~
24 ~~the inmate's tort claim is frivolous and dismiss the claim pursuant to . Appeals from the dismissal of a claim~~
25 ~~pursuant to the statute shall proceed directly to the Full Commission and shall be decided without oral argument.~~
26 ~~The Commission shall forward a copy of the file to the Attorney General's Office without cost upon plaintiff's notice~~
27 ~~of appeal to the Full Commission.~~

28 (a) In medical malpractice cases filed by or on behalf of prison inmates where the plaintiff is alleging that a health
29 care provider as defined in G.S. 90-21.11 failed to comply with the applicable standard of care under G.S. 90-21.12
30 and the defendant has filed a Motion to Dismiss the claim, all discovery is stayed until the following **occurs**:

31 (1) A recorded hearing in which no evidence is taken is held before a Deputy Commissioner or a
32 Special Deputy Commissioner for the purpose of determining:

33 (A) whether a claim for medical malpractice has been stated;

34 (B) whether expert testimony is necessary for the plaintiff to prevail; and

35 (C) if expert testimony is deemed necessary, whether the plaintiff will be able to produce
36 such testimony on the applicable standard of care.

1 (2) Upon receipt of a Motion to Dismiss and Request for Hearing from the defendant, the
2 Commission issues an order setting the motion on a hearing docket and the case is assigned to a
3 Deputy Commissioner or a Special Deputy Commissioner.

4 (b) If the defendant's Motion to Dismiss is granted, an appeal lies to the Full Commission.

5 (c) If defendant's Motion to Dismiss is denied, the case shall proceed as any other tort claims case. Defendant shall
6 produce medical records to plaintiff within 45 days of the Order of the Commission denying defendant's Motion to
7 Dismiss. Plaintiff shall then have 120 days to comply with Rule 9(j) of the North Carolina Rules of Civil Procedure.

8
9 History Note: Authority G.S. 143-300;
10 Eff. January 1, 1989;
11 Recodified from 4 NCAC 10B .0206 Eff. April 17, 2000;
12 Amended Eff. January 1, 2013; May 1, 2000.

1 04 NCAC 10B .0204 is amended with changes as published in 27:02 NCR 199 as follows:

2
3 **04 NCAC 10B .0204 MOTIONS**

4 ~~In all cases where it is proposed that minors or incompetents shall sue by their guardian ad litem, the Industrial~~
5 ~~Commission shall appoint such guardian ad litem upon the written application of a reputable person closely~~
6 ~~connected with such minor or incompetent; but if such person will not apply, then, upon the application of some~~
7 ~~reputable citizen. The Industrial Commission shall make such appointment only after due inquiry as to the fitness of~~
8 ~~the person to be appointed.~~

9 (a) All motions regarding tort claims shall be filed with the Docket Section, unless the case is currently calendared
10 before a Commissioner or Deputy Commissioner. All motions in calendared cases shall be filed with the
11 Commissioner or Deputy Commissioner.

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

15 (c) All motions and responses thereto shall include a proposed Order to be considered by the Commission.

16 (d) By motion of the parties, or on its own motion, the Commission may enlarge the time for an act required or
17 allowed to be done under the Rules in this Subchapter ~~[to prevent manifest injustice]~~ **in the interests of justice** or to
18 promote judicial economy. An enlargement of time may be granted either before or after the relevant time
19 requirement has elapsed.

20 (e) Motions to continue or remove a case from the hearing docket shall be made as much in advance as possible of
21 the scheduled hearing and shall be made in writing. The moving party shall state that the other parties have been
22 advised of the motion and relate the position of the other parties regarding the motion. Oral motions are permitted in
23 emergency situations.

24 (f) The responding party to a motion, with the exception of motions to continue or to remove a case from a hearing
25 docket, has 10 days after a motion is served during which to file and serve copies of a response in opposition to the
26 motion. The Commission may shorten or extend the time for responding to any motion ~~[to prevent manifest~~
27 **injustice]** **in the interests of justice** or to promote judicial economy.

28 (g) Notwithstanding Paragraph (f) of this Rule, a motion may be acted upon at any time by the Commission, despite
29 the absence of notice to all parties and without awaiting a response. A party who has not received actual notice of
30 the motion or who has not filed a response at the time such action is taken and who is adversely affected by the
31 ruling may request that it be reconsidered, vacated, or modified. Motions shall be determined without oral
32 argument, unless the Commission orders otherwise in the ~~[interest]~~ **interests** of justice.

33 (h) When a Motion to Amend Pleadings has been filed, served upon opposing parties, and not previously ruled
34 upon, the Commissioner or Deputy Commissioner may permit amendment of pleadings at the time of the hearing
35 and then proceed to a determination of the case based on the evidence presented at the time of the hearing without
36 requiring additional pleadings.

1 (i) Motions to dismiss or for summary judgment filed by the defendant on the ground that plaintiff has failed to
2 name the individual officer, agent, employee or involuntary servant whose alleged negligence gave rise to the claim,
3 or has failed to properly name the department or agency of the State with whom such person was employed, shall be
4 ruled upon following the completion of discovery.

5 (j) Motions to reconsider or amend an order, opinion and award, or decision and order, made prior to giving notice
6 of appeal to the Full Commission, shall be directed to the Deputy Commissioner who authored the Opinion and
7 Award.

8 (k) Upon request of either party, or upon motion of the Commission, motions shall be set for hearing before a
9 Commissioner or Deputy Commissioner.

10
11 *History Note: Authority G.S. 143-300; 143-296;*
12 *Eff. January 1, 1989;*
13 *Recodified from 4 NCAC 10B .0203 Eff. April 17, 2000;*
14 *Amended Eff. January 1, 2013; May 1, 2000.*
15
16

1 04 NCAC 10B .0205 is amended with changes as published in 27:02 NCR 200 as follows:

2
3 **04 NCAC 10B .0205 MEDIATION**

4 ~~(a) All motions in cases which are currently calendared before a Commissioner or Deputy Commissioner shall be~~
5 ~~sent directly to that Commissioner or Deputy Commissioner at the Industrial Commission. Before a case is~~
6 ~~calendared, or after a case has been continued, or removed, or after a case has been heard and a Decision and Order~~
7 ~~entered, motions shall be directed to the Executive Secretary of the Industrial Commission or the person designated~~
8 ~~by the Chair to determine these matters, if known.~~

9 ~~(b) A motion shall state with particularity the grounds on which it is based, the relief sought, and a brief statement~~
10 ~~of the opposing party's position, if known. The party making the motion shall make a reasonable and diligent effort~~
11 ~~to ascertain the position of the opposing party and if unable to do so, should specify the reasonable efforts made. A~~
12 ~~proposed Order shall be submitted with all motions. Service shall be made on all other parties.~~

13 ~~The above provisions shall not apply to inmate torts, except that service shall be made on all other parties.~~

14 ~~(c) Motions to continue or remove a case from the hearing docket on which the case is set must be made well in~~
15 ~~advance of the scheduled hearing and shall be made in writing. In all cases, the moving party must state that the~~
16 ~~other parties have been advised of the motion and relate the position of the other parties regarding the motion. Oral~~
17 ~~motions shall be permitted in emergency situations for good cause shown.~~

18 ~~(d) The responding party to a motion, with the exception of motions to continue or remove a case from a hearing~~
19 ~~docket, shall have 10 days after a motion is served upon him during which to file and serve copies of response in~~
20 ~~opposition to the motion. The Industrial Commission may shorten or extend the time for responding to any motion.~~

21 ~~(e) Notwithstanding the provisions of Paragraph (d) of this Rule, the Industrial Commission may act upon a motion~~
22 ~~at any time, despite the absence of notice to all parties, and without awaiting a response. A party who has not~~
23 ~~received actual notice of such a motion prior to the entry of a ruling by the Industrial Commission or who has not~~
24 ~~filed a response at the time such ruling is entered and who is adversely affected by the ruling may request~~
25 ~~reconsideration, vacation, or modification of the ruling. Motions will be determined without argument, unless the~~
26 ~~Industrial Commission orders otherwise.~~

27 ~~(f) In a case in which a Motion to Amend Pleadings has been filed, the Commissioner or Deputy Commissioner~~
28 ~~may permit amendment of pleadings at the time of the hearing and then proceed to a determination of the case based~~
29 ~~on the evidence presented at the hearing without requiring additional pleadings.~~

30 ~~(g) Motions to dismiss or for summary judgment for the defendant on the ground that plaintiff has failed to~~
31 ~~specifically name the individual officer, agent, employee or involuntary servant whose alleged negligence gave rise~~
32 ~~to the claim, or failure to properly name the department or agency of the State with whom such person was~~
33 ~~employed, shall be ruled upon following discovery.~~

34 ~~(h) In appropriate cases, motions may be set for hearing before a Commissioner or Deputy Commissioner upon~~
35 ~~request of either party or upon the Commission's own motion.~~

36 (a) The parties to tort claims, by agreement or Order of the Commission, shall participate in mediation. Any party
37 participating in mediation is bound by the Rules for Mediated Settlement and Neutral Evaluation Conferences of the

1 Commission found in 04 NCAC 10G, except to the extent the same conflict with the Tort Claims Act or the rules in
2 this Subchapter, in which case the Tort Claims Act and the rules in this Subchapter apply.

3 (b) Every effort shall be made to make ~~the~~ an employee or agent of the named governmental entity or agency
4 available via telecommunication. Mediation shall not be delayed due to the absence or unavailability of the
5 employee or agent of the named governmental entity or agency.

6 ~~(e) Consistent with 04 NCAC 10G .0101(g), the State shall not be compelled to participate in a mediation or neutral~~
7 ~~evaluation procedure with a prison inmate.~~

8
9 *History Note: Authority G.S. 143-300; 143-295; 143-296*

10 *Eff. January 1, 1989;*

11 *Amended Eff. January 1, 2013; January 1, 2011; May 1, 2000.*

12

1 04 NCAC 10B .0206 is amended with changes as published in 27:02 NCR 201 as follows:

2
3 **04 NCAC 10B .0206 HEARINGS**

4 (a) The ~~Industrial~~ Commission may, on its own motion, order a hearing, rehearing, or pre-trial conference of any
5 tort claim in dispute.

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

8 ~~(c) In cases involving a plaintiff who is an inmate in the North Carolina Department of Correction, the Industrial~~
9 ~~Commission shall set contested cases for hearing as follows:~~

10 ~~(1) In the prison unit where plaintiff is incarcerated or in some other prison facility or secure facility agreed~~
11 ~~upon by the Industrial Commission and the Attorney General's office; or~~

12 ~~(2) By videoteleconference according to procedures adopted by the Industrial Commission; or~~

13 ~~(3) By telephone conference according to procedures adopted by the Industrial Commission.~~

14 ~~(4)(c)~~ The ~~Industrial~~ Commission may issue writs of habeas corpus ad testificandum in cases arising under the Tort
15 Claims Act. Requests for issuance of a writ of habeas corpus ad testificandum ~~should~~ shall be sent to the ~~Dockets~~
16 ~~Department Docket Section~~ of the ~~Industrial~~ Commission if the case has not been set on a calendar for hearing. If
17 the case has been set ~~for on a hearing calendar~~, the request ~~should~~ shall be sent to the ~~Deputy~~ Commissioner or
18 Deputy Commissioner before whom the case is set.

19 ~~(e)(d)~~ The ~~Industrial~~ Commission shall give ~~reasonable~~ notice of a hearing in every case. A motion for a
20 continuance shall be allowed only ~~in the discretion of a~~ by the Commissioner or Deputy Commissioner before whom
21 the case is set. ~~set~~ if required to prevent manifest injustice in the interests of justice or to promote judicial
22 economy. Where a party has not notified the ~~Industrial~~ Commission of the attorney representing the party prior to
23 the mailing of calendars for hearing, notice to that party ~~shall constitute~~ constitutes notice to the party's attorney.

24 ~~(f)(e)~~ In cases involving ~~minimal~~ property ~~damage~~, damage of less than five hundred dollars (\$500.00), the
25 Commission ~~may~~ shall, upon its own motion or upon the motion of either party, order a telephonic hearing on the
26 matter.

27 ~~(g) In cases of multiple claim filings by an inmate, the Industrial Commission may consolidate all of the claims for~~
28 ~~hearing upon the motion of either party or upon the Commission's own motion. Other cases may be consolidated~~
29 ~~according to Rule 42 of the North Carolina Rules of Civil Procedure.~~

30 (f) All subpoenas shall be issued in accordance with Rule 45 of the North Carolina Rules of Civil Procedure, with
31 the exception that production of public records or hospital records as provided in Rule 45(c)(2), shall be served upon
32 the Commissioner or Deputy Commissioner before whom the case is calendared, or upon the Docket Section of the
33 Commission should the case not be calendared.

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

1 *History Note: Authority G.S. 143-300; 143-296;*
2 *Eff. January 1, 1989;*
3 *Recodified from 4 NCAC 10B .0202 Eff. April 17, 2000;*
4 *Amended Eff. January 1, 2013; January 1, 2011; May 1, 2000.*
5

1 04 NCAC 10B .0207 is amended with changes as published in 27:02 NCR 201 as follows:

2
3 **04 NCAC 10B .0207 HEARINGS OF CLAIMS BY PRISON INMATES**

4 ~~Hearing costs shall be assessed in each case set for hearing, including those cases which are settled after being~~
5 ~~calendared and notices mailed, and shall be payable upon submission of a statement by the Industrial Commission.~~
6 ~~In addition to the filing fee, the Industrial Commission may tax costs against a party. Costs payable to the Industrial~~
7 ~~Commission are due upon receipt of a bill or statement from the Commission.~~

8 (a) In tort claims involving a plaintiff who is an inmate in the North Carolina Division of Adult
9 ~~[Corrections]Correction~~, the Commission shall set contested cases or motions for hearing as follows:

10 (1) in the prison unit where plaintiff is incarcerated or in some other prison facility or secure facility;

11 ~~[or]~~

12 (2) by videoteleconference; ~~or~~

13 (3) by telephone conference.

14 (b) In cases involving multiple filings by an inmate, the Commission may, in the ~~[interest]~~ interests of justice and
15 for judicial economy, consolidate all of the claims for hearing upon the motion of either party or upon the
16 Commission's own motion.

17 (c) ~~The witnesses~~[Witnesses] incarcerated by the North Carolina Division of Adult ~~[Corrections]Correction~~ may be
18 subpoenaed by a writ of habeas corpus ad testificandum. Plaintiff shall file an *Application and Writ of Habeas*
19 *Corpus Ad Testificandum*, with a copy to the defendant, for review and approval by the Deputy Commissioner
20 before whom the matter is calendared for an evidentiary hearing in accordance with G.S. 97-101.1. ~~[consistent with~~
21 ~~the Workers' Compensation Act.~~

22 (d) All other subpoenas shall be issued in accordance with Rule 45 of the North Carolina Rules of Civil Procedure,
23 with the exception that production of public records or hospital records as provided in Rule 45(c)(2), shall be served
24 upon the Commissioner or Deputy Commissioner before whom the matter is calendared or upon the Docket Section
25 of the Commission should the case not be calendared.

26
27 *History Note: Authority G.S. 143-300; 143-296; 97-101.1;*
28 *Eff. January 1, 1989;*
29 *Recodified from 4 NCAC 10B .0204 Eff. April 17, 2000;*
30 *Amended Eff. January 1, 2013; May 1, 2000.*

31

1 04 NCAC 10B .0208 is adopted as published in 27:02 NCR 201 as follows:

2 **04 NCAC 10B .0208 HEARING COSTS**

3 Costs relating to tort claims payable to the Commission are due upon receipt of a bill or statement from the
4 Commission.

5
6 History Note: Authority G.S. 143-291.1; 143-291.2; 143-300; 7A-305;
7 Eff. January 1, 2013.

8

1 04 NCAC 10B .0301 is amended as published in 27:02 NCR 201 as follows:

2
3 **SECTION .0300 - APPEALS TO FULL COMMISSION**

4
5 **04 NCAC 10B .0301 SCOPE**

6 ~~A letter or other document expressing an intent to appeal, which is filed within 15 days of receipt of the Decision~~
7 ~~and Order of the Industrial Commission, and which clearly sets forth the Decision and Order from which appeal is~~
8 ~~taken, shall be considered notice of appeal to the Full Commission within the meaning of N.C.G.S. 143-292. Such~~
9 ~~notice shall include a written statement confirming service of a copy of the notice by mail or in person on the~~
10 ~~opposing party or parties.~~

11 The Rules in this Section are the applicable Rules for appeals of cases brought pursuant to Article 31 of Chapter 143
12 of the General Statutes to the Full Commission.

13
14 *History Note:* Authority *G.S. 143-292; 143-300;*
15 *Eff. January 1, 1989;*
16 *Amended Eff. January 1, 2013; May 1, 2000.*

17

1 04 NCAC 10B .0302 is amended as published in 27:02 NCR 202 as follows:

2

3 **04 NCAC 10B .0302 NOTICE OF APPEAL TO THE FULL COMMISSION**

4 ~~Upon receipt of notice of appeal, the Industrial Commission, after taxing appropriate costs, will prepare and supply~~
5 ~~to all parties a transcript of the record of the case and decision from which appeal is being taken to the Full~~
6 ~~Commission.~~

7 A letter expressing an intent to appeal shall be considered notice of appeal to the Full Commission within the
8 meaning of G.S. 143-292, provided that the letter specifies the Order, Opinion and Award, or Decision and Order
9 from which appeal is taken.

10

11 *History Note: Authority G.S. 143-292; 143-300;*

12 *Eff. January 1, 1989;*

13 *Amended Eff. January 1, 2013; May 1, 2000.*

14

15

1 04 NCAC 10B .0303 is amended with changes as published in 27:02 NCR 202 as follows:

2
3 **04 NCAC 10B .0303 PROPOSED ISSUES ON APPEAL**

4 (a) The appellant shall, within 25 days of receipt of the transcript of the record, or receipt of notice that there will be
5 no transcript of the record, file ~~in triplicate~~ with the ~~Industrial Commission, Commission~~ a written statement of the
6 proposed issues that the appellant intends to present on appeal. The statement shall certify service ~~of a copy by mail~~
7 ~~or in person~~ upon the opposing party or parties. ~~The purpose of the proposed~~ Proposed issues on appeal ~~are is~~ to
8 facilitate the preparation of the record on appeal and ~~shall does~~ not limit the scope of the issues presented on appeal
9 in appellant's brief.

10 (b) Failure to file the proposed issues on appeal may result in the dismissal of the appeal either upon the motion of
11 the non-appealing party or upon the Full Commission's own motion.

12
13 *History Note:* Authority G.S. 143-292; 143-300; ~~Dogwood Development and Management Co., LLC v. White~~
14 ~~Oak Transport Co., Inc.~~, 362 N.C. 191 (2008);
15 Eff. January 1, 1989;
16 Amended Eff. January 1, 2013; January 1, 2011; May 1, 2000.
17
18
19

1 04 NCAC 10B .0304 is repealed as published in 27:02 NCR 202 as follows:

2

3 **04 NCAC 10B .0304 DISMISSALS OF APPEALS**

4

5 *History Note: Authority G.S. 143-300;*

6 *Eff. January 1, 1989;*

7 *Recodified from 4 NCAC 10B .0305 Eff. April 17, 2000;*

8 *Amended Eff. May 1, 2000;*

9 *Repealed Eff. January 1, 2013.*

10

11

12

1 04 NCAC 10B .0305 is amended with changes as published in 27:02 NCR 202 as follows:

2
3 **04 NCAC 10B .0305 BRIEFS TO THE FULL COMMISSION**

4 ~~(a) Appellant's brief shall be filed with the Industrial Commission in triplicate no later than 25 days after receipt of~~
5 ~~the transcript of the record or receipt of notice that there will be no transcript.~~

6 ~~(b) Thereafter, appellee's brief shall be filed with the Industrial Commission in triplicate no later than 25 days after~~
7 ~~the service of appellant's brief. When an appellant fails to file a brief, appellee shall file his brief within 25 days~~
8 ~~after appellant's time for filing a brief has expired. If both parties appeal, they shall each file an appellant's and~~
9 ~~appellee's brief on the schedule set forth herein. The parties may file with the Docket Director a written stipulation~~
10 ~~to a single extension of time for each party, not to exceed 30 days, if the matter has not been calendared for hearing.~~

11 ~~(c) A party who fails to file a brief will not be allowed oral argument before the Full Commission. Cases should be~~
12 ~~cited by North Carolina Reports, and preferably, to Southeastern Reports. Counsel shall not discuss matters outside~~
13 ~~the record, assert personal opinions or relate personal experiences, or attribute unworthy acts or motives to opposing~~
14 ~~counsel.~~

15 ~~(d) Each brief filed pursuant to this Rule shall be accompanied by a written certification that the brief has been~~
16 ~~served by mail or in person upon the opposing party or parties.~~

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

26 (b) After request for review has been given to the Full Commission, any motions related to the issues for review
27 before the Full Commission shall be filed with the Full Commission, with service on the other parties. Motions
28 related to the issues for review including motions for new trial, to amend the record, or to take additional evidence,
29 filed during the pendency of a request for review to the Full Commission shall be argued before the Full
30 Commission at the time of the hearing of the request for review.

31 (c) Cases shall be cited to the North Carolina Reports, the North Carolina Court of Appeals Reports, or the North
32 Carolina Reporter, and when possible, to the Southeastern Reporter. Counsel shall not discuss matters outside the
33 record, assert personal opinions or relate personal experiences, or attribute wrongful acts or motives to opposing
34 counsel.

35 (d) Briefs to the Full Commission shall not exceed 35 pages, excluding attachments. No page limit applies to the
36 length of attachments. Briefs shall be prepared using a 12 point type, shall be double spaced, and shall be prepared
37 with non-justified right margins. Each page of the brief shall be numbered at the bottom right of the page. When a

1 party quotes or paraphrases testimony or other evidence from a transcript of the evidence or from an exhibit in the
2 party's brief, the party shall include, at the end of the sentence in the brief that quotes or paraphrases the testimony
3 or other evidence, a parenthetic entry that designates the source of the quoted or paraphrased material and the page
4 number location within the applicable source. The party shall use "T" for transcript, "Ex" for exhibit, and "p" for
5 page number. For example, (1) if a party quotes or paraphrases material located in the transcript on page 11, the
6 party shall use the following format "(T p 11)" and (2) if a party quotes or paraphrases material located in an exhibit
7 [three] on page 12, the party shall use the following format "(Ex [3] p 12)". When a party quotes or paraphrases
8 testimony or other evidence in the transcript of a deposition in the party's brief, the party shall include, at the end of
9 the sentence in the brief that quotes or paraphrases the testimony or other evidence from the deposition, a parenthetic
10 entry that contains the name of the person deposed and the page number location within the transcript of the
11 deposition. For example, if a party quotes or paraphrases the testimony of John Smith, located on page 11 of the
12 transcript of the deposition, the party shall use the following format "(Smith p 11)".

13
14 *History Note: Authority G.S. 143-296; 143-300;*
15 *Eff. January 1, 1989;*
16 *Recodified from 4 NCAC 10B .0306 Eff. April 17, 2000;*
17 *Amended Eff. January 1, 2013; May 1, 2000.*
18
19

1 04 NCAC 10B .0306 is repealed as published in 27:02 NCR 203 as follows:

2

3 **04 NCAC 10B .0306 MOTION FOR NEW HEARING**

4

5 *History Note: Authority G.S. 143-292; 143-296; 143-300;*

6 *Eff. January 1, 1989;*

7 *Recodified from 4 NCAC 10B .0310 Eff. April 17, 2000;*

8 *Repealed Eff. January 1, 2013; May 1, 2000.*

9

10

11

1 04 NCAC 10B .0307 is amended as published in 27:02 NCR 203 as follows:

2

3 **04 NCAC 10B .0307 MOTIONS BEFORE THE FULL COMMISSION**

4 ~~During the pendency of an appeal to the Full Commission, any motion by either party shall be filed in triplicate with~~
5 ~~the Industrial Commission and directed to the Chair if the case has not been calendared. If the case has been~~
6 ~~calendared the motion shall be directed to the Chair of the Full Commission panel before whom the case is set.~~
7 ~~Every motion shall certify, in writing, that it has been served by mail or in person upon the opposing party or parties.~~
8 ~~Motions for Reconsideration of a decision of the Full Commission shall be directed to the Commissioner who~~
9 ~~authored the Decision and Order.~~

10 (a) After notice of appeal has been given to the Full Commission, any motions related to the claim before the Full
11 Commission shall be filed with the Full Commission, with service on the other parties.

12 (b) A Motion for a New Hearing must be filed in writing, and supported by Affidavit. Motions related to the issues
13 for review including motions for new trial, to amend the record, or to take additional evidence, filed during the
14 pendency of an appeal to the Full Commission shall be argued before the Full Commission at the time of the hearing
15 of the appeal.

16

17 *History Note: Authority G.S. 143-296; 143-300;*

18 *Eff. May 1, 2000;*

19 *Amended Eff. January 1, 2013.*

20

21

1 04 NCAC 10B .0308 is amended as published in 27:02 NCR 203 as follows:

2

3 **04 NCAC 10B .0308 STAYS**

4 When a case is appealed to the Full ~~Commission, Commission or to the Court of Appeals,~~ all ~~decisions and orders-orders,~~
5 ~~opinion and awards, or decision and orders~~ of a Deputy Commissioner ~~or the Full Commission~~ are stayed pending
6 appeal.

7

8 *History Note: Authority G.S. 143-292; 143-296; 143-300;*

9 *Eff. May 1, 2000;*

10 *Amended Eff. January 1, 2013.*

11

12

1 04 NCAC 10B .0309 is repealed as published in 27:02 NCR 203 as follows:

2

3 **04 NCAC 10B .0309 NEW EVIDENCE**

4

5 *History Note: Authority G.S. 143-300;*

6 *Eff. January 1, 1989;*

7 *Amended Eff. May 1, 2000;*

8 *Repealed Eff. January 1, 2013.*

9

10

11

1 04 NCAC 10B .0310 is amended with changes as published in 27:02 NCR 203 as follows:

2

3 **04 NCAC 10B .0310 WAIVER OF ORAL ARGUMENT**

4 ~~Either or both parties, with permission of the Full Commission, may waive oral argument before the Full~~
5 ~~Commission. The Full Commission may in its discretion order that all oral argument in a particular case will be~~
6 ~~waived. If oral argument is waived by either of these methods, the Full Commission will issue a decision, based on~~
7 ~~the record, assignments of error, and briefs.~~

8 Upon the request of a party or its own motion, the Commission may waive oral argument **in the interests of justice**
9 **or to promote judicial economy** ~~[to prevent manifest injustice, to promote judicial economy, or to expedite a~~
10 ~~decision in the public interest].~~ In the event of such waiver, the Full Commission shall file an award, based on the
11 record and briefs.

12

13 *History Note: Authority G.S. 143-292; 143-296; 143-300;*
14 *Eff. January 1, 1989;*
15 *Recodified from 4 NCAC 10B .0311 Eff. April 17, 2000;*
16 *Amended Eff. January 1, 2013; May 1, 2000.*

17

18

1 04 NCAC 10B .0401 is amended as published in 27:02 NCR 203 as follows:

2 **SECTION .0400 - APPEALS TO THE COURT OF APPEALS**

3

4 **04 NCAC 10B .0401 SCOPE**

5 ~~Except as otherwise provided in N.C.G.S. 143-293, in every case appealed to the Court of Appeals, the North~~
6 ~~Carolina Rules of Appellate Procedure governing appeals in an ordinary civil action shall apply.~~

7 The Rules in this Section are the applicable Rules for appeals to the Court of Appeals pursuant to Article 31 of
8 Chapter 143 of the General Statutes.

9

10 *History Note: Authority G.S. 143-293; 143-300;*

11 *Eff. January 1, 1989;*

12 *Amended Eff. January 1, 2013.*

13

1 04 NCAC 10B .0402 is amended as published in 27:02 NCR 203 as follows:

2 **04 NCAC 10B .0402 STAYS**

3 ~~The amount of the appeal bond shall be set by the Chair of the Industrial Commission or the Chair's designee.~~

4 When a case is appealed to the Court of Appeals, all orders, opinion and awards, or decision and orders of the Full
5 Commission are stayed pending appeal.

6

7 *History Note: Authority G.S. 143-292; 143-294; 143-296; 143-300;*

8 *Eff. January 1, 1989;*

9 *Amended Eff. January 1, 2013; May 1, 2000.*

10

11

1 04 NCAC 10B .0403 is amended as published in 27:02 NCR 203 as follows:

2 **04 NCAC 10B .0403 MOTIONS FOR COURT OF APPEALS CASES**

3 (a) Prior to the docketing of the record on appeal in the Court of Appeals, ~~All~~-all motions filed by the parties
4 regarding an appeal to the Court of Appeals shall be addressed to and ruled upon by the Chair of the ~~Industrial~~
5 Commission, or the Chair's designee.

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

9 .

10 *History Note: Authority G.S. 143-293; 143-300;*
11 *Eff. January 1, 1989;*
12 *Amended Eff. January 1, 2013; May 1, 2000.*

13

14

1 04 NCAC 10B .0404 is amended as published in 27:02 NCR 204 as follows:

2 **04 NCAC 10B .0404 REMAND FROM APPELLATE COURTS**

3 ~~Upon a proper motion, the Chair of the Industrial Commission, or the Chair's designee, shall enter an Order settling~~
4 ~~a record on appeal after conducting a settlement conference, in accordance with the North Carolina Rules of~~
5 ~~Appellate Procedure. Settlement conferences shall be held at the Industrial Commission offices or by telephone~~
6 ~~conference.~~

7 When a case is remanded to the Commission from the appellate courts, each party may file a statement, with or
8 without a brief to the Full Commission, setting forth its position on the actions or proceedings, including evidentiary
9 hearings or depositions, required to comply with the court's decision. This statement shall be filed within 30 days of
10 the issuance of the court's mandate and shall be filed with the Commissioner who authored the Full Commission
11 decision or the Commissioner designated by the Chairman of the Commission if the Commissioner who authored
12 the decision is no longer a member of the Commission.

13

14 *History Note: Authority G.S. 143-292; 143-296; 143-300;*

15 *Eff. January 1, 1989;*

16 *Amended Eff. January 1, 2013; May 1, 2000.*

1 04 NCAC 10B .0502 is repealed as published in 27:02 NCR 204 as follows:

2

3 **04 NCAC 10B .0502 RULEMAKING**

4

5 *History Note:* *Authority G.S. 143-300;*

6 *Eff. January 1, 1989;*

7 *Repealed Eff. January 1, 2013.*

8

9

10

1 04 NCAC 10B .0503 is amended as published in 27:02 NCR 204 as follows:

2 **04 NCAC 10B .0503 SANCTIONS**

3 ~~Upon failure to comply with any of the aforementioned rules, the Industrial Commission may subject the violator to~~
4 ~~sanctions outlined in Rule 37 of the North Carolina Rules of Civil Procedure, including reasonable attorney fees to~~
5 ~~be taxed against the party or counsel whose conduct necessitates the order.~~

6 The Commission may, on its own initiative or motion of a party, impose a sanction against a party, or attorney or
7 both, when the Commission determines that such party, or attorney, or both failed to comply with the Rules in this
8 Subchapter. The Commission may impose sanctions of the type and in the manner prescribed by Rule 37 of the
9 North Carolina Rules of Civil Procedure.

10

11 *History Note: Authority G.S. 1A-1, Rule 37; 143-291; 143-296; 143-300;*

12 *Eff. January 1, 2011;*

13 *Amended Eff. January 1, 2013.*

14

15

16

1 04 NCAC 10C .0102 is repealed as published in 27:02 NCR 204 as follows:

2

3 **4 NCAC 10C .0102 PURPOSE OF THE RULES**

4

5 *History Note:* *Authority G.S. 97-25.4;*

6 *Eff. January 1, 1996;*

7 *Repealed Eff. January 1, 2013.*

8

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11

12

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~~ 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~~ 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):~~

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

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

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

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

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

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

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

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

25 (1) possess one of the following certifications:

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

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

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

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

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

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

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

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

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

7 (e) A qualified rehabilitation professional must also:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17
18 *History Note:* Authority: G.S. 97-25.4; 97-32.2; 97-25.5; 97-80;
19 Eff. January 1, 1996;
20 Amended Eff. January 1, 2013; June 1, 2000.
21

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 professionals~~shall have 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 Certified, 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 04 NCAC 10C .0110 is amended with changes as published in 27:02 NCR 211 as follows:

2
3 **4 NCAC 10C .0110 CHANGE OF REHABILITATION PROFESSIONAL**

4 (a) By agreement or stipulation of the parties, the rehabilitation professional may be changed.

5 ~~(a)(b)~~ An RP-A rehabilitation professional may be removed from a case upon motion by either party ~~for good cause~~
6 ~~shown or by the Industrial Commission in its own discretion~~ [to prevent manifest injustice] for good cause. The
7 motion shall be filed with the Executive Secretary's Office and served upon all parties and the ~~RP-rehabilitation~~
8 professional. Any party or the ~~RP-rehabilitation professional~~ may file a response to the motion within 10 days. ~~The~~
9 ~~Industrial Commission shall then determine whether to remove the RP from the case. The parties are referred to~~
10 ~~Industrial Commission Rule 4 NCAC 10A .0609.~~

11 ~~(b) If the employer/carrier chooses to do so and the worker consents, the employer/carrier may replace the RP, in~~
12 ~~which case the moving party shall notify the Industrial Commission that the motion does not need to be decided.~~

13 ~~(c) For good cause, including ineffective delivery of rehabilitation services, failure to comply with applicable laws,~~
14 ~~rules or regulations, or failure to timely respond to lawful orders of the Commission or other regulatory authorities,~~
15 ~~the Commission may prohibit or restrict an RP, or group of RPs, further participation by particular workers,~~
16 ~~employers, or health care providers, groups or classes of them, or all of them. As provided in Industrial Commission~~
17 ~~Rule 4 NCAC 10A .0802, the Commission may impose appropriate sanctions for violation of these Rules.~~

18 ~~(d)(c)~~ A party or the rehabilitation professional may request reconsideration of a ruling or appeal from an order as
19 provided in ~~Rule 4 NCAC 10A .0703 .0702~~ or pursuant to ~~G.S. 97-83;G.S. 97-83 and G.S. 97-84.~~

20
21 *History Note:* Authority G.S. 97-25.4; 97-25.5; 97-32.2; 97-80; 97-83 97-84;
22 Eff. January 1, 1996;
23 Amended Eff. January 1, 2013; June 1, 2000.

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 04 NCAC 10D .0101 is amended with changes as published in 27:02 NCR 212 as follows:

2

3

SUBCHAPTER 10D – WORKERS’ COMPENSATION RULES FOR MANAGED CARE

4

ORGANIZATIONS

5

SECTION .0100 – RULES

6

7

4 NCAC 10D .0101 PURPOSE

8

~~These~~ The Rules in this Subchapter are intended to facilitate the timely and cost-effective delivery of appropriate

9

medical compensation services to fulfill the employer's duty to provide such services as are **reasonably** necessary to

10

effect a cure, give relief, or shorten the period of disability resulting from compensable injuries through the use of

11

Managed Care Organizations (MCOs). ~~These~~ The Rules in this Subchapter do not affect ~~existing~~, informal lists or

12

"employer networks" of providers assembled by employers or insurers for their own referrals.

13

14

History Note: *Authority* G.S. 97-2(19); 97-2(20); 97-2(21); 97-25; 97-25.2; 97-25.3(e); 97-25.4(a); 97-

15

26(b); 97-26(c);

16

Eff. January 1, 1996;

17

Amended Eff. January 1, 2013.

1 04 NCAC 10D .0102 is amended with changes as published in 27:02 NCR 212 as follows:

2

3 **4 NCAC 10D .0102 DEFINITIONS**

4 ~~As used in these Rules, unless context otherwise dictates:~~ As used in this Subchapter:

5 (1) ~~Managed Care Organization (MCO). A preferred provider organization (PPO) or a health~~
6 ~~maintenance organization (HMO) regulated under G.S. 58.~~

7 (2) ~~Health Care Provider (Provider). Any medical doctor, chiropractor, other physician, hospital,~~
8 ~~pharmacy, nurse, dentist, podiatrist, physical therapist, rehabilitation specialist, psychologist and~~
9 ~~any other person or firm providing medical care pursuant to the Workers' Compensation Act.~~
10 ~~Payment for services rendered for a workers' compensation patient shall be controlled by contract~~
11 ~~between the provider and MCO, or if none, by the Commission's Medical Fee Schedules.~~

12 (3)(1) ~~Employer. Any person, firm, corporation, or governmental entity.~~ "Employer" means an employer
13 as defined by G.S. 97-2(3) who is obligated by the Workers' Compensation Act to pay or provide
14 indemnity or medical compensation, including any insurance carrier, self-insurance fund, third
15 party administrator or other person, firm or corporation undertaking to pay or adjust claims on
16 behalf of the employer's employees.

17 (4) ~~Commission. The North Carolina Industrial Commission and its employees acting on its behalf.~~

18 (5)(2) ~~Workers' Compensation Act. "Act" means~~ The the North Carolina Workers' Compensation Act,
19 G.S. Chapter 97, Article 1 (G.S. 97-1 through 97-101), as interpreted and applied by the rules and
20 decisions of the Commission and the courts of North Carolina and the United States. (G.S. 97-1
21 G.S. 97-101.1 G.S. 97-1 through G.S. 97-101.1).

22 (6)(3) ~~Employer Network. As used in Rule I.,~~ "Employer network" means any group of providers
23 assembled by or for an entity liable for medical compensation that agrees to accept the referrals of
24 that entity's workers' compensation patients, and from among whom an adjuster, officer,
25 employee, or insured patient of the entity chooses the initial provider; provided, the entity has no
26 right to sell the services of the providers to a third party.

27 *History Note:*

28 *Authority G.S. 58-50-50; 97-2(3); 97-2(20); 97-26(b); 97-26(c); 97-2(21); 97-25; 97-25.2; 97-77; 97-79.*

29 *Eff. January 1, 1996;*

30 *Amended Eff. January 1, 2013.*

1 4 NCAC 10D .0103 is repealed as published in 27:02 NCR 213 as follows:

2
3 **4 NCAC 10D .0103 QUALIFICATION BY DEPARTMENT OF INSURANCE**

4 ~~Prior to provision of any service for workers' compensation patients pursuant to an MCO contract with any~~
5 ~~employer, an MCO shall comply with the applicable requirements of G.S. 58, Insurance, and the regulations~~
6 ~~promulgated pursuant thereto, in addition to these Rules, except as they may be interpreted to specifically conflict~~
7 ~~with the Workers' Compensation Act and these Rules; provided, that MCOs with such existing contracts on the~~
8 ~~effective date of these Rules shall comply with this Rule on or before February 1, 1996. In the absence of effective~~
9 ~~and binding regulations administered by the N.C. Department of Insurance setting appropriate and sufficient~~
10 ~~requirements and standards for health care provider contracts, accessibility of providers, financial ability to meet~~
11 ~~contract commitments, quality management or quality assurance programs, health care provider credentialing,~~
12 ~~conflicts of interest, records and examinations, internal auditing, confidentiality and other appropriate matters, every~~
13 ~~MCO offering medical compensation services shall comply with temporary orders or provisional regulations issued~~
14 ~~by the Commission, consonant with the Workers Compensation Act, pending further formal rulemaking by the~~
15 ~~Commission or the Department of Insurance.~~

16
17 *History Note:* Authority G.S. 97-2(21); 97-25;

18 *Eff.* January 1, 1996;

19 Repealed *Eff. January 1, 2013.*

1 04 NCAC 10D .0104 is amended with changes as published in 27:02 NCR 213 as follows:

2

3 **4 NCAC 10D .0104 QUALIFICATION AND REVOCATION**

4 ~~Upon receipt of documents complying with Rule .0104, nothing otherwise appearing, the Commission will issue a~~
5 ~~letter to the MCO acknowledging receipt and stating that the MCO is qualified to contract to serve workers~~
6 ~~compensation patients while it holds an MCO certificate from the Department of Insurance, subject to renewal at a~~
7 ~~specified time, not exceeding three (3) years. For good cause, including, but not limited to, For ineffective delivery~~
8 ~~of medical services, failure to comply with applicable laws, rules or regulations, and failure to timely respond to~~
9 ~~lawful orders of the Commission or other regulatory authorities, the Commission may shall suspend or revoke an~~
10 ~~MCO's permission to deal with any particular workers' compensation patients, employers or providers, groups or~~
11 ~~elasses of them, or all of them change the [provision]provider of medical compensation in accordance with the~~
12 Workers' Compensation Act.

13

14 *History Note:* Authority G.S. 97.25; 97-25.2.

15 Eff. January 1, 1996;

16 Amended Eff. January 1, 2013.

04 NCAC 10D .0105 is amended as published in 27:02 NCR 213 as follows:

4 NCAC 10D .0105 NOTICE TO COMMISSION

(a) Upon contracting with an employer to provide medical compensation services, ~~the an~~ MCO shall provide to the ~~Commission.~~ Commission the following:

- (1) a copy of that portion of the contract containing the provisions specified in Rule ~~.0105, .0106~~ of this Subchapter and the method for determining payment to the MCO, excluding those of its terms kept confidential by the ~~N.C.~~ North Carolina Department of Insurance, initialed by the employer;
- (2) a copy of its current certificate(s) issued annually by the ~~N.C.~~ North Carolina Department of Insurance pursuant to ~~N.C. Gen. Stat.~~ Chapter 58; and
- (3) the name and address of all owners or shareholders, or related groups of owners or shareholders, holding more than ~~40%~~ 10 percent interest in the MCO, and whether they are or have any relationship with a provider. ~~Persons or firms are related, for the purposes of this Rule, if either has a financial interest in the other; shares officers, agents, or employees; or, if natural persons, are first cousins or closer in kinship. An MCO subject to these Rules shall report its medical compensation expenditures annually on I.C. Form 51.~~

(b) Persons or firms are related, for the purpose of this Rule, if either has the following:

- (1) a financial interest in the other;
- (2) shares officers, agents, or employees; or,
- (3) if natural persons, are first cousins or closer in kinship.

(c) An MCO subject to the Rules in this Subchapter shall report its medical compensation expenditures annually on I.C. Form 51.

History Note: Authority G.S. 97-25.2;
Eff. January 1, 1996;
Amended Eff. January 13, 2013.

04 NCAC 10D .0106 is amended as published in 27:02 NCR 213 as follows:

4 NCAC 10D .0106 CONTRACT PROVISIONS

An MCO's contract with an employer subject to ~~these the Rules in this Subchapter~~ shall include: ~~these provisions:~~

- (1) ~~The the~~ principal place(s) of employment of the covered employees, including address(es) and phone number(s) of the workplace(s);
- (2) ~~The the~~ name, title, mailing address, phone number, fax number, and ~~e-mail-email~~ address, if any, of an officer or responsible employee of the MCO empowered to assent to the treatment or referral of covered employees, capable of obtaining and providing complete business, administrative and medical records generated pursuant to the contract, and empowered to resolve routine disputes with ~~patients, employees,~~ employers and providers under the Commission's jurisdiction;
- (3) ~~The the~~ name, title, mailing address, phone number, fax number, and ~~e-mail-email~~ address, if any, of an adjuster, officer, agent or employee of the employer empowered to negotiate the resolution of routine medical compensation disputes, and receive orders of the Commission on behalf of the employer;
- (4) ~~An an~~ acknowledgment that the MCO is bound by applicable requirements of ~~G.S. Chapters 58 and 97 of the North Carolina General Statutes and these Rules, the Rules in this Subchapter,~~ and is subject to orders of the Commission to the same extent as the employer;
- (5) ~~The the~~ agreement of the employer that it will cooperate and ~~actively~~ assist in furnishing its employees and supervisors with a phone number and instructions for obtaining emergency treatment ~~and/or and~~ contacting the MCO upon injury to any employee during the workday or on the employer's premises requiring physician ~~attention; attention, and with furnishing to its injured employees the information and card hereinafter required in Rule .0106;~~
- (6) ~~Specify~~ a dispute resolution plan in accordance with G.S. 97-25.2 ~~and 11 NCAC 12 .0914,~~ including provisions for notice of decision in appeals within 30 days, or within 72 hours of appeal when the regular appeals process would cause a delay in the rendering of health care that would be detrimental to the health of the employee;
- (7) ~~Describe~~ a description of physician panels, including specialties represented, and the employee's right to select his or her attending physician from the appropriate panel, and to subsequently change attending physicians once within the members of the panel; and
- (8) ~~Whether whether~~ the MCO or employer will be responsible for securing the services of "out of network" providers when needed.

History Note: Authority G.S. 97-25.2.
Eff. January 1, 1996;
Amended Eff. January 1, 2013.

1 04 NCAC 10D .0107 is amended as published in 27:02 NCR 214 as follows:

2
3 **4 NCAC 10D .0107**

INFORMATION FOR ~~EMPLOYEE/PATIENT~~ EMPLOYEE

4 ~~The employer shall inform employees of its arrangements with an MCO for providing medical compensation~~
5 ~~through its usual means of communicating company policies and benefit information, and provide a wallet size card~~
6 ~~bearing a phone number to be contacted in case of a work related injury, and otherwise complying with Department~~
7 ~~of Insurance regulations. As soon as reasonable possible following the injury, the employer or MCO shall provide~~
8 ~~to the employee a printed explanation of the system being utilized for his care, suitable for sharing with emergency,~~
9 ~~"out of network", and referral physicians, which shall be filed with any Form 19 submitted to the Commission;~~
10 ~~provided, that electronic filers may otherwise notify the Commission of the identity of the MCO. This statement~~
11 ~~shall include the following information:~~

12 (a) Following the onset of an injury, the employer or MCO shall provide to the employee a printed explanation of
13 the system being utilized for his care, suitable for sharing with emergency, "out-of-network", and referral
14 physicians, which that shall be filed with any Form 19 submitted to the Commission; provided, that electronic filers
15 may otherwise notify the Commission of the identity of the MCO. This statement shall include the following
16 information:

- 17 (1) ~~The the~~ offices to contact concerning medical treatment for the injury, including a telephone
18 number;
- 19 (2) ~~If if~~ known at that time, the employee's chosen treating physician, including a phone number for
20 seeking medical assistance outside normal business hours if the injury might cause such a need;
- 21 (3) ~~The the~~ applicable methods for choosing and changing treating physicians and resolving disputes
22 concerning physicians or treatment pursuant to G.S. 97-25.2;
- 23 (4) ~~That that~~ the MCO can make available can provide access to licensed physicians of all in all the
24 fields and specialties licensed by the State of North Carolina;
- 25 (5) ~~The the~~ employer's obligation to pay for treatment for which the ~~employee/patient~~ employee is
26 referred to the MCO, whether or not the employer admits liability for the injury per G.S. 97-90(e);
- 27 (6) ~~The the~~ employee's duty to cooperate in treatment, and right to secure treatment at his or her own
28 expense that does not interfere with the treating physician's treatment; and
- 29 (7) ~~The I.C. the~~ Commission's File Number, if known when filed. ~~Information for providers~~
30 ~~concerning billing may be included, labeled as such.~~

31 (b) Providers may include identifying billing information on the statement.

32
33 *History Note:* Authority G.S. 97-25.2.
34 Eff. January 1, 1996;
35 Amended Eff. January 1, 2013.

1 04 NCAC 10D .0108 is amended with changes as published in 27:02 NCR 214 as follows:

2

3 **4 NCAC 10D .0108 INCLUSIVE PROVIDER PANELS**

4 ~~As soon as reasonably possible following~~ Following the onset ~~or of an~~ injury, and upon a ~~patient's~~ an employee's
5 first request to change attending physician, the MCO shall provide the ~~patient-employee~~ with a list of reasonably
6 accessible and available panel physicians qualified to treat or manage the primary condition for which the employer
7 has accepted liability or authorized treatment from which the employee may select the attending physician. The
8 employer and MCO shall provide for ~~reasonable access and availability~~ to all medical compensation services, and
9 include in its panels, or otherwise make available for the employee's choice, one or more licensed physicians
10 representing all specialties available in the community ~~that are licensed~~ to provide ~~foreseeably~~ necessary treatment
11 for the ~~patient's~~ employee's primary compensable condition. ~~condition, if a physician of that specialty meets the~~
12 MCO's reasonable credentialing criteria for that specialty, and is willing to contract to provide their services on a
13 ~~non-discriminatory~~ basis.

14

15 *History Note:* Authority G.S. 97-2(19); 97-2(20); 97-25; 97-25.2.

16 Eff. January 1, 1996;

17 Amended Eff. January 1, 2013.

1 04 NCAC 10D .0109 is amended as published in 27:02 NCR 215 as follows:

2

3 **4 NCAC 10D .0109 QUALITY ASSURANCE AND UTILIZATION REVIEW**

4 An MCO subject to ~~these~~ the Rules in this Subchapter shall comply with the requirements of the ~~N.C.~~ North
5 Carolina Department of Insurance for quality assurance and utilization review plans, and upon request, provide the
6 Commission with copies of records generated by, or utilized in, the operation of those programs, and copies of plans
7 or amendments to plans not yet filed with the Department of Insurance.

8

9 *History Note:* Authority G.S. 97-25.2.

10 *Eff.* January 1, 1996;

11 *Amended Eff.* January 1, 2013.

1 04 NCAC 10D .0111 is repealed as published in 27:02 NCR 215 as follows:

2

3 **4 NCAC 10D .0111 SANCTIONS**

4

5 *History Note: Authority G.S. 97-18(i); 97-25; 97-25.2; 97-80(a); ~~97-88(1)~~; 97-88.1; 1A-1, Rule 37.*

6

Repealed Eff. January 1, 2013.

7

1 4 NCAC 10E .0101 is amended with changes as published in 27:02 NCR 215 as follows:

2
3 **SUBCHAPTER 10E – WORKERS’ COMPENSATION RULES FOR UTILIZATION REVIEW**
4 **ADMINISTRATIVE RULES OF THE INDUSTRIAL COMMISSION**
5 **SECTION .0100 – RULES ADMINISTRATION**
6

7 **4 NCAC 10E .0101 ~~UTILIZATION REVIEW PLAN INSTRUCTIONS FOR FILING A PETITION~~**
8 **FOR RULE-MAKING**
9

10 ~~(a) All insurance companies and self-insured administrators providing benefits under the North Carolina Workers’~~
11 ~~Compensation Act shall, within 90 days of the effective date of these Rules, adopt, file with the Chairman of the~~
12 ~~North Carolina Industrial Commission at 430 N. Salisbury Street, Raleigh, NC 27611 and implement a Utilization~~
13 ~~Review Plan for containing medical compensation services costs. If an entity has in effect a Utilization Review Plan~~
14 ~~that predates these Rules, it may file it with the Chairman of the Commission in lieu of adopting a new plan.~~

15 ~~(b) The goal of such plans shall be to reduce costs without adversely affecting the quality of care to injured workers.~~

16 ~~(c) Each plan shall provide for monitoring, evaluating, improving and promoting the quality of care and quality of~~
17 ~~services provided.~~

18 ~~(d) Each plan shall address all areas and aspects of health care included in medical compensation within the~~
19 ~~meaning of the Workers’ Compensation Act.~~

20 ~~(e) Provider profiles shall be maintained and shall be filed with the Chairman of the Commission on a biennial~~
21 ~~basis, or on such other basis as may be ordered by the Commission from time to time, with the first filing to be made~~
22 ~~no later than 90 days after the effective date of these Rules.~~

23 (a) Any person may petition the Commission to adopt a new rule, or amend or repeal an existing rule by submitting
24 a rule-making petition to [the Chairperson of]the Commission at 4336 Mail Service Center, Raleigh, NC 27699-
25 4336. The petition must be titled “Petition for Rule-making” and must include the following information:

26 (1) the name and address of the person submitting the petition;

27 (2) a citation to any rule for which an amendment or repeal is requested;

28 (3) a draft of any proposed rule or amended rule;

29 (4) an explanation of why the new rule or amendment or repeal of an existing rule is requested and the
30 effect of the new rule, amendment, or repeal on the procedures of the Commission; and

31 (5) any other information the person submitting the petition considers relevant.

32 (b) The [Chairperson (Chair)-]Commission must decide whether to grant or deny a petition for rule-making within
33 [30-]120 days of receiving the petition. In making the decision, the [Chair-]Commission shall consider the
34 information submitted with the petition and any other relevant information.

35 (c) When the [Chair-]Commission denies a petition for rule-making, [he or she must send] a written notice of the
36 denial must be sent to the person who submitted the request. The notice must state the reason for the denial. When

1 | the ~~Chair~~ Commission grants a rule-making petition, ~~he or she~~ the Commission must initiate rule-making
2 | proceedings and send written notice of the proceedings to the person who submitted the request.
3 |

4 | History Note: *Authority* G.S. 97-73;150B-20;
5 | *Eff. January 1, 2013.*

1 4 NCAC 10E .0102 is adopted with changes as published in 27:02 NCR 215 as follows:

2

3 **4 NCAC 10E .0102 MAILING LIST**

4 (a) Any person or agency desiring to be placed on the mailing list for the Commission's rule-making notices issued
5 pursuant to G.S. 150B-21.2 may file a request in writing to the Chairperson of the Commission at 4336 Mail Service
6 Center Raleigh, NC 27699-4336.

7 (b) The request shall:

8 (1) include the person's name and address;

9 (2) specify the subject areas within the authority of the Commission for which notice is requested; and

10 (3) state the calendar year(s) for which the notice is desired.

11

12 *History Note:* Authority G.S. 97-73; 97-80(a); 150B-21.2(d);

13 Eff. *January 1, 2013*

1 4 NCAC 10E .0204 is adopted with changes as published in 27:02 NCR 216 as follows:

2
3 **4 NCAC 10E .0204 ACCIDENT PREVENTION AND SAFETY EDUCATIONAL PROGRAM FEES**

4 (a) The following fees shall be assessed for accident prevention and safety educational programs:

- 5 (1) one hundred twenty-five dollars (\$125.00) per person for an Accident Prevention Awareness
6 (APCAP) Workshop;
- 7 (2) seventy-five dollars (\$75.00) per person for an Advanced APCAP Workshop;
- 8 (3) thirty dollars (\$30.00) per person for a Safety and Health Workshop;
- 9 (4) twenty dollars (\$20.00) per person for a First Aid, CPR, and AED Course, plus fifteen dollars
10 (\$15.00) per person for materials;
- 11 (5) fifteen dollars per person (\$15.00) for a First Aid Course, plus twelve dollars (\$12.00) per person
12 for materials;
- 13 (6) fifteen dollars per person (\$15.00) for a CPR and AED Course, plus twelve dollars (\$12.00) per
14 person for materials;
- 15 (7) twenty dollars (\$20.00) per person for a Defensive Driving Course, plus four dollars (\$4.00) per
16 person for materials;
- 17 (8) fifty dollars (\$50.00) per person for a **Hazardous Waste Operations and Emergency Response**
18 **(HAZWOPER)** ~~HAZWOPER OPS~~ Course or Refresher Course;
- 19 (9) thirty dollars (\$30.00) per person for a HAZWOPER Awareness Course;
- 20 (10) twenty-five dollars (\$25.00) per person for a Work Zone Flagger Course, plus five dollars (\$5.00)
21 for materials;
- 22 (11) thirty dollars (\$30.00) per person for a Trenching Competent Person Course;
- 23 (12) thirty-five dollars (\$35.00) per person for a Competent Person Scaffolding Course;
- 24 (13) forty-five dollars (\$45.00) per person for an eight-hour **National Fire Protection Association**
25 **(NFPA)** ~~NFPA~~ E Arc Flash Course;
- 26 (14) thirty dollars (\$30.00) per person for a four-hour NFPA E Arc Flash Course;
- 27 (15) fifty dollars (\$50.00) per person for a Safety for Supervisors Course;
- 28 (16) one hundred fifty dollars (\$150.00) per person for a Safety Leadership Course;
- 29 (17) a two hundred dollar (\$200.00) flat fee for a (five to eight-hour) Workplace Training;
- 30 (18) a one hundred-fifty dollar (\$150.00) flat fee for a (three to four-hour) Workplace Training (3-4
31 hours); and
- 32 (19) a one hundred dollar (\$100.00) flat fee for a (one to two-hour) Workplace Training.

33 (b) In addition to the fees listed in Paragraph (a), each individual or group registering for a class must pay a four
34 dollar and ninety-five cent (\$4.95) registration processing fee to the Commission's third party vendor upon
35 registering for an educational program listed in Paragraph (a).

36
37 *History Note:* Authority G.S. 97-73(~~d~~); 97-80;

1 4 NCAC 10E .0302 originally proposed for amendment as published in 27:02 NCR 217 is withdrawn:

2

3 **4 NCAC 10E .0302 SANCTIONS**

4

5 History Note: *Authority* G.S. 1A-1, Rule 37; G.S. 97-18; 97-25; 97-25.2; 97-25.4; 97-25.5; 97-32.2; 97-
6 73; 97-80; 97-84; 97-88(1); 130A-425(d); 143-166.4; 143-296; 143-300;

7

1 04 NCAC 10F .0101 is adopted with changes as published in 27:02 NCR 217 as follows:

2
3 **SUBCHAPTER 10F –ELECTRONIC BILLING RULES**

4 **SECTION .0100 –ADMINISTRATION**

5
6 **04 NCAC 10F .0101 ELECTRONIC MEDICAL BILLING AND PAYMENT REQUIREMENT**

7 Carriers and licensed medical health care providers shall utilize electronic billing and payment in workers'
8 compensation claims. Carriers and ~~medical health care~~ providers shall develop and implement electronic billing and
9 payment processes consistent with 45 CFR 162. Carriers and ~~medical health care~~ providers shall comply with this
10 Rule on or before March 1, 2014. 45 CFR 162 is hereby incorporated by reference and includes subsequent
11 amendments and editions. A copy may be obtained at no charge from the National Archives and Records
12 Administration's website, [http://ecfr.gpoaccess.gov/cgi/t/text/text-](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title45/45cfr162_main_02.tpl)
13 [idx?c=ecfr&tpl=/ecfrbrowse/Title45/45cfr162_main_02.tpl](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title45/45cfr162_main_02.tpl), or upon request, at the offices of the Commission,
14 located in the Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, between the hours of 8:00 a.m.
15 and 5:00 p.m.

16
17 *History Note:* Authority G.S. 97-26(g1); 97-80;

18 *Eff.* January 1, 2013.

1 04 NCAC 10F .0102 is amended with changes as published in 27:02 NCR 217 as follows:

2
3 **04 NCAC 10F .0102 DEFINITIONS**

4 ~~(a) The Revised Medical Fee Schedule is being published for the Commission by Medicode, Inc., of Salt Lake City,~~
5 ~~Utah, and is expected to be available prior to the effective date of January 1, 1996.~~

6 ~~(b) In developing the 1996 Revised Medical Fee Schedule (hereafter, the 1996 Fee Schedule) the Commission has~~
7 ~~made the following determinations:~~

8 ~~(1) The medical fees should be based on the 1995 CPT codes adopted by the American Medical Association~~
9 ~~with values based on a Resource Based Relative Value System (RBRVS).~~

10 ~~(2) CPT codes for General Medicine will be based on North Carolina 1995 Medicare values multiplied by~~
11 ~~1.58, which the Commission believes would leave the General Medicine charges as a whole at roughly the same~~
12 ~~level as in the Commission's fee schedule that has been in effect since January 1, 1993 (hereafter, the 1993 Fee~~
13 ~~Schedule). Since the Medicare relative value codes for each procedure in the schedule are likely to be different than~~
14 ~~the codes used in the 1993 Fee Schedule, individual codes under the 1996 Fee Schedule will likely be more or less~~
15 ~~than the code for the same procedure in the 1993 Fee Schedule, but on average the charges for General Medicine~~
16 ~~will be at the same level.~~

17 ~~(3) CPT codes for Physical Medicine will be based on North Carolina 1995 Medicare values multiplied by~~
18 ~~1.30, which the Commission believes would be a slight decrease from the 1993 Fee Schedule. Since the Medicare~~
19 ~~relative value codes for each procedure in the schedule are likely to be different than the codes used in the 1993 Fee~~
20 ~~Schedule, individual codes under the 1996 Fee Schedule will likely be more or less than the code for the same~~
21 ~~procedure in the 1993 Fee Schedule, but on average the charges for Physical Medicine under the 1996 Fee Schedule~~
22 ~~will be slightly lower than the 1993 Fee Schedule.~~

23 ~~(4) CPT codes for Radiology will be based on North Carolina 1995 Medicare values multiplied by 1.96, which~~
24 ~~the Commission believes would be a 20% decrease from the 1993 Fee Schedule. Since the Medicare relative value~~
25 ~~codes for each procedure in the schedule are likely to be different than the codes used in the 1993 Fee Schedule,~~
26 ~~individual codes under the 1996 Fee Schedule will likely be more or less than the code for the same procedure in the~~
27 ~~1993 Fee Schedule, but on average the charges for Radiology under the 1996 Fee Schedule will be approximately~~
28 ~~20% lower than the 1993 Fee Schedule.~~

29 ~~(5) CPT codes for Surgery will be based on North Carolina 1995 Medicare values multiplied by 2.06, which~~
30 ~~the Commission believes would be an 8% decrease from the 1993 Fee Schedule. Since the Medicare relative value~~
31 ~~codes for each procedure in the schedule are likely to be different than the codes used in the 1993 Fee Schedule,~~
32 ~~individual codes under the 1996 Fee Schedule will likely be more or less than the code for the same procedure in the~~
33 ~~1993 Fee Schedule, but on average the charges for Surgery under the 1996 Fee Schedule will be 8% lower than the~~
34 ~~1993 Fee Schedule.~~

35 ~~(c) As a whole, the Commission believes that the 1996 Fee Schedule will result in at least an 11% reduction in~~
36 ~~charges under that schedule.~~

1 ~~(d) As has been the case in the past, charges under the 1996 Fee Schedule are a ceiling and if the provider usually~~
2 ~~charges a lesser fee for such services, the provider shall charge the lesser fee for cases under the Workers'~~
3 ~~Compensation Act.~~

4 ~~(e) Also, upon request the Commission will consider greater charges than that set forth in the 1996 Revised Fee~~
5 ~~Schedule on a case by case basis based on the merits of extenuating circumstances proven by the provider.~~

6 ~~(f) Treatments not covered under the 1996 Fee Schedule will be handled on a "by report" basis.~~

7 ~~(g) The Chiropractic Fee Schedule will stay the same in 1996 as it was in 1993, as will the Dental Fee Schedule.~~

8 ~~(h) The Commission has outsourced the publication of the 1996 Fee Schedule to Medicode, Inc., of Salt Lake City,~~
9 ~~Utah, in an effort to trim the cost of government services. Copies of the fee schedule will be available through~~
10 ~~Medicode, Inc. at a price of seventy five dollars (\$75.00), plus tax and shipping. Copies on magnetic media will be~~
11 ~~available through Medicode, Inc., at a price of two hundred ninety five dollars (\$295.00), plus tax and~~
12 ~~shipping. The magnetic media price includes one free printed copy. Medicode's address and phone number is~~
13 ~~Medicode, Inc., 5225 Wiley Post Way, Suite 500, Salt Lake City, Utah 84116, TEL: (801) 536-1000, FAX: (801)~~
14 ~~536-1009.~~

15 As used in this Subchapter:

16 (1) "Clearinghouse" means a public or private entity, including a billing service, repricing company,
17 community health management information system or community health information system, and
18 "value-added" networks and switches, that is an agent of either the payer or the provider and that
19 may perform the following functions:

20 (a) Processes or facilitates the processing of medical billing information received from a
21 client in a nonstandard format or containing nonstandard data content into standard data
22 elements or a standard transaction for further processing of a bill related transaction; or

23 (b) Receives a standard transaction from another entity and processes or facilitates the
24 processing of medical billing information into nonstandard format or nonstandard data
25 content for a client entity.

26 (2) "Complete electronic bill" submission means a medical bill that meets all of the criteria
27 enumerated in this Subchapter.

28 (3) "Electronic" refers to a communication between computerized data exchange systems that
29 complies with the standards enumerated in this Subchapter.

30 (3) "Health Care Provider" is as set forth in G.S. 97-2(20)

31 (4) "Health Care Provider Agent" is a person or entity that contracts with a health care provider
32 establishing an agency relationship to process bills for services provided by the health care
33 provider under the terms and conditions of a contract between the agent and health care provider.
34 Such contracts may permit the agent to submit bills, request reconsideration, receive
35 reimbursement, and seek medical dispute resolution for the health care provider services.

36 ([4] 5) "Implementation guide" is a published document for national electronic standard formats as
37 defined in this Subchapter that specifies data requirements and data transaction sets.

1 (5 6) "National Provider Identification Number" or "NPI" means the unique identifier assigned to a
2 health care provider or health care facility by the Secretary of the United States Department of
3 Health and Human Services.

4 (6 7) "Payer" means the insurance carrier, third-party administrator, managed care organization, or
5 employer responsible for paying the workers' compensation medical bills.

6 (7 8) "Payer agent" here means any person or entity that performs medical bill related processes for
7 the payer responsible for the bill. These processes include reporting to government agencies,
8 electronic transmission, forwarding or receipt of documents, review of reports, adjudication of bill,
9 and final payment.

10
11 *History Note:* Authority G.S. 97-26; 97-26(g1); 97-80;
12 *Eff.* January 1, 1996
13 *Revised Eff.* March 1, 2014.

1 04 NCAC 10F .0103 is amended as published in 27:02 NCR 219 as follows:

2
3 **4 NCAC 10F .0103 FORMATS FOR ELECTRONIC MEDICAL BILL PROCESSING**

4 ~~(a) In revising the medical fee schedule the Industrial Commission was guided by the three principles contained in~~
5 ~~its statutory mandate: setting fees adequate to ensure:~~

6 ~~(1) that injured workers are provided the standard of services and care intended by the Workers' Compensation~~
7 ~~Act,~~

8 ~~(2) that providers of medical services are reimbursed reasonable fees for providing these services, and~~

9 ~~(3) that medical costs are adequately contained. G.S. 97-26.~~

10 ~~(b) Benchmarking studies by the Workers' Compensation Research Institute of Cambridge, Massachusetts, have~~
11 ~~shown that the North Carolina Workers' Compensation 1993 Medical Fee Schedule was the third highest in the~~
12 ~~nation in 1993, and, in 1995, was the fifth highest among states having Workers' Compensation medical fee~~
13 ~~schedules. Yet those same studies indicate that two adjoining states, South Carolina and Georgia, have Workers'~~
14 ~~Compensation medical fee schedules 12 to 16% lower than North Carolina's; six states with similar costs of~~
15 ~~producing medical services have schedules 13 to 27% lower than North Carolina's; two major private payers in~~
16 ~~North Carolina have schedules that average 14% lower; and six states that have adopted Resource Based Relative~~
17 ~~Value System fee schedules have schedules that are 27 to 34% lower.~~

18 ~~(c) The Medicare fee schedule presently in effect in North Carolina is a Resource Based Relative Value System~~
19 ~~(RBRVS) fee schedule. Comparing the 1993 North Carolina Workers' compensation medical fee schedule to the~~
20 ~~North Carolina Medicare fee schedule yields the following: Overall, the 1993 Fee Schedule is 91% greater than the~~
21 ~~1995 Medicare schedule; general medicine is 58% greater; surgery is 124% greater; radiology is 145% greater and~~
22 ~~physical medicine is 105% greater.~~

23 ~~(d) The Industrial Commission believes that basing the revised Workers' Compensation Medical Fee Schedule on~~
24 ~~multipliers of the North Carolina Medicare fee schedule will yield the results sought. That is, such a fee schedule~~
25 ~~will yield ready access to good medical care for North Carolina's injured workers and will result in a lower medical~~
26 ~~cost and a lower overall cost while still getting injured workers well and back to work on a timely basis.~~

27 ~~(e) The Commission believes that the 1996 Fee Schedule will result in an overall lowering of medical fees by 11%,~~
28 ~~which will place it in line generally with what is being paid by two major private payers in North Carolina and in~~
29 ~~line generally with what is being paid in South Carolina and Georgia as well as in line generally with the six~~
30 ~~RBRVS states and the six states with similar costs of providing medical services.~~

31 ~~(f) The multiplier of 1.58 for General Medicine leaves General Medicine at about the same level of fees under the~~
32 ~~1996 Fee Schedule as under the 1993 Fee Schedule.~~

33 ~~(g) The multiplier of 1.30 for Physical Medicine would yield a slight reduction. The Commission had originally~~
34 ~~proposed a multiplier of 1.60 which would have yielded rates higher than the 1993 Fee Schedule.~~

35 ~~(h) The multiplier of 2.06 for Surgery will yield an 8% reduction. The Commission had originally proposed a~~
36 ~~multiplier of 2.02, which would have yielded a 10% reduction. The higher multiplier, and consequently the lower~~

1 ~~percentage reduction, gives recognition to the fact that the early intervention of good surgery is often what is needed~~
2 ~~for good results in difficult workers' compensation injury situations.~~

3 ~~The 1.96 multiplier for Radiology will yield a 20% reduction in that schedule rather than the 34% reduction using a~~
4 ~~multiplier of 1.60 that the Commission had originally proposed. The change from the 1.60 multiplier to the 1.96~~
5 ~~multiplier was made by the Commission to give recognition to the fact that the Radiology schedule got "short~~
6 ~~changed" by the Medicare RBRVS system when it was first set up and has not be rectified by the Medicare RBRVS~~
7 ~~system in the intervening years.~~

8 ~~(i) No change was made in the chiropractic fee schedule and in the dental fee schedule for a number of reasons: the~~
9 ~~overall amount paid under these schedules is small in comparison to all medical fees, and, the charges allowed under~~
10 ~~the schedules are relatively low compared with what other licensed physicians and medical care providers are~~
11 ~~allowed, among other reasons.~~

12 ~~(j) The Industrial Commission intends to monitor behavior resulting from changes to the medical fee schedule to~~
13 ~~determine if the changes result in problems with access to quality medical care for injured workers and to determine~~
14 ~~if savings result from the changes.~~

15 (a) Beginning March 1, 2014, electronic medical billing transactions shall be conducted using the electronic formats
16 adopted under the Code of Federal Regulations, Title 45, part 162, subparts K, N, and P. Whenever a standard
17 format is replaced with a newer standard, the most recent standard shall be used. The requirement to use a new
18 version shall commence on the effective date of the new version as published in the Code of Federal Regulations.

19 [The Code of Federal Regulations, Title 45, part 162, subparts K, N, and P is hereby incorporated by reference and
20 includes subsequent amendments and editions. A copy may be obtained at no charge from the Internal Revenue
21 Service's website, <http://ecfr.gpoaccess.gov>, or upon request, at the offices of the Commission, located in the Dobbs
22 Building, 430 North Salisbury Street, Raleigh, North Carolina, between the hours of 8:00 a.m. and 5:00 p.m.]

23 (b) Nothing in this Subchapter shall prohibit payers and health care providers from using a direct data entry
24 methodology for complying with these requirements, provided the methodology complies with the data content
25 requirements of the adopted formats and these rules.

26
27 *History Note:* Authority G.S. 97-26; 97-26(g1); 97-80;
28 Eff. January 1, 1996
29 Revised Eff. March 1, 2014.

1 04 NCAC 10F .0104 is adopted with changes as published in 27:02 NCR 220 as follows:

2
3 **4 NCAC 10F .0104 BILLING CODE SETS**

4 Billing codes and modifier systems identified below are valid codes for the specified workers' compensation
5 transactions, in addition to any code sets defined by the standards adopted in 4 NCAC 10F ~~.0102~~ .0103:

- 6 (1) "CDT-4 Codes" that refers to the codes and nomenclature prescribed by the American Dental
7 Association.
- 8 (2) "CPT-4 Codes" that refers to the procedural terminology and codes contained in the "Current
9 Procedural Terminology, Fourth Edition," as published by the American Medical Association.
- 10 (3) "Diagnosis Related Group (DRG)" that refers to the inpatient classification scheme used by CMS
11 for hospital inpatient reimbursement.
- 12 (4) "Healthcare Common Procedure Coding System" (HCPCS) that refers to a coding system which
13 describes products, supplies, procedures, and health professional services and ~~which~~ that includes
14 CPT-4 codes, alphanumeric codes, and related modifiers.
- 15 (5) "ICD-9-CM Codes" that refers to diagnosis and procedure codes in the International Classification
16 of Diseases, Ninth Revision, Clinical Modification published by the United States Department of
17 Health and Human Services.
- 18 (6) "ICD-10-CM/PCS that refers to diagnosis and procedure codes in the International Classification
19 of Diseases, Tenth Edition, Clinical Modification/Procedure Coding System.
- 20 (7) National Drug Codes (NDC) of the United States Food and Drug Administration.
- 21 (8) "Revenue Codes" that refers to the 4-digit coding system developed and maintained by the
22 National Uniform Billing Committee for billing inpatient and outpatient hospital services, home
23 health services, and hospice services.
- 24 (9) "National Uniform Billing Committee Codes" that refers to the code structure and instructions
25 established for use by the National Uniform Billing Committee (NUBC).

26
27 *History Note:* Authority G.S. 97-26(g1); 97-80;
28 *Eff.* March 1, 2014.

04 NCAC 10F .0105 is adopted with changes as published in 27:02 NCR 220 as follows:

4 NCAC 10F .0105 ELECTRONIC MEDICAL BILLING, REIMBURSEMENT, AND DOCUMENTATION

~~(a) Applicability~~

~~(1)(a)~~ Payers and payer agents shall:

~~(A)(1)~~ accept electronic medical bills submitted in accordance with the ~~adopted~~ standards adopted in this Subchapter;

~~(B)(2)~~ transmit acknowledgments and remittance advice in compliance with the ~~adopted~~ standards adopted in this Subchapter in response to electronically submitted medical bills; and

~~(C)(3)~~ ~~support~~ utilize methods to receive electronic documentation required for the adjudication of a bill.

~~(2)(b)~~ A health care provider shall:

~~(A)(1)~~ exchange medical bill data in accordance with the ~~adopted~~ standards adopted in this Subchapter;

~~(B)(2)~~ submit medical bills as defined by this Rule to any payers ~~that has~~ who have established connectivity with the health care provider system or clearinghouse;

~~(C)(3)~~ submit required documentation in accordance with Paragraph (d) of this Rule; and

~~(D)(4)~~ receive and ~~process~~ act upon any acceptance or rejection acknowledgment from the payer.

~~(b)(c)~~ To be considered a complete electronic medical bill, the bill or supporting transmissions shall:

(1) be submitted in the correct billing format, with the correct billing code sets as presented in this Rule;

(2) be transmitted in compliance with the format requirements described in this Rule;

(3) include in legible text all medical reports and records, including evaluation reports, narrative reports, assessment reports, progress reports and notes, clinical notes, hospital records and diagnostic test results that are necessary for adjudication;

(4) identify the:

(A) injured employee;

(B) employer;

(C) insurance carrier, third party administrator, managed care organization or its agent;

(D) health care provider; and

(E) medical service or product;

~~(F) any other requirements as presented in the companion guide; and~~

~~(G) use current and valid codes and values as defined in the applicable formats defined in this Subchapter.~~

(5) comply with any other requirements as presented in a companion guide published by the Commission; and

(6) use current and valid codes and values as defined in the applicable formats defined in this Subchapter.

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~~(e)~~(d) Electronic Acknowledgment:

- (1) Interchange Acknowledgment (TA1) notifies the sender of the receipt of, and structural defects associated with, an incoming transaction.
- (2) As used in this Paragraph, Implementation Acknowledgment (ASC X12 999) transaction is an electronic notification to the sender of the file that it has been received and has been:
 - (A) accepted as a complete and structurally correct file; or
 - (B) rejected with a valid rejection code.
- (3) As used in this Paragraph, Health Care Claim Status Response (ASC X12 277) or Acknowledgment transaction (detail acknowledgment) is an electronic notification to the sender of an electronic transaction (individual electronic bill) that the transaction has been received and has been:
 - (A) accepted as a complete, correct submission; or
 - (B) rejected with a valid rejection code.
- (4) A payer shall acknowledge receipt of an electronic medical bill by returning an Implementation Acknowledgment (ASC X12 999) within one business day of receipt of the electronic submission.
 - ~~(A) — Notification of a rejected bill shall be transmitted using the appropriate acknowledgment when an electronic medical bill does not meet the definition of a complete electronic medical bill as described in this Rule or does not meet the edits defined in the applicable implementation guide or guides.~~
 - ~~(B) — A health care provider or its agent may not submit a duplicate electronic medical bill earlier than 60 days from the date originally submitted if a payer has acknowledged acceptance of the original complete electronic medical bill. A health care provider or its agent may submit a corrected medical bill electronically to the payer after receiving notification of a rejection. The corrected medical bill shall be submitted as a new, original bill.~~
- ~~(5) — Notification of a rejected bill shall be transmitted when an electronic medical bill does not meet the definition of a complete electronic medical bill as described in this Rule or does not meet the edits defined in the applicable implementation guide or guides.~~
- ~~(6) — A health care provider or its agent may not submit a duplicate electronic medical bill earlier than 60 days from the date originally submitted if a payer has acknowledged acceptance of the original complete electronic medical bill. A health care provider or its agent may submit a corrected medical bill electronically to the payer after receiving notification of a rejection. The corrected medical bill shall be submitted as a new, original bill.~~
- ~~(5)~~(7) A payer shall acknowledge receipt of an electronic medical bill by returning a Health Care Claim Status Response or Acknowledgment (ASC X12 277) transaction (detail acknowledgment) within two business days of receipt of the electronic submission.

1 (A) ~~Notification of a rejected bill is shall be transmitted in an ASC X12NX12 277 response~~
2 ~~or acknowledgment when an electronic medical bill does not meet the definition of a~~
3 ~~complete electronic medical bill or does not meet the edits defined in the applicable~~
4 ~~implementation guide or guides.~~

5 (B) ~~A health care provider or its agent may not submit a duplicate electronic medical bill~~
6 ~~earlier than 60 days from the date originally submitted if a payer has acknowledged~~
7 ~~acceptance of the original complete electronic medical bill. A health care provider or its~~
8 ~~agent may submit a corrected medical bill electronically to the payer after receiving~~
9 ~~notification of a rejection. The corrected medical bill shall be submitted as a new, original~~
10 ~~bill.~~

11 (8) ~~Notification of a rejected bill is shall be transmitted in an ASC X12 277 response or~~
12 ~~acknowledgment when an electronic medical bill does not meet the definition of a complete~~
13 ~~electronic medical bill or does not meet the edits defined in the applicable implementation guide~~
14 ~~or guides.~~

15 (9) ~~A health care provider or its agent may not submit a duplicate electronic medical bill earlier than~~
16 ~~60 days from the date originally submitted if a payer has acknowledged acceptance of the original~~
17 ~~complete electronic medical bill. A health care provider or its agent may submit a corrected~~
18 ~~medical bill electronically to the payer after receiving notification of a rejection. The corrected~~
19 ~~medical bill shall be submitted as a new, original bill.~~

20 (6)(10) ~~Acceptance of a complete medical bill is not an admission of liability by the payer. A payer may~~
21 ~~subsequently reject an accepted electronic medical bill if the employer or other responsible party~~
22 ~~named on the medical bill is not legally liable for its payment.~~

23 (A) ~~The subsequent rejection shall occur no later than seven days from the date of receipt of~~
24 ~~the complete electronic medical bill.~~

25 (B) ~~The rejection transaction shall indicate that the reason for the rejection is due to denial of~~
26 ~~liability.~~

27 (11) ~~The subsequent rejection shall occur no later than seven days from the date of receipt of the~~
28 ~~complete electronic medical bill.~~

29 (12) ~~The rejection transaction shall indicate that the reason for the rejection is due to denial of liability.~~

30 (7)(13) ~~Acceptance of an incomplete medical bill does not satisfy the written notice of injury requirement~~
31 ~~from an employee or payer as required in G.S. 97-22.~~

32 (8)(14) ~~Acceptance of a complete or incomplete medical bill by a payer does not begin the time period by~~
33 ~~which a payer shall accept or deny liability for any alleged claim related to such medical treatment~~
34 ~~pursuant to G.S. 97-18 and 4 NCAC 10A 0601.~~

35 (9)(15) ~~Transmission of an Implementation Acknowledgment under Subsection Subparagraph (c)(2) of~~
36 ~~this Rule and acceptance of a complete, structurally correct file serves as proof of the received~~
37 ~~date for an electronic medical bill in this Rule.~~

1 ~~(d)~~(e) Electronic Documentation

- 2 (1) Electronic documentation, including ~~but not limited to~~ medical reports and records submitted
3 electronically that support an electronic medical bill, may be required by the payer before payment
4 may be remitted to the health care provider. Electronic documentation may be submitted
5 simultaneously with the electronic medical bill.
- 6 (2) Electronic transmittal by electronic mail shall contain the following information:
- 7 (A) the name of the injured employee;
- 8 (B) identification of the worker's employer, the employer's insurance carrier, or the third
9 party administrator or its agent handling the workers' compensation claim;
- 10 (C) identification of the health care provider billing for services to the employee, and where
11 applicable, its agent;
- 12 (D) the date(s) of service; and
- 13 (E) the workers' compensation claim number assigned by the payer, if known.

14 ~~(e)~~(f) Electronic remittance notification

- 15 (1) ~~As used in the Paragraph, an An~~ electronic remittance notification is an explanation of benefits
16 (EOB) or explanation of review (EOR), submitted electronically regarding payment or denial of a
17 medical bill, recoupment request, or receipt of a refund.
- 18 (2) A payer shall provide an electronic remittance notification in accordance with G.S. 97-18.
- 19 (3) The electronic remittance notification shall contain the appropriate Group Claim Adjustment
20 Reason Codes, Claim Adjustment Reason Codes (CARC) and associated Remittance Advice
21 Remark Codes (RARC) ~~as specified by ASC X12 835 implementation guide~~ or, for pharmacy
22 charges, the National Council for Prescription Drugs Program (NCPDP) Reject Codes, denoting
23 the reason for payment, adjustment, or denial.
- 24 (4) The remittance notification shall be sent within two days of:
- 25 (A) the expected date of receipt by the ~~medical~~ health care provider of payment from the
26 payer; or
- 27 (B) the date the bill was rejected by the payer. If a recoupment of funds is being requested,
28 the notification shall contain the proper code described in Subparagraph (e)(3) of this
29 Rule and ~~a~~ an explanation for the amount and basis of the refund.

30 ~~(f)~~(g) A health care provider or its agent may not submit a duplicate paper medical bill earlier than 30 days from the
31 date originally submitted unless the payer has returned the medical bill as incomplete in accordance with this
32 Subchapter. A health care provider or its clearinghouse or agent may submit a corrected paper medical bill to the
33 payer after receiving notification of the return of an incomplete medical bill. The corrected medical bill shall be
34 submitted as a new, original bill.

35 ~~(g)~~(h) A payer shall establish connectivity with any clearinghouse that requests the exchange of data in accordance
36 with this Subchapter.

1 ~~(b)(i)~~ A payer or its agent may not reject a standard transaction on the basis that it contains data elements not
2 needed or used by the payer or its agent.

3 ~~(j)~~ A health care provider that does not send standard transactions shall use an internet-based direct data
4 entry system offered by a payer if the payer does not charge a transaction fee. A health care provider using an
5 Internet-based direct data entry system offered by a payer or other entity shall use the appropriate data content and
6 data condition requirements of the standard transactions.

7

8 *History Note:* Authority G.S. 97-26(g1); 97-80

9 *Eff.* March 1, 2014.

04 NCAC 10F .0106 is adopted with changes as published in 27:02 NCR 222 as follows:

**4 NCAC 10F .0106 EMPLOYER, INSURANCE CARRIER, MANAGED CARE ORGANIZATION,
OR AGENTS' RECEIPT OF MEDICAL BILLS FROM HEALTH CARE
PROVIDERS**

(a) Upon receipt of medical bills submitted in accordance with ~~these Rules~~ the Rules in this Subchapter, a payer shall evaluate each bill's conformance with the criteria of a complete medical ~~bills. bill as follows:~~ A payer shall not return to the health care provider medical bills that are complete, unless the bill is a duplicate bill. Within 21 days of receipt of an incomplete medical bill, a payer or its agent shall either.

~~(1) A payer shall not return to the health care provider medical bills that are complete, unless the bill is a duplicate bill.~~

~~(2) Within 21 days of receipt of an incomplete medical bill, a payer or its agent shall either:~~

~~(A)(1)~~ Complete the bill by adding missing health care provider identification or demographic information already known to the payer; or

~~(B)(2)~~ Return the bill to the sender, in accordance with this Paragraph.

(b) The received date of an electronic medical bill is the date all of the contents of a complete electronic bill are successfully received by the claims payer.

(c) The payer may contact the ~~medical~~ health care provider to obtain the information necessary to make the bill ~~complete. complete as follows:~~ Any request by the payer or its agent for additional documentation to pay a medical bill shall:

~~(1) Any request by the payer or its agent for additional documentation to pay a medical bill shall:~~

~~(A)(1)~~ be made by telephone or electronic transmission unless the information cannot be sent by those media, in which case the sender shall send the information by mail or personal delivery;

~~(B)(2)~~ be specific to the bill or the bill's related episode of care;

~~(C)(3)~~ describe with specificity the clinical and other information to be included in the response;

~~(D)(4)~~ be relevant and necessary for the resolution of the bill;

~~(E)(5)~~ be for information that is contained in or is in the process of being incorporated into the injured employee's medical or billing record maintained by the health care provider; and

~~(F)(6)~~ indicate the reason for which the insurance carrier is requesting the information.

~~(2) If the payer or its agent obtains the missing information and completes the bill to the point it can be adjudicated for payment, the payer shall document the name and telephone number of the person who supplied the information.~~

~~(3) Health care providers and payers, or their agents, shall maintain, in a reproducible format, documentation of communications related to medical bill processing.~~

If the payer or its agent obtains the missing information and completes the bill to the point it can be adjudicated for payment, the payer shall document the name and telephone number of the person who supplied the information.

1 Health care providers and payers, or their agents, shall maintain, in a reproducible format, documentation of
2 communications related to medical bill processing.

3 (d) A payer shall not return a medical bill except as provided in this Rule. When returning an electronic medical
4 bill, the payer shall identify the reason(s) for returning the bill by utilizing the appropriate Reason and Rejection
5 Code identified in the standards identified in this Subchapter.

6 (e) The proper return of an incomplete medical bill in accordance with this section fulfills the obligation of the
7 payer to provide to the health care provider or its agent information related to the incompleteness of the bill.

8 (f) Payers shall timely reject bills or request additional information needed to reasonably determine the amount
9 payable as follows:

10 (1) For bills submitted electronically, the rejection of all or part of the bill shall be sent to the
11 submitter within two days of receipt.

12 (2) If bills are submitted in a batch transmission, only the specific bills failing edits shall be rejected.

13 (g) If a payer has reason to challenge the coverage or amount of a specific line item on a bill, but has no reasonable
14 basis for objections to the remainder of the bill, the uncontested portion shall be paid timely, as required in this Rule.

15 (i) Payment of all uncontested portions of a complete medical bill shall be made within 30 days of receipt of the
16 original bill, or receipt of additional information requested by the payer allowed under the law. After 60 days an
17 amount equal to 10 percent shall be added to an unpaid bill.

18 (j) A payer shall not return a medical bill except as provided in this Rule. When returning a medical bill, the payer
19 shall also communicate the reason(s) for returning the bill.

20

21 *History Note:* Authority G.S. ~~97-18(1)~~ 97-18(a); 97-26(g1); 97-80;

22 *Eff.* March 1, 2014.

1 04 NCAC 10F .0107 is adopted with changes as published in 27:02 NCR 223 as follows:

2

3 **4 NCAC 10F .0107 COMMUNICATION BETWEEN HEALTH CARE PROVIDERS AND PAYERS**

4 (a) Any communication between the health care provider and the payer related to medical bill processing shall be of
5 sufficient ~~specific~~ detail to allow the responder to easily identify the information required to resolve the issue or
6 question related to the medical bill. Generic statements that simply state a conclusion such as "payer improperly
7 reduced the bill" or "health care provider did not document" or other similar phrases with no further description of
8 the factual basis for the sender's position do not satisfy the requirements of this Rule.

9 (b) When communicating with the [~~healthcare~~ health care] provider, agent, or assignee, the payer may ~~utilize~~
10 utilize the ASC X12 Reason Codes, or ~~as appropriate~~, the NCPDP Reject Codes, to communicate with the health
11 care provider, agent, or assignee.

12 (c) Communication between the health care provider and payer related to medical bill processing shall be made by
13 telephone or electronic transmission unless the information cannot be sent by those media, in which case the sender
14 shall send the information by mail or personal delivery.

15

16 *History Note:* Authority G.S. 97-26(g1); 97-80(a);

17 *Eff.* March 1, 2014.

1 4 NCAC 10F .0108 originally proposed for amendment as published in 27:02 NCR 223 is withdrawn:

2

3 **4 NCAC 10F .0108** **SANCTIONS**

4

5 *History Note:* *Authority* G.S. 1A-1, Rule 37; 97-26(g1); 97-80;

1 04 NCAC 10F .0109 is adopted as published in 27:02 NCR 223 as follows:

2

3 **4 NCAC 10F .0109 EFFECTIVE DATE**

4 This Chapter applies to all medical services and products provided on or after March 1, 2014. For medical services
5 and products provided prior to March 1, 2014, medical billing and processing shall be in accordance with the rules
6 in effect at the time the health care was provided.

7

8 *History Note:* *Authority* G.S. 97-26(g1); 97-80

9 *Eff.* March 1, 2014.

1 4 NCAC 10G .0102 is amended as published in 27:02 NCR 225 as follows:

2
3 **04 NCAC 10G .0102 SELECTION OF MEDIATOR**

4 (a) By Agreement of ~~Parties~~ Parties. The parties in a workers' compensation case or a state tort claims case may,
5 by agreement, ~~choose~~ select a mediator certified by the North Carolina Dispute Resolution Commission by
6 ~~agreement~~ within 55 days of the filing of a Form 33 ~~Request for Hearing, Request that Claim be Assigned for~~
7 ~~Hearing~~, or otherwise within ~~the deadline set forth in~~ 21 days after the Commission's order entered pursuant to ~~Rules~~
8 ~~1(e) Paragraph (c) and or 1(d), Paragraph (d) of Rule .0101 of this Subchapter, unless otherwise specified therein,~~
9 subject to the Commission's authority to remove the mediator selected by the parties ~~for specific reasonable~~
10 ~~cause due to a conflict of interest.~~ Such ~~The~~ stipulation may be transmitted by either party, shall be dated as of the
11 date it is transmitted to the Commission, and must be received by the Dispute Resolution Coordinator within 55 days
12 of the filing of a Form 33 ~~Request for Hearing, Request that Claim be Assigned for Hearing,~~ or otherwise within ~~21~~
13 ~~days of the mediation~~ the deadline set forth in the Commission's order entered pursuant to Rules 1(e) and
14 ~~1(d), Paragraph (c) or Paragraph (d) of Rule .0101 of this Subchapter.~~ The scheduled date of the ~~mediation~~ mediated
15 settlement conference shall be within 120 days of the mediation order. The stipulation shall include the date of the
16 scheduled mediation, the name, address and telephone number of the mediator selected by agreement, and shall
17 confirm that the mediator is certified by the Dispute Resolution Commission. ~~The 21 or 55 day applicable~~ deadline
18 ~~may~~ shall be extended by the Dispute Resolution Coordinator upon request of the parties. Any party may waive the
19 ~~21 or 55 day periods applicable~~ deadline for the selection and suggestion of mediators and request that the
20 Commission ~~immediately~~ appoint a mediator, ~~from the Commission's appointed list.~~

21 (b) Appointment by ~~Commission~~ Commission. If the parties fail to notify the Commission of ~~their~~ the parties'
22 selection of a mediator within 55 days of the filing of a Form 33 ~~Request for Hearing, Request that Claim be~~
23 ~~Assigned for Hearing,~~ or otherwise within ~~21 days of a mediation~~ the deadline set forth in the Commission's order
24 entered pursuant to ~~Rules 1(e) and 1(d), Paragraph (c) or Paragraph (d) of Rule .0101 of this Subchapter as set forth~~
25 ~~above,~~ the Commission shall appoint a mediator to hold a mediated settlement conference in ~~that~~ the case. The
26 Commission shall appoint ~~a mediator~~ mediators ~~from a list of mediators eligible for appointment maintained by the~~
27 ~~Commission which shall consist of those mediators who attain~~ meets ~~the~~ qualifications in Rule 8 and request
28 ~~inclusion on such list,~~ requirements in Paragraph (b) of Rule .0108 of this Subchapter. In the absence of any
29 suggestions by the parties with regard to the appointment of mediators, ~~the Commission~~ mediators shall ~~generally be~~
30 ~~selected~~ select the mediator ~~for specific the~~ cases case by random order, ~~or by a system which attempts to assign each~~
31 ~~mediator to an equal number of cases over a period of time,~~ unless the Commission determines ~~in its discretion that,~~
32 because of unusual circumstances, a particular mediator should be ~~chosen~~ appointed in a particular case. ~~If the~~
33 ~~parties request the approval of a selected mediator after the appointment of another mediator by the Commission, the~~
34 ~~Commission may require one or more of the parties, or other responsible person(s), to pay a substitution of mediator~~
35 ~~fee to the Commission of up to \$100.00.~~

36 (c) Mediator Lists — To assist parties in the selection of mediators by agreement, the Commission shall maintain a
37 list of mediators eligible for appointment by the Commission in compensation and tort cases, and a list of mediators

1 | ~~who are not eligible for appointment, but who may be selected by the parties and approved by the Commission. The~~
2 | ~~Commission shall provide copies of these lists to parties on request, and may charge a reasonable fee for~~
3 | ~~maintaining and distributing these lists.~~

4 | ~~(d)(c)~~ Disqualification of ~~Mediator—~~Mediator. Any party may move the Commission for an order disqualifying a
5 | mediator. For good cause, such order shall be entered. If the mediator is disqualified, an order shall be entered for
6 | the selection of a replacement mediator pursuant to this Rule, 2. Nothing in this ~~provision~~ Paragraph shall preclude
7 | mediators from disqualifying themselves.

8 |
9 | *History Note:* *Authority* G.S. 97-80(a), (c); G.S. 143-296; 143-300; Rule 2 of Rules Implementing
10 | Statewide Mediated Settlement Conference in Superior Court Civil Actions;
11 | *Eff.* January 16, 1996;
12 | *Amended Eff.* October 1, 1998;
13 | *Recodified from* 4 NCAC 10A .0616;
14 | *Amended Eff.* January 1, 2013; January 1, 2011; June 1, 2000.

1 4 NCAC 10G .0104 is amended with changes as published in 27:02 NCR 226 as follows:

2
3 **04 NCAC 10G .0104 DUTIES OF PARTIES, REPRESENTATIVES, AND ATTORNEYS**

4 (a) ~~Attendance~~—Attendance. The following persons shall physically attend ~~a~~the mediated settlement conference:

5 (1) ~~Parties.~~

6 (A)(1) ~~All~~all individual parties;

7 (B)(2) ~~Employers.~~ in a workers' compensation case, a representative of the employer at the time of
8 injury ~~is required to attend only if:~~ (1) ~~the employer, instead of or in addition to the insurance~~
9 ~~company or administrator, has decision making authority with respect to settlement;~~ or (2) ~~the~~
10 ~~employer is offering the claimant employment and the suitability of that employment is in issue;~~
11 ~~or (3) the employer and the claimant have agreed to simultaneously mediate non compensation~~
12 ~~issues arising from the injury; or (4) the Commission orders the employer representative to attend~~
13 ~~the mediation conference.~~

14 (A) the employer, instead of or in addition to the insurance company or administrator, has
15 decision-making authority with respect to settlement;

16 (B) the employer is offering the claimant employment and the suitability of that employment
17 is in issue;

18 (C) the employer and the claimant have agreed to simultaneously mediate non-compensation
19 issues arising from the injury; or

20 (D) the Commission orders the employer representative to attend the conference if the
21 representative's physical attendance is necessary to resolve matters in dispute in the
22 subject action;

23 (C)(3) ~~an officer, employee or agent of any party that is not a natural person or a governmental entity~~
24 ~~shall be represented at the conference by an officer, employee or agent who is not such party's~~
25 ~~outside counsel and who has been the authorized authority to decide on behalf of such party~~
26 ~~whether and on what terms to settle the action; and~~

27 (D)(4) ~~in a workers' compensation case, an employee or agent of any party that is a governmental entity~~
28 ~~shall be represented at the conference by an employee or agent who is not such party's outside~~
29 ~~counsel or Attorney General's counsel responsible for the case and who has the authority to decide~~
30 ~~on behalf of such party and on what terms to settle the action;action. provided if under law,~~

31 (5) [When] when the governing law prescribes that the terms of a proposed settlement terms can may
32 be approved only by a Board, the representative shall have an employee or agent who is not such
33 party's outside counsel or Attorney General's counsel responsible for the case and who has the
34 authority to negotiate on behalf of the party and to make a recommendation to that the Board.
35 Because G.S. 143-295 provides the Attorney General with settlement authority on behalf of
36 governmental entities and agencies for state tort claims, an employee or agent of the named
37 governmental entity or agency is not required to attend the mediated settlement conference; the

1 Attorney General shall attempt to make ~~every effort to make~~ an employee or agent of the named
2 governmental entity or agency in a state tort claim available via telecommunication, and mediation
3 shall not be delayed due to the absence or unavailability of the employee or agent of the named
4 governmental entity or agency.

5 ~~(2)(6) Attorneys. The~~ counsels of record; parties' counsel of record; provided, that appearance by
6 counsel does not dispense with or waive the required attendance of the parties listed ~~above;~~ in
7 Subparagraphs (1) through (4);

8 ~~(3)(7) Insurance Company Representatives. A~~ a representative of each defendant's primary workers'
9 compensation or liability insurance carrier or self-insured ~~which that~~ may be obligated to pay all
10 or part of any claim presented in the action. Each ~~such~~ carrier or self-insured shall be represented
11 at the conference by an officer, employee or agent who is not such party's outside counsel and
12 who has the authority to ~~make a decision~~ decide on behalf of ~~such the~~ carrier or self-insured
13 whether and on what terms to settle the action, or who has been authorized to negotiate to negotiate
14 on behalf of such carrier or self-insured and can ~~promptly~~ communicate during the conference
15 with persons who have such decision making authority; and

16 ~~(4)(8) Other Parties and Persons. by~~ order of the Commission, other representatives of parties,
17 employers ~~or, or~~ carriers, who may be obligated to pay all or part of any claim presented in the
18 action and who are not required to attend the conference pursuant to ~~the above rules~~ Subparagraphs
19 (1) through (6) of this Rule, ~~may be required to attend the~~ conference if the Commission
20 determines that the ~~person's~~ representative's attendance ~~may be~~ is necessary for purposes of
21 resolving the matters in dispute in the subject action. All (i) Any employer employers and (ii)
22 or carriers carrier who may be obligated to pay all or part of any claim presented in the action and
23 who ~~are~~ is not required to physically attend a the mediation mediated settlement conference
24 pursuant to ~~these rules~~ Subparagraphs (1) through (6) of this Rule or by Commission orders, ~~are~~
25 ~~nevertheless allowed to~~ may attend the ~~mediation~~ conference if ~~they the~~ employer or carrier elects
26 to ~~do so attend~~. If, during ~~a the mediation~~ conference, the mediator determines that the physical
27 attendance of one or more additional persons is necessary to resolve the matters in dispute in the
28 subject action, the mediator may recess the ~~conference, conference~~ and ~~then~~ reconvene the
29 conference at a later date and time ~~in order to allow for the attendance of~~ the additional person or
30 ~~persons. persons to physically attend.~~

31 ~~(b) Waiver of Attendance Requirement.~~

32 ~~(1)(b)~~ Any party or person required to attend a mediated settlement conference shall physically attend the
33 conference until an agreement is reduced to writing and signed as provided in Paragraph (f) of this Rule, 4(d), or
34 until an impasse has been declared. Any such party or person may have the physical attendance requirement
35 excused or ~~modified, including the allowance of that party's or person's participation without physical attendance;~~
36 modified by agreement of all parties and persons required to attend the conference and the mediator, or by order of

1 the Commission in the interests of justice upon motion of a party and notice to all parties and persons
2 required to attend the conference.

3 (A) — In the absence of an order by the Dispute Resolution Coordinator, only by agreement of
4 all parties and persons required to attend and the mediator; or

5 (B) — By order of the Dispute Resolution Coordinator, upon motion of a party and notice to all
6 parties and persons required to attend and the mediator.

7 ~~(e) Permissible modifications include allowing a party or person to participate in the conference without the party or
8 person being physically present at the conference.~~

9 ~~(2)(d)(c) Appearance by Telephone: In appropriate cases The Dispute Resolution Coordinator the Commission or
10 the mediator, with the consent of the parties, may in appropriate cases allow a party or insurance carrier
11 representative who is required to physically attend a mediated settlement conference under these rules this Rule to
12 attend the conference by telephone, conference call, or speaker telephone, telephone or videoconferencing; at the
13 discretion of the mediator, provided that, the party or person(s) representative so attending shall bear all costs of such
14 telephone calls, calls or videoconferencing, that the mediator may communicate directly with the insurance
15 representative with regard to the matters discussed in mediation, and that the mediator may set a subsequent
16 mediated settlement conference at which all persons parties and representatives shall be required to physically attend.
17 The failure to properly appear by telephone or videoconferencing in accordance with this rule Paragraph may shall
18 subject the responsible party(ies) or representative(s) to sanctions pursuant to Rule 5- .0105 of this Subchapter.~~

19 ~~(e)(e)(d) Notice of Mediation Order—Order. Within seven days after the receipt of an order for a mediated
20 settlement conference, the carrier or self-insured named in the order shall provide a copy of the order to the
21 employer and all other carriers which who may be obligated to pay all or part of any claim presented in the workers'
22 compensation case or any related third-party tort-feasor tortfeasor claims, and shall provide the mediator and the
23 other parties in the action with the name, address and telephone number of all such carriers.~~

24 ~~(4)(f)(e) Finalizing Agreement—Agreement. If an agreement is reached in the mediation-mediated settlement
25 conference, the parties shall reduce the agreement to writing, specifying all the terms of their the agreement
26 that bearing bear on the resolution of the dispute before the Industrial-Commission, and shall sign it the agreement
27 along with their counsel. The parties may use IC Form MSC8, Mediated Settlement Agreement, or MSC9, Mediated
28 Settlement Agreement – Alternative Form, for this purpose. The Execution by counsel of a mediated settlement
29 agreement for an employer or carrier who does not physically attend the mediation-mediated settlement conference
30 shall be deemed to be in compliance with this Rule and Rule 502(3)(b) of the Workers' Compensation Rules of the
31 North Carolina Industrial Commission, 04 NCAC 10A .0502. By stipulation of the parties and at their the parties'
32 expense, the agreement may be electronically or stenographically recorded. All agreements for payment of
33 compensation shall be submitted in proper form for Industrial-Commission approval in accordance with 04 NCAC
34 10A .0501 and .0502, and shall be filed with the Commission within 20 days of the conclusion of the mediation
35 conference.~~

1 ~~(e)~~~~(g)~~~~(f)~~ Payment of Mediator's ~~Fee~~—Fee. The mediator's fee shall be paid at the conclusion of the mediated
2 settlement conference, unless otherwise provided by Rule 7 .0107 of this Subchapter, or by agreement with the
3 mediator. ~~Sanctions may be assessed if the mediator's fee is not paid in a timely fashion.~~

4 ~~(f)~~~~(h)~~~~(g)~~ Related ~~Cases~~—Cases. Upon application by any party or person and upon notice to all parties, the
5 Commission may, in the [interest] interests of justice, order ~~that~~ an attorney of record, party or representative of an
6 insurance carrier ~~that who~~ may be liable for all or any part of a claim pending in ~~an Industrial~~ a Commission case
7 ~~shall, upon reasonable notice, to~~ attend a mediated settlement conference that may be convened in another pending
8 case, regardless of the forum in which the other case may be pending, provided that all parties in the other pending
9 case consent to the attendance ordered pursuant to this ~~rule~~—Paragraph. Any disputed issues concerning such an
10 order shall be addressed to the Commission's Dispute Resolution Coordinator. Unless otherwise ordered, any
11 attorney, party or carrier representative ~~that who~~ properly attends a mediated settlement conference pursuant to this
12 Paragraph~~rule~~ shall not be required to pay any of the mediation fees or costs related to that ~~mediation~~—conference.
13 Requests that a party, attorney of record, or insurance carrier representative in a related case attend a mediated
14 settlement conference in ~~an Industrial~~ a Commission case shall be addressed to the court or agency in which the
15 related case is pending, provided that all parties in the ~~Industrial~~—Commission case consent to the requested
16 attendance.

17
18 *History Note:* Authority G.S. 97-80(a), (c); 143-295; 143-296; 143-300; Rule 4 of
19 Rules Implementing Statewide Mediated Settlement Conference in Superior Court Civil
20 Actions;
21 *Eff.* January 16, 1996;
22 *Amended Eff.* October 1, 1998;
23 *Recodified from* 4 NCAC 10A .0616;
24 *Amended Eff.* January 1, 2013; January 1, 2011; June 1, 2000.

1 4 NCAC 10G .0106 is amended with changes as published in 27:02 NCR 229 as follows:

2
3 **04 NCAC 10G .0106 AUTHORITY AND DUTIES OF MEDIATORS**

4 ~~(a) Authority of Mediator.~~

5 ~~(1)(a) Control of Conference.~~ The mediator shall at all times be in control of the mediated settlement conference
6 and the procedures to be followed. Except as otherwise set forth in ~~these rules~~ the Rules in this Subchapter with
7 regard to the finalization of the parties' agreement, there shall be no audio, video, electronic or stenographic
8 recording ~~made of the negotiations or discussions that occur at the mediated settlement conference of the mediation~~
9 process by any participant.

10 ~~(2)(b) Private Consultation.~~ The mediator may meet and consult privately with any ~~party or parties or their counsel~~
11 participant prior to or during the conference. The fact that private communications have occurred with a participant
12 shall be disclosed to all other participants at the beginning of the conference.

13 ~~(3)(c) Scheduling the Conference.~~ The mediator shall make a good faith effort to schedule the conference at a time
14 that is convenient with the parties, attorneys and mediator. In the absence of agreement, the mediator shall select the
15 date for the conference.

16 ~~(b) Duties of Mediator.~~

17 ~~(1)(d) Information to the Parties.~~ The mediator shall define and describe the following to the parties at the
18 beginning of the mediated settlement conference:

19 ~~(A)(1)~~ (1) the process of mediation;

20 ~~(B)(2)~~ (2) the differences between mediation and other forms of conflict resolution;

21 ~~(C)(3)~~ (3) the costs of the ~~mediated settlement~~ conference;

22 ~~(D)(4)~~ (4) the facts that the ~~mediated settlement~~ conference is not a trial or hearing, the mediator is not acting
23 in the capacity of a Commissioner or Deputy ~~Commissioner, Commissioner and the mediator will~~
24 shall not act in the such capacity of a Commissioner or Deputy Commissioner in the subject case
25 at any time in the future, and the parties retain their right to a hearing if ~~they~~ the parties do not
26 reach a settlement;

27 ~~(E)(5)~~ (5) the circumstances under which the mediator may meet alone with ~~either~~ any of the parties or with
28 any other person;

29 ~~(F)(6)~~ (6) whether and under what conditions, communications with the mediator will ~~shall~~ be held in
30 confidence during the conference;

31 ~~(G)(7)~~ (7) the inadmissibility of conduct and statements as provided by G.S. 8C-1, Rule 408 of the Evidence
32 Code and Subparagraph 3(f) of this Rule; Paragraph (f) of Rule. 0103 of this Subchapter;

33 ~~(H)(8)~~ (8) the duties and responsibilities of the mediator and the parties; ~~and, and~~

34 ~~(I)(9)~~ (9) the fact that any agreement reached will ~~shall~~ be reached by mutual consent of the parties.

35 ~~(2)(e) Disclosure.~~ The mediator ~~has a duty to~~ shall be impartial and ~~to~~ advise all parties of any circumstances
36 bearing on possible bias, prejudice or partiality.

1 ~~(3)~~(f) Declaring Impasse. ~~It is the duty of~~ The mediator ~~to timely~~ shall determine when mediation is not viable, that
2 an impasse exists, or that mediation should end.

3 ~~(4)~~(g) Reporting Results of Conference. In all cases within the Commission's jurisdiction, whether mediated
4 voluntarily or pursuant to an order of the Commission, the mediator shall report the results of the mediated
5 settlement conference on a form provided by the Commission. If an agreement was reached, the report shall state
6 whether the issue or matter under mediation will ~~[shall]~~ be resolved by ~~Industrial~~ Commission form agreement,
7 compromise settlement agreement, other settlement agreement, voluntary dismissal or removal from the hearing
8 docket, and shall identify the persons designated to file or submit for approval ~~such the~~ agreement, or dismissal.
9 The mediator shall not attach a copy of the parties' memorandum of agreement to the mediator's report transmitted
10 to the Commission and, except as ~~set forth above~~ permitted under the Rules in this Subchapter, ~~or as may be ordered~~
11 unless deemed necessary in the ~~[interest]~~ interests of justice by the Commission, the mediator shall not disclose the
12 terms of settlement in the mediator's report. The Commission ~~may~~ shall require the mediator to provide statistical
13 data for evaluation of the mediated settlement conference program on forms provided by the Commission.

14 ~~(5)~~(h) Scheduling and Holding the Conference. ~~It is the duty of~~ The mediator ~~to~~ shall schedule the mediated
15 settlement ~~conference, conference~~ in consultation with the ~~parties, parties~~ and conduct ~~it the conference~~ prior to the
16 ~~conference~~ completion deadline set out in the Commission's ~~order, and prior to the date of any hearing before a~~
17 ~~Deputy Commissioner if the case is scheduled for hearing after the mediator is appointed.~~ order. Deadlines for
18 completion of the conference shall be ~~strictly~~ observed by the mediator unless ~~said the~~ time limits are changed by
19 the Commission.

20 ~~(6)~~(i) Standards of Conduct. All mediators conducting ~~mediation~~ mediated settlement conferences pursuant to ~~these~~
21 ~~rules~~ the Rules in this Subchapter shall adhere to the ~~Standards of Conduct for Mediators~~ Standards of Professional
22 Conduct for Mediators adopted by the Supreme Court of North Carolina and enforced by the ~~N.C.~~ North Carolina
23 Dispute Resolution Commission. The Standards of Professional Conduct for Mediators is hereby incorporated by
24 reference and includes subsequent amendments and editions. A copy may be obtained at no charge from the North
25 Carolina Administrative Office of the Court's website,
26 http://www.nccourts.org/Courts/CRS/Councils/DRC/Documents/StandardsofConduct_1-1-12.pdf, or upon request,
27 at the offices of the Commission, located in the Dobbs Building, 430 North Salisbury Street, Raleigh, North
28 Carolina, between the hours of 8:00 a.m. and 5:00 p.m.

29
30 *History Note:* Authority G.S. 97-80(a), (c); 143-296; 143-300; Rule 6 of Rules Implementing Statewide
31 Mediated Settlement Conference in Superior Court Civil Actions;
32 Eff. January 16, 1996;
33 Amended Eff. October 1, 1998;
34 Recodified from 4 NCAC 10A .0616;
35 Amended Eff. January 1, 2013; June 1, 2000.

1 4 NCAC 10G .0108 is amended with changes as published in 27:02 NCR 231 as follows:

2
3 **04 NCAC 10G .0108 MEDIATOR CERTIFICATION AND DECERTIFICATION**

4 (a) ~~Party Selection—~~Selection. The parties may, by mutual consent, select any North Carolina Dispute Resolution
5 Commission-certified mediator, with or without the qualifications in Paragraph (b) of this Rule, as ~~their~~ the parties'
6 mediator. mediator; by mutual consent, with or without the qualifications in (b); provided, that the Commission
7 may shall, for good cause, bar any persons from holding themselves himself or herself out as a mediator of cases
8 within its the Commission's jurisdiction or from receiving a fee for mediation of such cases.

9 (b) ~~Appointment of Mediators—~~Mediators. If the parties have agreed or been ordered to mediate, and cannot agree
10 on the selection of a mediator, the Commission shall appoint a mediator, from a list of persons who holds current
11 certification from the North Carolina Dispute Resolution Commission that they he or she are is qualified to carry out
12 mandatory mediations in the Superior Courts of the ~~State,~~ State of North Carolina and who ~~have~~ has filed a
13 declaration with the Commission, on forms provided by ~~it~~ the Commission, stating ~~that:~~ that the declarant agrees to
14 accept and perform mediations of disputes before the Commission with reasonable frequency when called upon for
15 the fees and at the rates of payment specified by the Commission. A mediator making this declaration shall notify
16 the commission when any of the facts declared are no longer accurate.

- 17 (1) ~~— If an attorney, that declarant remains a member in good standing of the North Carolina State Bar;~~
18 (2) ~~— The declarant agrees to accept and perform mediations of disputes before the Commission with~~
19 ~~reasonable frequency when called upon for the fees and at the rates of payment specified by the~~
20 ~~Commission;~~
21 (3) ~~— If the declarant desires to be appointed by the Commission to mediate workers' compensation~~
22 ~~eases, that he or she has completed N.C. State Bar approved continuing legal education course(s)~~
23 ~~on workers' compensation law during the previous two years totaling not less than six hours.~~
24 ~~A mediator making such declaration shall immediately notify the Commission when any of the~~
25 ~~facts declared are no longer accurate. The Commission may require a new declaration on a~~
26 ~~periodic or intermittent basis. The Commission shall delete from such lists any mediator whose~~
27 ~~certification from the Dispute Resolution Commission has expired or been revoked. The~~
28 ~~Commission may charge an administrative fee to defray the costs of maintaining lists and referring~~
29 ~~cases to mediators.~~

30 (e) ~~Mediator Lists—~~The Commission may maintain and provide to parties separate lists of mediators who have
31 successfully completed mediation training certified by the Dispute Resolution Commission, and who desire to hold
32 mediations in disputes arising under the Workers' Compensation Act and the State Tort Claims Act.

33 ~~(d)~~(c) Failure of Mediator to Appear at Conference. ~~Conference—~~ In the event that If a mediator fails to appear at a
34 scheduled ~~mediation~~ mediated settlement conference. ~~conference without good cause,~~ the mediator shall ~~is~~ not be
35 entitled to the administrative fee for the case, and may be deleted from the Commission's list of mediators qualified
36 for appointments for a period of six months.

1 *History Note:* Authority G.S. 97-80(a), (c); 143-296; 143-300; Rule 8 of Rules Implementing Statewide
2 Mediated Settlement Conference in Superior Court Civil Actions;
3 *Eff.* January 16, 1996;
4 *Amended Eff.* October 1, 1998;
5 *Recodified from* 4 NCAC 10A .0616;
6 *Amended Eff.* January 1, 2013; January 1, 2011; June 1, 2000.
7 |
8

1 4 NCAC 10G .0109 is amended with changes as published in 27:02 NCR 232 as follows:

2
3 **04 NCAC 10G .0109 NEUTRAL EVALUATION**

4 (a) Nature of Neutral ~~Evaluation—~~Evaluation. As used in this Subchapter, ~~neutral evaluation is an informal,~~
5 ~~abbreviated presentation of facts and issues by the parties to an a neutral evaluator at an early stage of the case. The~~
6 ~~neutral evaluator is responsible for evaluating the strengths and weaknesses of the case, and for providing a candid~~
7 ~~assessment of liability, settlement value, and a dollar value or range of potential awards if the case proceeds to a~~
8 ~~hearing. The neutral evaluator is also responsible for identifying areas of agreement and disagreement and~~
9 ~~suggesting necessary and appropriate discovery.~~

10 (b) When Conference Is to Be ~~Held. Held—~~The provisions applicable to the scheduling of ~~mediation-mediated~~
11 ~~settlement conferences set forth in Rule 3(b) .0103 of this Subchapter shall also be applicable apply to neutral~~
12 ~~evaluation proceedings.~~

13 (c) Pre-conference ~~Submissions.Submissions—~~ No later than ~~45~~ 20 days prior to the date established for the neutral
14 ~~evaluation conference to begin, each party may, but is not required to, furnish the evaluator with written information~~
15 ~~about the case, and shall at the same time certify to the evaluator that they the party has served a copy of such~~
16 ~~summary on all other parties to in the case. The information provided to the neutral evaluator and the other parties~~
17 ~~hereunder under this Rule shall be a summary of the significant facts and issues in the party's case, shall not be more~~
18 ~~than 10 pages in length, and shall have attached to it include as attachments copies of any documents supporting the~~
19 ~~parties' party's summary. Information provided to the neutral evaluator and to the other parties pursuant to this~~
20 ~~Paragraph shall not be filed with the Commission.~~

21 (d) Replies to Pre-conference ~~Submissions.Submissions—~~ No later than five days prior to the date established for
22 ~~the neutral evaluation conference to begin, any party may, but is not required to, send additional written information~~
23 ~~not exceeding 5 pages in length to the neutral evaluator, evaluator responding to the submission of an opposing party.~~
24 ~~The party's response shall not exceed five pages in length, be served on all other parties and the party sending such~~
25 ~~the response shall certify such service to the neutral evaluator, evaluator that the party has served a copy of the~~
26 ~~response on all other parties in the case, but such—The response shall not be filed with the Commission.~~

27 (e) Conference ~~Procedure.Procedure—~~ Prior to a neutral evaluation conference, the neutral evaluator may, if he or
28 ~~she deems it necessary, may request additional written information from any party. At the conference, the neutral~~
29 ~~evaluator may address questions to the parties and give them the parties an opportunity to complete their summaries~~
30 ~~with a brief oral statement.~~

31 (f) Modification of ~~Procedure.Procedure—~~ Subject to the approval of the neutral evaluator, the parties may agree to
32 ~~modify the procedures for neutral evaluation required by these rules—the Rules for neutral evaluation, in this~~
33 ~~Subchapter, or such—the procedures may be modified by order of the Commission—Commission in the [interest]~~
34 ~~interests of justice.~~ The modified procedures may include the presentation of submissions in writing or by telephone
35 ~~in lieu of the physical appearance at a neutral evaluation conference, and may also include revisions to the time~~
36 ~~periods and page limitations concerning the parties' submissions.~~

37 ~~(g) Evaluator's Duties.~~

1 ~~(1)(g)~~ Evaluator's Opening Statement. At the beginning of the neutral evaluation conference, the neutral evaluator
2 shall define and describe the following points to the parties:

3 ~~(A)(1)~~ the facts that the neutral evaluation;

4 (A) the conference is not a hearing,

5 (B) the neutral evaluator is not acting in the capacity of a Commissioner or
6 Deputy Commissioner, Commissioner and the neutral will shall not act in the such
7 capacity of a Commissioner or Deputy Commissioner in the subject case at any time in
8 the future,

9 (C) the neutral evaluator's opinions are not binding on any party, and

10 (D) the parties retain their right to a hearing if ~~they~~ the parties do not reach a ~~settlement.~~
11 settlement;

12 ~~(B)(2)~~ the fact that any settlement reached will be only by mutual consent of the parties. ~~parties;~~

13 ~~(C)(3)~~ the process of the proceeding;

14 ~~(D)(4)~~ the differences between the proceeding and other forms of conflict resolution;

15 ~~(E)(5)~~ the costs of the proceeding;

16 ~~(F)(6)~~ the inadmissibility of conduct and statements as provided by G.S. 8C-1, Rule 408 of the Evidence
17 Code and Paragraph (f) of Rule .0103 in this Subchapter; Rule 3(f) above of the Rules; and

18 ~~(G)(7)~~ the duties and responsibilities of the neutral evaluator and the participants.

19 ~~(2)(h)~~ Oral Report to Parties by Evaluator. In addition to the written report to the Commission required under ~~these~~
20 ~~rules, the Rules in this Subchapter,~~ at the conclusion of the neutral evaluation conference, the neutral evaluator shall
21 issue an oral report to the parties advising ~~them~~ the parties of ~~his or her~~ the neutral evaluator's opinion of
22 the case. ~~Such~~ The opinion shall include a candid assessment of liability, estimated settlement values and options,
23 and the strengths and ~~weaknesses~~ weaknesses of the parties' claims and defenses if the case proceeds to a hearing.
24 The oral report shall also contain a suggested settlement or disposition of the case and the reasons therefor. The
25 neutral evaluator shall not reduce his or her oral report to ~~writing,~~ writing and shall not inform the Commission
26 thereof.

27 ~~(3)(i)~~ Report of Evaluator to Commission. Within 10 days after the completion of the neutral evaluation
28 conference, the neutral evaluator;

29 (1) shall submit to the Dispute Resolution Coordinator a written report using a form prepared and
30 distributed by the Commission, stating;

31 (A) when and where the conference was held,

32 (B) the names of those persons who attended the conference,

33 (C) whether or not an agreement was reached by the parties, and

34 (D) whether the issue or matter will be resolved by ~~Industrial~~ Commission form agreement,
35 compromise settlement agreement, other settlement agreement, voluntary dismissal or
36 removal from the hearing docket, docket and docket;

1 | (2) shall identify the persons designated to file or submit for approval such agreement, or dismissal.
2 | dismissal; and

3 | (3) ~~The Commission may require the neutral [evaluator] to~~ shall provide statistical data for evaluation
4 | of the settlement conference programs on forms provided by the Commission.

5 | ~~(h)(j) Evaluator's Authority to Assist Negotiations. Negotiations~~— If all parties at the neutral evaluation conference
6 | request and agree, the neutral evaluator may assist the parties in settlement discussions. If the parties do not reach a
7 | settlement during ~~such the~~ discussions, ~~however,~~ the neutral evaluator shall complete the neutral evaluation
8 | conference and make his or her written report to the Commission as if ~~such the~~ settlement discussions had not
9 | occurred.

10 | ~~(i)(k) Finalizing Agreement. Agreement~~— If the parties are able to reach an agreement before the conclusion of the
11 | neutral evaluation conference and before the evaluator's evaluator provides his report to the Commission, ~~the parties~~
12 | ~~are able to reach an agreement,~~ the parties shall reduce the agreement to writing, specifying all the terms of ~~their the~~
13 | parties' agreement that bearing bear on the resolution of the dispute before the Commission, and shall sign it the
14 | agreement along with ~~their the~~ parties' respective counsel. By stipulation of the parties and at their expense, the
15 | agreement may be electronically or stenographically recorded. All agreements for payment of compensation shall
16 | be submitted ~~in proper form for Commission approval, approval~~ and shall be filed with the Commission within 20
17 | days of the conclusion of the ~~mediation~~ conference.

18 | ~~(j)(l) Applicability of Mediation Rules and Duties. Duties~~— All provisions and duties applicable to mediated
19 | settlement conferences set forth in ~~Rules 3 through 7 Rule .0103 through Rule .0107 of these rules this Subchapter,~~
20 | ~~which that~~ are not in conflict with the provisions and duties of Rule 9 .0109 ~~herein of this Subchapter,~~ shall be
21 | ~~incorporated by reference and shall be applicable apply~~ to neutral evaluation conferences conducted under ~~these~~
22 | rules, the Rules in this Subchapter.

23 | ~~(k)(m) Ex Parte Communications Prohibited. Prohibited~~— Unless all parties agree otherwise, there shall be no ex
24 | parte communication prior to the conclusion of the proceeding between the neutral evaluator and any counsel or
25 | party on any matter related to the proceeding except with regard to administrative matters.

26 | ~~(l)(n) Adherence to Standards of Conduct for Neutrals. Neutrals~~— All ~~neutrals neutral evaluators~~ conducting neutral
27 | evaluation conferences pursuant to ~~these rules the Rules in the Subchapter~~ shall adhere to any applicable standards
28 | of conduct which may be that are adopted by the N.C. North Carolina Dispute Resolution Commission and are
29 | hereby incorporated by reference and includes subsequent amendments and editions.

30 |
31 | *History Note:* Authority G.S. 97-80(a), (c); 143-296; 143-300; Rule 11 of Rules Implementing
32 | Statewide
33 | Mediated Settlement Conference in Superior Court Civil Actions;
34 | Eff. January 16, 1996;
35 | Amended Eff. October 1, 1998;
36 | Recodified from 4 NCAC 10A .0616;
37 | Amended Eff. January 1, 2013; January 1, 2011; June 1, 2000.

1 4 NCAC 10G .0111 is amended with changes as published in 27:02 NCR 233 as follows:

2
3 **04 NCAC 10G .0111 MOTIONS**

4 Unless otherwise ~~indicated~~, indicated by the Rules in this Subchapter or an applicable order by the Commission in
5 the ~~the~~ [interest] interests of justice or judicial economy, motions pursuant to ~~these rules~~ the Rules in this Subchapter
6 shall be addressed to the Commission's Dispute Resolution Coordinator (~~unless the applicable order provides~~
7 ~~otherwise~~) and served on all parties to the claim and the settlement procedure. Responses may be filed with the
8 Commission within 10 days after the date of receipt of the motion. Notwithstanding the above, ~~for good cause~~ the
9 Commission may, in the [interest] interests of justice, act upon oral motions, or act upon motions prior to the
10 expiration of the 10-day response period. Motions ~~will~~ shall be decided without oral argument unless otherwise
11 ~~ordered~~ ordered in the [interest] interests of justice. Any appeals from orders issued pursuant to a motion under
12 ~~these rules~~ the Rules in this Subchapter shall be addressed to the attention of the Commission Chair or the
13 ~~Chairman's~~ Chair's designee for appropriate action.

14
15 *History Note:* Authority G.S. 97-80(a), (c); G.S. 143-296; G.S. 143-300;
16 Eff. January 16, 1996;
17 Amended Eff. October 1, 1998;
18 Recodified from 4 NCAC 10A .0616;
19 Amended Eff. January 1, 2013; January 1, 2011; June 1, 2000.

1 4 NCAC 10G .0112 is amended as published in 27:02 NCR 233 as follows:

2

3 **04 NCAC 10G .0112 MISCELLANEOUS**

4 Throughout ~~these rules~~ the Rules in this Subchapter any reference to the number of days within which any act may
5 be performed shall mean and refer to calendar days, and shall include Saturdays, Sundays and ~~legal~~
6 ~~holidays.~~ holidays established by the State Personnel Commission. Provided, however, that if the last day (a) to file
7 a motion, (b) to give notice of the selection of a mediator, or (c) for a pro se plaintiff to give notice that the plaintiff
8 requests mediation is a Saturday, Sunday or ~~legal holiday,~~ holiday established by the State Personnel Commission,
9 the motion or notice may be filed or given on the next day that is not a Saturday, Sunday or ~~legal holiday.~~ holiday
10 established by the State Personnel Commission.

11

12 *History Note: Authority G.S. 97-80(a), (c); G.S. 143-296; G.S. 143-300;*

13 *Eff. January 16, 1996;*

14 *Amended Eff. October 1, 1998;*

15 *Recodified from 4 NCAC 10A .0616;*

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

1 4 NCAC 10H .0101 is amended as published in 27:02 NCR 234 as follows:

2
3 **SUBCHAPTER 10H – RULES OF THE INDUSTRIAL COMMISSION RELATING TO THE LAW-**
4 **ENFORCEMENT OFFICERS’, FIREMEN’S, RESCUE SQUAD WORKERS’ AND CIVIL AIR PATROL**
5 **MEMBERS’ DEATH BENEFITS ACT**
6

7 **RULE 1.04 NCAC 10H .0101 LOCATION OF OFFICES AND HOURS OF BUSINESS**

8 For purposes of this Subsection, the ~~The~~ offices of the North Carolina Industrial Commission are located in the
9 Dobbs Building, 430 North Salisbury Street, ~~in~~ Raleigh, North Carolina. ~~The same office hours as are or may be~~
10 ~~observed by other State offices in Raleigh will be observed by the Industrial Commission.~~ Documents that are not
11 being filed electronically may be filed between the hours of 8:00 a.m. and 5:00 p.m. only. Documents permitted to
12 be filed electronically may be filed until 11:59 p.m. on the required filing date.
13

14 History Note: Authority G.S. 143-166.4

15 *Amended Eff.* January 1, 2013

1 4 NCAC 10H .0201 is amended with changes as published in 27:02 NCR 234 as follows:

2
3 **SECTION .0200 - RULES OF COMMISSION**

4
5 **RULE III.04 NCAC 10H .0201 DETERMINATION OF CLAIMS BY THE COMMISSION**

6 ~~1-(a)~~ Upon application ~~or request to the Industrial Commission~~ for an award under the provisions of the Law-
7 Enforcement Officers', Firemen's, Rescue Squad Workers' and Civil Air Patrol Members' Death Benefits Act, the
8 ~~Full Commission will shall~~ determine whether sufficient ~~information or evidence~~ is contained in the Commission's
9 workers' compensation or other files upon which to base an ~~Order order~~ for the payment of benefits. If the ~~Full~~
10 Commission is satisfied that such an ~~Order order~~ should be issued, it ~~will, shall~~, without conducting a ~~formal~~
11 hearing, file an ~~appropriate Award award~~ directing the payment of benefits.

12 ~~The Full Commission, on joint request of the interested parties or for good cause shown, may in its discretion The~~
13 ~~Full Commission, order or approve a settlement for less than the maximum amount set forth in G.S. §143-166.3.~~

14 ~~2-(b)~~ If the ~~Full~~ Commission is of the opinion that ~~it~~ the Commission's workers' compensation or other files ~~has~~
15 have insufficient ~~information or evidence~~ before it upon which ~~to base~~ basis an award for the payment of benefits,
16 ~~should be issued~~, the ~~Full~~ Commission ~~will shall~~ place the case upon the Commission's hearing ~~docket~~docket. The

17 Commission shall set a contested case for hearing in a location deemed convenient to witnesses and the
18 Commission. ~~in the county where the incident giving rise to the death is alleged to have occurred. The case will~~
19 ~~thereafter be set for hearing before a Hearing Commissioner or Hearing Deputy Commissioner in such county or in~~
20 ~~such other county as the Full Commission may direct, due notice of the hearing being given to all parties and to the~~
21 ~~Attorney General of the State of North Carolina who may appear as amicus curiae.~~

22 ~~3. The Hearing Commissioner or Hearing Deputy Commissioner before whom the case is set for hearing, in his~~
23 ~~discretion, may order the parties to appear at a reasonable time and place for a pre trial hearing to determine such~~
24 ~~matters as he deems necessary. The Hearing Commissioner or Deputy Commissioner will, having received all~~
25 ~~evidence pertinent to the case, thereafter proceed to file a Decision and Award in the case in which benefits are~~
26 ~~awarded or denied. Such Decision will be sent to all parties.~~

27 ~~4. The Commission may, of its own motion, order a rehearing of any case.~~

28 ~~5. The Commission will give reasonable notice of hearing in every case. Postponement or continuance of a~~
29 ~~scheduled hearing will rest entirely in the discretion of the Commission.~~

30 ~~6. In all cases where it is suitable that infants or incompetents sue by their guardian ad litem, the Commission will~~
31 ~~appoint such guardian ad litem upon the written application of a reputable disinterested person closely connected~~
32 ~~with such infant or incompetent. But, if such person will not apply, then, upon the like application of some~~
33 ~~reputable citizen; and the Commission will make such appointment only after due inquiry as to the fitness of the~~
34 ~~person to be appointed.~~

35 ~~7. Any claimant who gives to the opposing party or an agent of that party a written or recorded statement of the~~
36 ~~facts and circumstances surrounding his claim shall be furnished by the opposing party a copy of such statement~~
37 ~~within ten days upon request. Further, any claimant who has given such a statement shall, without request, be~~

1 | ~~furnished by the opposing party a copy thereof immediately following a denial of his claim or no less than ten days~~
2 | ~~prior to a pending hearing.~~

3 | ~~Such copy shall be furnished at the expense of the party to whom the statement was given.~~

4 | ~~If any party fails to comply with this rule, then an Order may be entered by the hearing officer prohibiting that party~~
5 | ~~from introducing designated matters into evidence.~~

6 | ~~8. In the absence of written notice of appeal from the Decision and Award filed in such a case by the Hearing~~
7 | ~~Commissioner or Hearing Deputy Commissioner within fifteen days from receipt of such award, the award as filed~~
8 | ~~will be binding on the parties.~~

9 |
10 | History Note: Authority G.S. 143-166.4;

11 | Amended Eff. January 1, 2013

1 4 NCAC 10H .0202 is amended with changes as published in 27:02 NCR 234 as follows:

2
3 4 NCAC 10H .0202 HEARINGS BEFORE THE COMMISSION

4 ~~3.~~ (a) The ~~Hearing Commissioner or Hearing~~ Commissioner or Deputy Commissioner before whom ~~the a~~ case
5 regarding the Law-Enforcement Officers', Firemen's, Rescue Squad Workers' and Civil Air Patrol Members' Death
6 Benefits Act is ~~is~~ set for hearing, shall order the parties to participate in a pre-trial conference. This conference shall
7 be conducted at such place and by such method as the Commissioner or Deputy Commissioner deems appropriate,
8 including conference telephone calls. ~~in his discretion, may order the parties to appear at a reasonable time and place~~
9 ~~for a pre trial hearing to determine such matters as he deems necessary. The Hearing Commissioner or Deputy~~
10 ~~Commissioner will, having received all evidence pertinent to the case, thereafter proceed to file a Decision and~~
11 ~~Award in the case in which benefits are awarded or denied. Such Decision will be sent to all parties.~~

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

14 ~~5. (e)(b)~~ The Commission ~~will shall~~ give ~~reasonable~~ notice of hearing in every case. Postponement or continuance of
15 a scheduled hearing ~~will shall be granted [to prevent manifest injustice]~~ in the interests of justice or to promote
16 judicial economy. ~~rest entirely in the discretion of the Commission.~~

17 ~~(d)(c)~~ Notice of the hearing shall be given to the Attorney General of the State of North Carolina, who may appear as
18 amicus curiae.

19
20 History Note: Authority G.S. 143-166.4;

21 *Amended Eff.* January 1, 2013

1 4 NCAC 10H .0203 is amended with changes as published in 27:02 NCR 235 as follows:

2
3 **4 NCAC 10H .0203** **APPOINTMENT OF GUARDIAN AD LITEM**

4 (a) Infants or incompetents may bring an action under this Subchapter only through their guardian *ad litem*. The
5 Commission shall appoint a person as guardian *ad litem* if the Commission determines it to be in the best interest of
6 the infant or incompetent. The Commission shall appoint a guardian *ad litem* only after due inquiry as to the fitness
7 of the person to be appointed.

8 (b) No compensation due or owed to the infant or incompetent shall be paid directly to the guardian *ad litem*.

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

12
13 History Note: Authority G.S. 1A-1 Rule 17(b)(2); 143-166.4;

14 Amended Eff. January 1, 2013.

1 4 NCAC 10H .0204 is amended with changes as published in 27:02 NCR 235 as follows:

2 **04 NCAC 10H .0204 WRITTEN OR RECORDED STATEMENT**

3 (a) Upon the request of the employer or his agent to take a written or a recorded statement in an action pursuant to
4 Article 12A of Chapter 143 of the General Statutes, the employer or his agent shall advise any person eligible for
5 payments that the statement may be used to determine whether the claim will be paid or denied. Any person eligible
6 for payments who gives the employer, its carrier, or any agent either a written or recorded statement of the facts and
7 circumstances surrounding the decedent's injury shall be furnished a copy of such statement within 45 days after
8 request. Any person eligible for payments shall immediately be furnished with a copy of the written or recorded
9 statement following a denial of the claim. A copy shall be furnished at the expense of the party to whom the
10 statement was given.

11 (b) If any party fails to comply with this Rule, a Commissioner or Deputy Commissioner shall enter an order
12 prohibiting that party from introducing the statement into evidence or using any part of the statement.

13

14 History Note: Authority G.S. 143-166.4;

15 Amended Eff. January 1, 2013

1 4 NCAC 10H .0205 is amended with changes as published in 27:02 NCR 235 as follows:

2
3 **IV. APPEAL TO THE FULL COMMISSION**
4 **04 NCAC 10H .0205 REVIEW BY THE FULL**
5 **COMMISSION**

6 ~~1.(a) In any case in which Decision is filed by Hearing Commissioner or Hearing Deputy Commissioner, appeal~~
7 ~~may be made to the Full Commission by giving written notice of appeal to the Commission within fifteen days from~~
8 ~~receipt of the Decision, with written statement of service of copy by mail or in person on opposing party or parties.~~

9 A party may request a review of an award filed by a Deputy Commissioner in an action pursuant to Article 12A of
10 Chapter 143 of the General Statutes by filing a letter expressing a request for review to the Full Commission within
11 15 days of receipt of the award. The award is binding on the parties if not appealed.

12 ~~2.(b) Upon After receipt of notice of appeal review, the Commission will shall supply to the appellant and to the~~
13 ~~appellee a transcript of the record upon which is based the Decision and the Award award is based and from which~~
14 ~~appeal a review is being taken to the Full Commission. The appellant shall, within ten days of receipt of transcript~~
15 ~~of the record, file with the Commission a written statement of the particular grounds for the appeal, with written~~
16 ~~statement of service of copy by mail or in person on all opposing party or parties.~~

17 ~~(c) Particular grounds Grounds for appeal review not set forth will be are deemed to be abandoned and argument~~
18 ~~thereon will shall not be heard before the Full Commission.~~

19 ~~A nonappealing party is not required to file conditional assignments of error in order to preserve his rights for~~
20 ~~possible further appeals.~~

21 ~~3.(d) When an appeal a review is made to the Full Commission, the appellant's brief, if any, in support of his~~
22 ~~ground for appeal shall be filed in triplicate with the Commission, with written statement of service of copy by mail~~
23 ~~or in person on appellee all opposing parties no less than fifteen 15 days prior to the hearing on appeal. review. The~~
24 ~~appellee Appellee shall have five days in which to file a reply brief, if any deemed necessary, in triplicate with the~~
25 ~~Commission, with written statement of service of copy by mail or in person on all opposing party or parties.~~

26 ~~(e) Any motions by either party shall be filed in triplicate with the Full Commission, with written statement of~~
27 ~~service of copy by mail or in person on all opposing party or parties.~~

28 ~~4. No new evidence will be presented to or heard by the Full Commission.~~

29 ~~5. Ruling on a motion for a new hearing to take additional evidence will be governed by the general law of the State~~
30 ~~for the granting of new trials on the grounds of newly discovered evidence. Such motion must be written, supported~~
31 ~~by affidavit, and maybe argued before the Full Commission at the time of the hearing on appeal.~~

32 ~~6.(f) The parties, or either of them, may waive oral argument before the Full Commission. Upon the request of a~~
33 ~~party, or its own motion, the Commission may waive oral arguments [to prevent manifest injustice,] in the interests~~
34 ~~of justice or to promote judicial economy, [or to expedite a decision in the public interest]. In the event of such~~
35 ~~waiver, a Decision the Full Commission shall file an award based on the record, exceptions, record and briefs.~~
36 ~~briefs, if any, will be given by the Full Commission.~~

37 History Note: Authority G.S. 143-166.4;

1 4 NCAC 10H .0207 originally proposed for amendment as published in 27:02 NCR 236 is withdrawn:

2

3 **4 NCAC 10H .0207** **SANCTIONS**

4

5 History Note: Authority G.S. 1A-1, Rule 37; 143-166.4.

1 4 NCAC 10I .0101 is amended as published in 27:02 NCR 236 as follows:

2
3 **SUBCHAPTER 10I - CHILDHOOD VACCINE-RELATED INJURY RULES**

4 **OF THE NORTH CAROLINA INDUSTRIAL COMMISSION**

5 **~~ARTICLE I~~ SECTION .0100 –ADMINISTRATION**

6
7 **~~RULE 10I. LOCATIONS OF OFFICES AND HOURS OF BUSINESS.~~ 04 NCAC 10I .0101 LOCATIONS**
8 **OF OFFICES AND HOURS OF BUSINESS**

9 For purposes of this Subsection, the offices of the North Carolina Industrial Commission are located in the Dobbs
10 Building, 430 North Salisbury Street, in Raleigh, North Carolina, 27611. The same office hours as are or may be
11 observed by other State offices in Raleigh will be observed by the Industrial Commission. Documents pertaining to
12 the Childhood Vaccine-Related Injury claims that are not being filed electronically may be filed between the hours
13 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
14 required filing date.

15 *History Note:* Authority G.S. 130A-424; 130A-425(d);

16 Amended Eff. January 1, 2013.
17

1 4 NCAC 10I .0102 is amended as published in 27:02 NCR 236 as follows:

2
3 ~~**RULE 103. OFFICIAL FORMS.**~~ **04 NCAC 10I .0102** **OFFICIAL FORMS**

4 The use of any printed forms related to Childhood Vaccine-Related Injury claims, other than those ~~approved and~~
5 ~~adopted~~ provided by this the Commission is prohibited, except that. Approved forms may be obtained from the
6 ~~Commission. Insurance~~ insurance carriers, and self-insurers, attorneys and other parties may reproduce prepare
7 forms for their own use, provided: ~~(1) that the color of the paper upon which the form is printed shall be~~
8 ~~substantially identical to that used on the approved Commission's form, (2) no statement, question, or information~~
9 ~~blank contained on the approved Commission's form is omitted from the substituted form, and (3) such substituted~~
10 ~~form is substantially identical in size and format with the approved Commission's form.~~

11 (1) no statement, question, or information blank contained on the Commission form is omitted from
12 the substituted form; and

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

14
15 *History Note:* *Authority* G.S. 130A-424; 130A-425(d);
16 *Amended Eff.* January 1, 2013.

1 4 NCAC 10I .0201 originally proposed for amendment as published in 27:02 NCR 236 is withdrawn.

2 ~~ARTICLE H.~~ **SECTION .0200 - RULES OF COMMISSION**

3

4 **04 NCAC 10I .0201 RULES OF CIVIL PROCEDURE**

5

6 *History Note:* *Authority* G.S. 130A-425(d);

1 4 NCAC 10I .0205 is adopted with changes as published in 27:02 NCR 237 as follows:

2

3 **04 NCAC 10I .0205 SANCTIONS**

4 (a) The Commission may, on its own initiative or motion of a party, impose a sanction against a party or attorney or
5 both when the Commission determines that such party, or attorney, or both failed to comply with the Rules in this
6 Subchapter. The Commission may impose sanctions of the type and in the manner prescribed by Rule 37 of the
7 North Carolina Rules of Civil Procedure.

8 (b) Failure to timely file forms as required by either the Rules in this Subchapter or pursuant to the Childhood
9 Vaccine-Related Injury Compensation Program may result in ~~fines or other~~ sanctions.

10

11 *History Note:* Authority G.S. 130A-425(d);

12 *Eff.* January 1, 2013