STATE OF NORTH CAROLINA

BEFORE THE NORTH CAROLINA INDUSTRIAL COMMISSION

AUGUST 6, 2012

HEARING BEFORE THE FULL COMMISSION

ON

PROPOSED RULE CHANGES

GRAHAM ERLACHER & ASSOCIATES
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A P P E A R A N C E S

COMMISSIONERS:

Pamela T. Young, Chair

Bernadine S. Ballance

Danny Lee McDonald

Linda Cheatham

Staci T. Meyer

Tammy Nance

I N D E X

I N D E X (Continued)

E X H I B I T S

P R O C E E D I N G S

CHAIR YOUNG: Good morning. My name is Pam Young, and I'm Chair of the North Carolina Industrial Commission. Pursuant to Session Law 2011-287, the Industrial Commission has proceeded with the review and revision of its rules. The proposed rule changes were published on July the 16th of 2012 in Volume 27, Issue 02, of the *North Carolina Register*. These proposed rule changes have also been posted on our website, and a Public Hearing Notice was also published in the *News and Observer*. The Commission is holding this hearing for the purpose of receiving comments from the public concerning these proposed rule changes. We have already received some written comments from the public, and the record will be held open to receive additional written comments through the close of business on September the 14th of 2012. At this time, I would like to introduce the other Commissioners to you. Beginning on my immediate right, we have Commissioner Danny Lee McDonald. On my immediate left, we have Commissioner Bernadine Ballance. In front, from my right to left, we have Commissioners Linda Cheatham, Staci Meyer and Commissioner Tammy Nance. We wish to thank you and all the members of the public and the Bar who gave

recommendations or input regarding the proposed rule changes considered by the Commissioners. The Commission greatly appreciates all of your time and all of your efforts. Our first speaker this morning will be Meredith Henderson, Executive Secretary of the Industrial Commission, followed by the members of the public. Those wishing to speak on behalf of an organization will be allowed forty minutes, while those speaking on their own behalf will be allowed twenty minutes. It is my understanding that we have several people who requested to speak prior to today, and those individuals will go first this morning, and will go in the order in which we received your request. I believe you've already been notified of your order, and those of you who have requested this morning to have an opportunity to speak will do so after those with previous requests. The Commissioners may request that certain employees of the Commission speak today, if needed. The first speaker will be Meredith Henderson, again, Executive Secretary of the Industrial Commission, followed by the members of the public in order as follows: We'll begin after Ms. Henderson with Larry Baker, Vernon Sumwalt, Cathy Thamen, Hank Patterson, Alison Crews, Jane Rouse, Steve Keene and any others that are present today and

signed up this morning. Ms. Henderson, would you place your left hand on the Bible and raise your right hand?

MS. HENDERSON: I need the Bible.

CHAIR YOUNG: Oh. We need to take a timeout to get you what you need.

UNIDENTIFIED COMMISSIONER: Are you going to affirm?

MS. HENDERSON: I would – I would prefer to affirm---

CHAIR YOUNG: No problem.

MS. HENDERSON: ---actually. You other people will need this. There we go.

CHAIR YOUNG: All right. Ms. Henderson, place your left hand on the Bible and raise your right hand.

MEREDITH HENDERSON

HAVING FIRST BEEN DULY AFFIRMED, was examined and testified as follows:

CHAIR YOUNG: All right. Thank you. And would you state your name for the record, please?

MS. HENDERSON: I'm Meredith Henderson, Executive Secretary of the North Carolina Industrial Commission.

CHAIR YOUNG: And do you have any prepared exhibits that you'd like to place into the record of these proceedings today?

MS. HENDERSON: Yes, I do, and I have already given a clerk – the clerk a copy of these exhibits. They are a copy of the Notice of Text and Proposed Rules as published on July 16th, in Volume 27, Issue 02, of the *North Carolina Register* and a copy of the fiscal notes which have been approved by the Office of State Budget and Management. All of these documents are also available on our website.

CHAIR YOUNG: And are they marked as Exhibit 1?

MS. HENDERSON: Yes.

CHAIR YOUNG: All right.

MS. HENDERSON: The entire package is Exhibit 1.

CHAIR YOUNG: Thank you, Ms. Henderson. Well, they'll be moved into evidence at this time.

(Exhibit Number 1 is identified and admitted into evidence.)

CHAIR YOUNG: Would you briefly give us some background, please, and mention the rules that would be affected by the proposed rule changes?

MS. HENDERSON: Yes. The Industrial Commission has proposed amendments, additions and deletions from its rules in accordance with Session Law 2011-287. There are many, many rules being affected. In fact, they are all either being amended, repealed, or adopted. I will review the rules that are being

adopted. The ones that are being amended and repealed are also listed in the Notice of Text. The rules that are being adopted are as follows because some of these are new: Rules 106, 107, 210, 618, 619, 704 and 1001 of the Workers' Compensation Rules of the Industrial Commission, Rule 2008 of the Tort Claims Rules - Rules 208 of the Tort Claims Rules, Rules 201 and 202 of the Rules for Utilization of Rehabilitation Professionals in Workers' Compensation Claims, Rule 111 of the Workers' Compensation Rules from the EDGE Care Association – or I mean EDGE Care Organizations - excuse me – Rules 101, 201 through 204, 301 through 302 of the Administrative Rules and Rules 101 and 104 through 109 of the Electronic Billing Rules, and then Rule 206 of the Rules of the Industrial Commission relating to the Law Enforcement Officers, Firemen's, Rescue Squad Workers' and Civil Air Patrol Members' Death Benefits Act, and lastly, Rule 204 of the Childhood Vaccine-Related Injury Rules of the North Carolina Industrial Commission.

CHAIR YOUNG: Thank you, Ms. Henderson. Are there any questions by the Commissioners for Ms. Henderson? All right. Hearing none, Ms. Henderson, you may be seated. Thank you very much.

MS. HENDERSON: Thank you.

CHAIR YOUNG: And we will proceed to the next speaker. The next speaker up is Mr. Larry Baker. Sir, if you'd come forward.

MR. BAKER: Thank you.

CHAIR YOUNG: Before you begin this morning, I'd like you to place your left hand on the Bible and raise your right hand.

MR. BAKER: Before I do that, actually, we have three other speakers who are going to use some of the forty minutes if that is okay. So if you want us all to be sworn at the same time, I can have them come up here if that's acceptable. They would be Bruce Hamilton, Joy Brewer and Julia Dixon.

CHAIR YOUNG: Come on up. I guess you're going to have to share that tiny Bible there.

MR. BAKER: It's like when we took the Bar.

CHAIR YOUNG: It feels like it, doesn't it? All right. Let's see if I need to call each of your names out. I tell you what I'll do state your name. How about that?

MR. BAKER: That's fine.

CHAIR YOUNG: Do you – state your name each of you---

(SPEAKERS STATE THEIR NAMES AND ARE SWORN.)

* * * * * * *

LARRY BAKER

HAVING FIRST BEEN DULY SWORN, was examined and testified as follows:

CHAIR YOUNG: All right. Thank you very much. Now, Mr. Baker, would you like for me to assist you with timing of the folks this morning?

MR. BAKER: Hopefully, we won't even need all of our forty minutes. We've talked about breaking it up, and everybody is well aware that we are limited to forty minutes on behalf of the North Carolina Association of Defense Attorneys.

CHAIR YOUNG: Okay. What I will do then and probably, though, is alert you at about twenty minutes.

MR. BAKER: That will be---

CHAIR YOUNG: That will be a halfway point. If you're still speaking, you'll either have to stop and – you know – you know the course.

MR. BAKER: Right.

CHAIR YOUNG: You know what to do. If you'd please go ahead again and state your name and tell us who you represent and identify any of the proposed rules that you'll be addressing in your remarks this morning.

MR. BAKER: I will do that. My name is Larry

Baker from Cranfill, Sumner and Hartzog in Charlotte. I'm speaking on behalf of the North Carolina Association of Defense Attorneys, as is Bruce Hamilton, Joy Brewer and Julia Dixon. There are a number of rules that we are going to address comments to today. I have an exhibit of an outline of not only the ones we're going to discuss today, but ones that due to time constraints we are not going to discuss today, but want to present written comments at a later date. If I may approach, Your Honor?

CHAIR YOUNG: You may.

(Exhibit Number 2 is marked for identification and admitted into evidence.)

CHAIR YOUNG: Thank you, sir.

MR. BAKER: Thank you. I represent one thousand members of the North Carolina Association of Defense Attorneys who work on behalf of a hundred and seventy law firms, both small and large, as well as solo practitioners, governmental agencies and corporate legal departments throughout the state from the eastern coast to the western mountains. It is the desire of the NCADA to have fair and equitable rules for all parties appearing before the Commission, but which have legislative authority either in the

Workers' Compensation Act or in the Administrative Procedures Act. As I indicated, there are a number of rules that we believe require NCADA comment for these reasons, but because of time constraints, we will be limited to the five or six which we feel are the biggest issues regarding those rules. I will be talking about Rule 405 dealing with the reinstatement of benefits. Bruce Hamilton will be talking about several of the rules in the 600s. Julia Dixon will be talking regarding rules regarding fees and costs, and then Joy Brewer will be discussing Rule 502 and settlement agreements. I will then also make some brief comments regarding a couple of the rehabilitation rules. At the outset, I would point out that a number of the rules that have been proposed by the Commission throughout not just the workers' compensations rules, but the rehabilitation rules and those for mediation include in them a statement that the rules may be suspended to prevent manifest injustice to a party or to expedite a decision in the public interest. In reviewing the APA, specifically N.C.G.S. 150B-19, that states – sets out restrictions on what types of rules may be implemented and actually prohibits an agency from waiving or modifying a requirement of one of its rules. Because of this, the

NCADA believes that as written, the rule proposal – proposals, because there are several regarding suspension of the rules, is prohibited by the APA. In addition, the APA requires that there be an avoidance of redundancy in its rules, both with a legislative act, with a specific statute, or with other rules, and we believe that a number of the proposed rules likewise are redundant and, therefore, are unnecessary. I do want to briefly, specifically address Rule 405, which is the proposed rule regarding the reinstatement of benefits pursuant to N.C.G.S. 97-18(k). In that rule, the Commission has proposed, and has actually already been operating once the statute was enacted while they were in the process forming these proposed rules - they have proposed and are operating under a telephonic hearing procedure similar to that that's used in a Form 24 suspension of benefits. The problem is that 97-18(k) does not provide any statutory authority for such a telephonic hearing. Unlike the Form 24 procedure which is contained in 97-18.1, that statute does set out statutorily the telephonic hearing procedure, and therefore, the rule requiring that is consistent with that statute. However, 97-18(k) does not provide a similar statutory framework. Rather, that simply

states that where an employer contests an employee's request to reinstate benefits, "the matter shall be scheduled on a preemptive basis." It is the position of the NCADA that that preemptive basis requires a full evidentiary hearing. That hearing can be scheduled on the next available docket. It could be scheduled for a full hearing in Raleigh, but we believe the statutory requirement that exists there requires a full evidentiary hearing, and the fact that there is no similar telephonic hearing procedure set out in the statute as there is in 97-18.1 solidifies and is evidence that the legislature did not intend for a telephonic procedure to reinstate benefits. If it is determined however that the Commission does have statutory authority for that, it would be the NCADA's position that those procedures should be identical to the Form 24 procedures. As written right now, the rules for reinstatement of benefits have a much shorter timeframe, do not allow for extra evidence to be submitted and simply don't follow the Form 24 procedure without there being any rational basis for not doing so. To reinstate benefits, an Administrative Decision has to be rendered within five days after – I'm sorry – the employer has five days to appeal after that has been done, and therefore, unlike

the seventeen-day timeframe for a Form 24, an employer is in essence only given five days, and there's no rational basis for that shorter timeframe. Because of this, we would contend that if the Commission determines, and the Rules Review Committee eventually determines, that there is a statutory basis for a telephonic procedure in a Form 23, that should be identical to a Form 24, but basically, our position is that there is no statutory authority for that telephonic hearing procedure and that, therefore, the rule as proposed is improper. I would now turn it over to Bruce Hamilton who is going to address Rule 609 and other Rule 600 procedures.

(SPEAKER DISMISSED)

BRUCE HAMILTON

HAVING PREVIOUSLY BEEN DULY SWORN, was examined and testified as follows:

MR. HAMILTON: If it pleases the Commission, I'm Bruce Hamilton with the Law Firm of Teague, Campbell, Dennis and Gorham, here on behalf of the North Carolina Association of Defense Attorneys. I'll be discussing Rules .0609(a), .0605, .0608, .0607, .0609 and .0616, but I'll be brief on most of those. Let me first start by thanking the Commission. I know a lot of work went into the proposed rules. I've been in

part of the process a little bit from the outside, but I know that's the tip of the iceberg for all that – the work that you all have put in on it, and appreciate it from the defense attorney and appreciate the fact that we were – we were consulted early on. I also want to reiterate that the APA being included in the Workers' Comp Reform Act was not a request of either the Defense Bar or the Plaintiff's Bar, but now that we're – we have it, we're dealing with it, along with you all, probably more than we ever wanted to. Specifically with respect to Rule 609(a), a little background on that – I was part of a – our basic point on 609A is similar to what Larry just mentioned with the other rule. Twofold, is there statutory authority for the procedure presented, and then secondly, if there is a statutory authority for it, is there a way to tweak the rule to make it a little bit more balanced in our – in our estimation? In 2007, there was an amendment in the budget that was included that amended 97-78 which prompted the changes to the medical motion, and there was a taskforce created back then. I was part of one with Lenny Jernigan, Commissioner Ballance, Commissioner Sellers, Executive Secretary Weaver and Deputy Commissioner Gillen, and we worked on it for approximately six months at that

time. The reason I bring that up is when that was originally – the taskforce was originally created, there was initial questions on what was our mandate based upon the legislation, and there was a little bit of debate within the taskforce on whether we were supposed to come up – the statute talks about developing and implementing a plan. The question that I had was whether that was supposed to be a pilot plan or a final plan. In other words, did we need additional authority from the legislature once we came up with a plan? And there was some documentation going back and forth at that point, and so the point we have right now is that really what we think the original legislation back in 2007 required was that the Commission was supposed to analyze medical motions, how long they were taking, develop stats and develop what we thought – what I think from the defense perspective was a pilot program that would then go back to the Commission and get statutory authority similar to 97-18.1, the Form 24 procedure where the procedure is specifically laid out by the legislature. There was a discussion with Lenny Jernigan and I at the first meeting. My recollection is that we kind of looked at each other – well, Tracey Weaver came in and was essentially, “I think we need

to have stats," is that we're looking at stats is what we were looking at, is tracking how long it was taking to deal with medical motions under the current procedure. Lenny Jernigan and I both thought that the current procedure was adequate, didn't see the need for a new – an entirely new procedure, but when it was presented, no, that's what the legislature wanted. We developed the proposal that was eventually put forward to the Commission at that point. I still have a question in my mind whether the original legislation, and the NCADA does - whether the original legislation authorized the actual plan that was put into place, whether it should have been a pilot program that then got reported back to the General Assembly and said here's our recommendation on what these expedited medical motions should look like, and then have that developed into legislation to specifically enact it, so that's the legislative background on whether that was supposed to be a pilot program or something set in stone. But let's assume that there is statutory authority, that we don't need 97 – similar legislation like 97-18.1. Even if we have the current rule as adopted, the Defense Bar – and this has been our continual kind of complaint or concern all along is a due process issue – is – and recognizing at the same

time – and this came up in the taskforce – is that the Commission and the Workers' Comp Act was developed to be – to expeditiously resolve work comp cases. It's not supposed to be a civil system - court system that drags on for years, so realizing that we need to balance the needs of injured workers to get prompt medical care with at the same time balancing an employer's due process rights in those cases where they feel like they have significant, substantive defenses to an underlying issue. In particular, I've seen this personally in issues where there's a dispute between medical doctors over surgical issues, things like that, that can essentially decide the case for long term on disabilities and indemnity issues. It's our concern it's twofold that – I noted that the current proposed rule does not impose a thirty-day time limit. It does not include that. We don't know how the proposed rule will get implemented, but if the new rule gets implemented like the current rules with a thirty-day time limit, we have significant problems with that because of the limited ability to get any deposition testimony. We also have a significant problem in that the way the current system is set up is with telephone hearings. There is no live testimony or any testimony under oath and that you

have the telephonic hearings going back and forth and generally written submissions to the Deputy Commissioner at that point. Specifically, the provisions we have is there are depositions under the proposed rule are only allowed if deemed necessary, without really defining what necessary is. IMEs will be denied unless demonstrated need; again, not really defined. And most significantly that there's no opt out procedure, that there's no – there's no specific indication in the proposed rule along the way where the Deputy Commissioner can say this is too complicated for this type of hearing, we need to go to an expedited hearing. Now I think what I've heard is that in practice, Deputies always have that right. It's not spelled out in the rule. The reason I bring that up is back when we were in the taskforce, there was a flowchart presented by Deputy Commissioner Gillen, and I can't recall at this time whether it was a proposal or if it was his analysis of the current system, but the most significant part of it was his flowchart along the way had about four decision points where a case could get resolved at the Executive Secretary level, and then at a Deputy level after a telephonic hearing at a Deputy level, with a little bit more involvement. And then – but ultimately under

his flowchart, if a case could not resolved, it ended up – ended up in three possible resolution options. One was an expedited hearing; fourteen days in Raleigh, no questions asked. You were going to have a hearing and hear with some Deputy who was free. The second option was another expedited hearing where you basically go, look at the next month's calendar and it gets an added-on generally in the county where the injury occurred. And then the third option was the Deputy could decide, well, no, this is just a decision that needs to go into the regular hopper and goes along with the regular hearing option. We much more prefer that type of program or procedure that ends up with live testimony and a hearing in those appropriate cases, understanding that along the way we need to have a process that allows for quick decisions on minor medical issues, maybe a medication or a diagnostic test or things along those lines and trying to balance the defendants' due process rights and the plaintiffs' desire to get quick medical treatment, so if – we'd ask to look at that issue again. Now briefly going on to the other rules, under Rule 608, we have – this is the – that deals with requiring the production of recorded statements, which we understand need to be produced. We're concerned that there's no

specific statutory authority for requiring that recorded statement to be provided within forty-five days of the request for hearing or it shall be excluded from evidence at the hearing. We're concerned substantively then twofold on this is that there's no discretion in that rule. If it's not provided in forty [sic] days, it says shall be excluded. And then secondly, the forty-five day requirement – I have – my experience is with most carriers they don't get recorded statements transcribed right away. They'll have the information summarized in their chart notes and stuff, but they wait to see if the claim develops. I don't understand the need for having – I understand the need for producing the recorded statement, but we don't understand the need for having it within forty-five days of the request for hearing. We believe that it should track similar to Rule 605 and that it should be within thirty days of when requested, and if it's not requested, certainly it needs to be part – provided as part of a pretrial agreement so that it would be disclosed prior to any hearing, but certainly, normal requests for production of the recorded statement should be produced within thirty days, but it shouldn't be tied to the request for hearing and the –

and the remedy should not be complete exclusion of the recorded statement. With respect to Rule 607, we believe that – it's the standard rule we've lived with all along. With respect to request for employment records, we believe that there needs to be some limitation on relevance rather than just a blanket request in every case. It's a little bit open in how you define employment records, and in (unintelligible) case, employment records can be stacks and stacks of documents with – that really aren't relevant to the case, so we would just ask that that be added. With respect to Rule 609, the sticky thing here is there's really not a specific – that we can see – statutory authority for a motions practice. However, we recognize that the Commission needs to have a motions practice. If for some reason this were going to get struck down, we would represent on behalf of the defense attorneys we would work with the Plaintiff's Bar as well and the Commission to develop legislation to allow motions practice because we realize that one needs to be in place. That benefits both sides and the administration of the Act rather than turning every motions issue into a hearing issue, so we appreciate that. We just wanted to point out as part of our duty that we're concerned about that the – that

the Rules Review Commission may look at it and question whether there is statutory authority for that. Finally, with respect to Rule 616 - this is the dismissal of claims – there is a double standard on it that we have - a one-year dismissal for voluntary dismissals, but a two-year statute of limitations for removal. We run into a problem here. We think they should be the same standard because you run into a semantics issue, and can – we can avoid litigation if you have the same standard for – bless you – removal and voluntary dismissal, and we believe that they should both be the one-year – the one-year standard under that, is that if there is a removal or a voluntary dismissal taken that there should be a one-year timeframe. It gives certainty. It tracks the civil system on taking a dismissal and removing a case under an active hearing docket, so we just believe that they should be the same and it will avoid any litigation in the future on a difference between those two standards. I'd be happy to answer any questions as well.

CHAIR YOUNG: Any questions for Mr. Hamilton?

MR. HAMILTON: None? I was going to pass this over to Julia Dixon. She's going to talk about fees. There's one section in the – in the 600s that talks

about Guardian ad Litems, and I think Julia might be – were you going to mention it? Okay. If I can take one briefly, on the Guardian ad Litem issue with respect to fees on the defendants, the statutory authority cited – if you dig down into the civil side where it's mentioned, the statutory authority for assessing fees against the defendants is when a Guardian ad Litem is defending a civil case, not prosecuting one, so the question we have is that whether that statutory authority really supports, in instance in this case, where the Guardian ad Litem is appointed not to defend the child and/or incompetent in some area, but is actually prosecuting the claim, and that's just – if you look at the civil statute – and I apologize - we'll have it in our written comments. I can't remember the statute off the top of my head that it refers to, but actually, it is the statutory authority listed with the rule because - if you look at that slightly different context. Thank you.

CHAIR YOUNG: All right. You're right at twenty minutes. Very good.

(SPEAKER DISMISSED)

CHAIR YOUNG: Ms. Dixon, you're next.

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JULIA DIXON

HAVING PREVIOUSLY BEEN DULY SWORN, was examined and testified as follows:

MS. DIXON: My name is Julia Dixon. I'm with Young, Moore and Henderson, and I'm also here on behalf of the North Carolina Association of Defense Attorneys. I wanted to thank you first for the effort that you've put into drafting these rules, and I know firsthand that this has been a huge challenge and a lot of work, and we really appreciate your efforts, and to reiterate what Bruce Hamilton mentioned, we also appreciate the opportunity to give you comments during the drafting process. I am going to speak today about fees, costs and sanctions. Because there are fees, costs and sanctions throughout the Act, I'm going to just give you our brief summary on whether we believe there's statutory authority for those, and I would note that this may not be an all encompassing list, but the rules at issue are 10E .0201, 10E .0202, 10E .0203, 10E .0204, 10E .0302, 10G .0104, 10A .0604 and 10A .0612. We certainly don't profess to be experts of the Administrative Procedures Act, but we would note that 150B-19 indicates that an agency may not establish a fee or other charge, which we would assert is defined as a cost or a sanction, unless the

law specifically authorized the agency to establish the fee or other charge, or unless the charge falls within one of five categories – service to a government entity; copy of a state publication or other document, including the mailing of that document; transcript of a public hearing; fees for conference, workshop or courses, and data processing services. We would assert that there are numerous fees and costs throughout the proposed rules, many of which are supported by statutory authority, many of which are supported by the APA. There are a few however that are not supported by either, and I will get to those at the end of my presentation. What the NCADA would assert is that although there may be statutory authority for the costs and the fees set out in the rules, that the statutes are very clear with regard to who shall bear those costs and that the rules are either silent on who shall bear the costs, or in practice, those costs are typically assessed the employers, which we would assert is not within the statutory authority, particularly in light of the fact that we are now subject to the APA, so we would ask that the rules list all the fees and costs that will be charged to the parties where it's appropriate and that the rule states specifically who shall bear that

cost. So I want to talk with you just about statutory construction and to illustrate our point with regard to the fees and the costs. 97-73 is a perfect example of where we believe the General Assembly has noted specifically that an employer shall bear a cost. In 19-73(d), the General Assembly gave the Commission authority to set fees for educational training programs on how to prevent and reduce accidents, and the General Assembly specifically noted that that fee should be imposed on employers. Within that same section, 97-73(a), the General Assembly did not assign costs and fees to the employers. They noted that the Commission had the authority to establish a schedule of fees for examinations conducted, reports made, documents filed and agreements reviewed, but there was no specific language in the statute assigning all of those costs or fees to the employers. Since the General Assembly has shown that they know how to assign costs and fees to the employers in (d), we would assert that those costs and fees in (a) should either be divvied out between the parties based on the type of document at issue or should be borne by both parties together. Another example of a statute that would support this argument is 97-80, and in 97-80(b), it specifically notes that the Commission shall have

the power to, quote, "…tax costs against the parties…," plural. All of the costs that are set out in 97-80 which impact hearing costs, mediation costs and depositions costs indicate that those costs shall be taxed against the parties. That is our position. Therefore, we would assert that any of the fees related to hearings, depositions and mediations should be taxed against the parties jointly or based on the type of deposition that may be going on. With regard to, for example, hearing transcripts, under 97-80, we would assert that (b) talks to hearing transcripts and costs, as well as 97-73. We would assert that those costs should be shared or assigned to the appealing party, and we would assert that that is not only good public policy, but would encourage judicial economy because it would create a climate where all parties are more judicious with their appeal decisions. In the current practice, there's no disincentive to withhold an appeal at any level. In addition, with regard to depositions, we would note that there's also statutory authority for fees related to depositions under 97-26.1. However, yet again, the General Assembly did not specifically note that employers should bear all of those costs. We would assert again that 97-80 speaks to depositions and that because

97-80 notes that costs should be taxed against the parties, plural, that the parties should share those costs or that the Commission should assign those costs based on who elects to take the deposition. This would not only decrease the number of depositions, but it would decrease the burden on the medical providers who have to sit for those depositions. We would also note that foreign language interpreters in the rules that relate to those costs also would fall under – specifically as it relates to mediation, would fall under 97-80 and that those costs should be beared (phonetic). We note the public policy and question why the defendants should be required to pay for a translator at mediation. We would assume that the attorney for the plaintiff would be able to communicate with their own client. Finally, we would note that sanctions would fall under the category of other charge pursuant to the APA, and there is a Rule 10E .0302(b) which notes that there's a sanction for failing to – pardon me – sanction for a failure to timely file forms. We would note that that is too broad and that we are concerned that Rules Review Commission may address that. There are some statutory basis for assigning sanctions for failure to timely file certain forms, such as 97-18(h) with regard to a

28C, 97-18(j), a Form 60, 61, 63. Certainly, we acknowledge that there's statutory authority for a sanction for failure to file those forms timely, but the broad sanction for all forms we're concerned about. Under Rule 10E .0202(b), as well as 10E .0302(a), we would assert that the sanction for a failure to pay a fee or cost is not allowed by the APA, and we're concerned that Rules Review may strike those rules. Finally, just as a note, as we were going through this process of preparing our comments, we looked back at all of the minutes that have been previously published. Again, we're not experts on the APA, but assume that those minutes will no longer be in effect and are concerned that some of the minutes may not have been addressed in the proposed rules and that if they need to go forward and be in effect as part of the rules, that it might be necessary to review those minutes to ensure that all of that information is in the proposed rules. To just give some examples – and I won't give you all of the details, but with regard specifically to fees, there is a set of minutes regarding a method of payment, a requirement that documents and forms be filed simultaneously with a filing fee, a memo or minutes regarding all costs. And again, all costs are not

reflected in the proposed rules. A fine for a failure to comply with the Rule 610(3), IME fees – I don't see those necessarily reflected. So in closing, as it relates to fees, costs and sanctions, we would ask the Commission to revisit the rules and to ask is there statutory authority for each of the costs and fees. If not, does the APA allow for the costs and fee? If either the statute or the APA does allow, what does the statute say about who shall bear the costs? We would assert that should be specifically spelled out in the rule. And finally, we would just ask that you revisit the old minutes to determine and ensure that all of the information in those old minutes, if the Commission deems them appropriate to be in the rules, be addressed in the rules. Thank you for---

CHAIR YOUNG: Any questions---

MS. DIXON: ---your time.

CHAIR YOUNG: ---for Ms. Dixon? Any questions?

(SPEAKER DISMISSED)

CHAIR YOUNG: Ms. Brewer, you have ten minutes.

JOY BREWER

HAVING PREVIOUSLY BEEN DULY SWORN, was examined and testified as follows:

MS. BREWER: May it please the Commission, my name is Joy Brewer. I'm with Brooks, Stevens and Pope, and

I'm here today also speaking on behalf of the North Carolina Association of Defense Attorneys. I've – I will be addressing one rule here today. It's Rule 10A .0502, specifically (b)(4) and (7), and this is the rule dealing with settlement agreements, so we believe that it is a very important and critical rule given the number of claims that are actually resolved through settlement. And again, I reiterate our appreciation for being involved in this process early on, and we worked extensively with the Plaintiff's Bar, and I think a lot of the issues we had were resolved, and I think this rule was modified before being published, but we still have two issues from OUR perspective that we feel lacks statutory authority. In (4), the rule says that where liability is denied, the employer/carrier or administrator shall undertake to pay all disputed unpaid medicals. We do not – the North Carolina Association of Defense Attorneys does not believe there is any statutory authority for this requirement. We also think that it essentially undermines the denial of claims by placing liability on the employer/carrier or administrator. There are times obviously in denied claims where a plaintiff may receive no settlement, so the money they receive is essentially a compromise of their claim which implies

that not all of the medical expenses will be paid. A recent case came down from the Court of Appeals, Malloy versus Davis Mechanical, where the Court of Appeals specifically acknowledged that a situation may arise where a compromise agreement is reached that does not fully compensate a plaintiff for his or her medical expenses. So while we recognize the amount of unpaid medicals, it's a factor for the Commission to consider in making a determination as to whether a settlement is fair and just. We do not believe there is statutory authority to require that the employer/carrier or administrator undertake to pay all unpaid medicals. The second section we are taking issue with here today under that rule is (7), and this – specifically, we're looking at the requirement that the parties provide certain notification to medical providers in writing, and I believe in that section, there's sort of three separate provisions. One was if one of the parties in the settlement agreement undertakes to pay certain disputed medicals, they are to notify the party in writing. If the employee's attorney has notified the provider that they're not to pursue a claim for medical expenses, that provider is to be notified, and then when a provider has actually provided notice that they intend

to pursue their right to medical costs. And while we recognize this may be an issue, obviously, through this point, we've been operating – we've not been required to provide such notice. Again, we don't believe there's any statutory authority, and we believe that if there's an issue with this particular – with this notification, that the proper fix is statutory as opposed to time to be fixed under the rules. It's the statutory authority that allows the plaintiffs' attorneys to notify the providers not to pursue their client, so again, we believe it would be properly addressed through a modification or addition to the statute, and that's the issues with Rule – former Rule 502. Thank you.

CHAIR YOUNG: All right. Any questions for Ms. Brewer?

(SPEAKER DISMISSED)

CHAIR YOUNG: Mr. Baker, are you going to wrap up? You've got five minutes.

LARRY BAKER

HAVING PREVIOUSLY BEEN DULY SWORN, was examined and testified as follows:

MR. BAKER: Thank you. It will be very brief. I just want to comment on one of the rehabilitation rules under 10C, which is Rule .0103(5) which defines

suitable employment. The second part of that identifies the statute and when it was enacted of June 24, 2011, and uses the statutory definition the legislature enacted. Before that, it sets out a definition of suitable employment which was gleaned from case law and the prior rehabilitation rules. It would be our contention on behalf of the NCADA that there is no statutory authority for that definition. And again, the APA provides that where there's no statutory authority for the rule, it should not be implemented. There is some question as to whether or not, when there was not a previously defined definition in a statute that subsequently is defined, if that definition should not also be retroactive. However, at the very least, it would be the position of the NCADA that that definition of suitable employment should not be included in the rule itself. As you can see from the number of people who have come up here, we had a very large group who went through this. We know the Commission spent a large amount of time in drafting these rules. We appreciate the opportunity that you have given us previously to comment before these rules were even published in an effort to try and streamline this. We look forward to the opportunity again of working with the Commission

to create rules that are fair and equitable to everybody and which, you know, are going to pass a Rules Review Committee, so we again want to thank you for the opportunity of being here today. I didn't give you a chance when I spoke earlier to ask if you had any questions of me on Rule 405, so if you have any questions of any of the comments we've made, I'll be glad to take those at this time.

CHAIR YOUNG: Are there any questions for Mr. Baker? All right. Thank you, Mr. Baker---

MR. BAKER: Thank you.

CHAIR YOUNG: ---Mr. Hamilton, Ms. Dixon, Ms. Brewer. Appreciate it.

(SPEAKER DISMISSED)

CHAIR YOUNG: All right. At this time, we'd call Mr. Sumwalt. Mr. Sumwalt---

MR. SUMWALT: Thank you very much.

CHAIR YOUNG: ---if you would just go ahead and just state your name and who you represent and the specific rules that you will discussing this morning.

MR. SUMWALT: I'm Vernon Sumwalt. I'm from the Mecklenburg County Bar. I practice with the Law Firm of – well, Sumwalt Law Firm, and I'm here representing the workers' compensation section of the North Carolina Advocates for Justice.

CHAIR YOUNG: All right. And if you'd place your left hand on the Bible and raise your right hand.

VERNON SUMWALT

HAVING FIRST BEEN DULY SWORN, was examined and testified as follows:

CHAIR YOUNG: Thank you, sir. You may proceed.

MR. SUMWALT: Thank you. May it please the Commission, again, I'm Vernon Sumwalt from Charlotte, and I'm here representing the workers' compensation section of the North Carolina Advocates for Justice, and our organization represents the employees, the individuals in this state who are injured at work, and we have several hundred members who practice primarily workers' compensation law, but whose – at least a large part of their practice involves representing the individuals that appear before the Commission on a daily basis. On July 30th, we submitted written comments and objections to the rules, and we took a little bit a different approach in that we were more focused on the procedural regularity of the rules, at least how they compare to the specific provisions in Chapter 97, and some of our comments and objections were mature to that procedure, but some of them can be – even be characterized as cosmetic. We just wanted to make sure that they were clear, they were

easy to follow because the rules should be followed not only by represented parties, but also unrepresented parties as well because that's one of our interests that our organization has – is not only do you – people who have attorneys, but the people who don't have attorneys because they're working through this system as well. I want to bring the Commission's attention to some specific rules that we – that we raised. And most of these comments are consensus comments, being that we solicited input from our executive committee members and got good feedback on these rules, but some of – all these are consensus issues. There are a few that I would like to discuss later on, specifically with Rule 605 and some material that's not contained in the proposed rules that I want to address that there is some debate on, and I'm not sure we came to a consensus, but I wanted to bring the Commission's attention to those issues. The consensus issues primarily are with Rule Subchapter A - Rule 404A(b). I do want to touch on Rule 502(b)(7), which I believe Ms. Dixon touched on in her presentation, Rule 1001(i), under Subchapter A, and those are the – those are the primary rules. First of all with Rule 404A(b) - and that goes with a 28U - and the proposed rule again just like the former rule states that the

parties shall file a Form 28U, and the Court of Appeals in the Burchett (phonetic) case, of course, said that a Form 28U is not mandatory; it's permissive, so we think that that language would be inconsistent with the Burchett case as it construed the statute implementing a Form 28U. With respect to Rule 502(b)(7), Ms. Dixon talked about this. Our comments in our written comments and objections dealt with the problem that plaintiffs' attorneys have across the board with medical liens. And most of the times when we get medical providers writing us saying here's what your bills are, they don't comply with the medical lien statute. Yet, we know by Section I-717 (phonetic) that the medical lien statute can apply to workers' compensation cases, so the issue we've got is when we have unpaid medical bills in a clincher, how do these get paid out, and how do they get paid out that, one, is fair to the medical providers, but, two, also satisfies the attorney's obligation and the injured worker's obligation to pay a part of that settlement to the medical providers? Which is – which is not paying them in full necessarily, but says, okay, I'll just disburse it, but here's how we divide this up. And the lien statutes do that. They provide for a proportional decrease, and that's typically the

way many of our members do this in clinchers, but we would like the Commission to specify, you know, here's – just like it does presently, here's the amount of the unpaid bills, here's how much has been paid by other parties, here's how much is paying paid out of this clincher because with the Commission's approval of that settlement, we now have something to show the medical provider, look, you know, we paid ten percent of your $100 bill, here's $10; you have to pursue the extra $9.00 in some other fashion because what the attorneys and injured workers don't like doing is getting a disbursement and having to deal with medical providers, and most of the times, they will reduce their payments, but when you have a set amount in a clincher that disburses it pursuant to a form that's already in the lien statute, then that makes the medical providers happy, and we can go on our way and get the money to other people. The final rule that we submitted in our written objections and comments was the peer review rule, Rule 1001(i) of Subchapter A. I've not met a medical provider in this state who likes peer review, and I think most of my colleagues would agree with me on that. It serves a purpose, but the fact of the matter is we're getting a lot of denials based on medical opinions that take

place out of state, and one of the issues that comes up in peer review is whether the reviewing doctor is actually committing the unauthorized practice of medicine in North Carolina, which is a well-defined definition in Chapter 90. And what we would propose is if carriers are going to use peer review, then the peer reviewer should at least be licensed in North Carolina to recognize the standard of care here and to recognize the local medical practices. Otherwise, they're at risk for the unauthorized practice of medicine, and I will say there is a wrinkle to this because, for example, if we represent employees in South Carolina or Virginia who are out of state, that doesn't necessarily mean the doctor licensed in North Carolina can give that peer reviewing opinion because their authorized treating doctors may be out of state as well. They may be in the state of residence, so there may be a little (unintelligible) that's needed in the rule just to make sure that whoever is reviewing the doctor's recommendation is licensed in the state where that doctor is also licensed to practice and where that treatment will be performed because, otherwise, you may run the risk of violating the unauthorized practice statute. The non-consensus issues – we had a lot of debate about this, and I'm

not sure I'm sold one way or the other with some of these issues, but I want to bring these to the Commission's attention. The first deals with Subchapter A, Rule 605, and at least with the rules I pulled off the Commission's website, my understanding is there's another version of 605 that's floating around there that includes not only interrogatories, but also request for production of documents, and I'm not sure if I'm correct about that. Is that---?

COMMISSIONER MEYER: I do believe that there was some information submitted. And then when these got published, I'm sure the exact version---

MR. SUMWALT: Okay.

COMMISSIONER MEYER: ---that was picked up, so there may be – in fact, I think someone has resubmitted that as a comment, that that should be included, so---

MR. SUMWALT: That---

COMMISSIONER MEYER: ---that may be the case. I---

MR. SUMWALT: Well, I was counting on---

COMMISSIONER MEYER: I know there was discussion about it with some input about both.

MR. SUMWALT: Okay. I'll comment just on request for production in general, assuming that it's in the

rule, assuming that it's in that alternative version. Generally speaking, none of us have an issue with producing documents in our possession consistent with the contours of Rule 607 and Section 97-25.6(a). One of the concerns we have is that the scope of request for production in civil context is that you can get documents outside of your possession, and there is some concerns raised by our members that that could lead to two situations. I mean certainly request for production have use, but they can also be subject to abuse, and those are the two words that most of our members focus on – use and abuse – because in complex claims, I think they would be useful. I think that in occupational disease claims, there are certainly things we want from the other side to help us find the facts we need in claims, but on the other side, I can certainly see in the run-of-the-mill slip and fall at work or, you know, you're not going into elaborate discovery that the request for production can be abused in some situations. We would ask the Commission to do one of two things, even though we didn't submit a formal comment on this, but limit the scope of request for productions even by – either by number or by scope, and scope would be preferable, we think, because I think that if you look at – the

Commission also sends out Form 36s, for example, that you have subpoena power. If a party really wants documents that another party doesn't have in its possession, they can send a subpoena for that same information, so there's other ways to get it. It doesn't deprive a party of getting that information through other means, but it – by limiting the scope of the request to information in the party's possession, it also prevents potential abuse for making that party chase down stuff and spend ten times as much in the administrative claim that really the system has got – is geared for simplicity, and I think that recognizing that there is the Form 36 out there that they can get the same information, then limiting the scope of the request for production either, you know, by who has the information or by the number of requests that would help. The other comment – and some other commenters (phonetic) may be mentioning this today – is that there's a number of forms that are mentioned in the proposed rules that were incorporated from the prior rules, and there are some of them that were not mentioned in the proposed rules, and I won't go through which ones were and weren't today, but the concern that's raised is that if there's going to be an amendment to a form – a substantive amendment, or

if there's going to be a new form, then we would propose that that's also subject to the rule-making procedure as well because I think that everyone needs to review those forms because we're all working with them, and it just – at least the transparency I think – I think that if there's an issue with a form that may be critical to either the defense side or the plaintiff's side, we want to anticipate these issues as much as possible to make sure that we have a workable form that the Commission can publish, and that's my comments. I didn't use the full forty minutes. I apologize if you wanted me to, but we do thank you very, very much. We do realize this is an incredible undertaking.

CHAIR YOUNG: Let me just ask, are there any---

MR. SUMWALT: Yes, ma'am?

CHAIR YOUNG: ---questions for Mr. Sumwalt? And did you have a prepared summary of your remarks, Mr. Sumwalt, that you'd like to present to the court reporter for marking?

MR. SUMWALT: Other than the---

CHAIR YOUNG: Your letter?

MR. SUMWALT: ---my letter of July 30th, I have no prepared remarks so---

CHAIR YOUNG: All right. Could you go ahead

though and hand that over to – do you have an extra copy of that? We have copies of that letter. If you have an extra copy---

MR. SUMWALT: I've got my copy, but you're fine – I mean---

CHAIR YOUNG: That would be fine. If you would just go ahead and present that over to Mr. Constantino, that would great. We'll mark it and get it into the record at this time.

(Exhibit Number 3 is marked for identification and admitted into evidence.)

CHAIR YOUNG: Thank you so much.

(SPEAKER DISMISSED)

CHAIR YOUNG: Are we going to keep moving forward? At this time, Ms. Cathy Thamen. Ms. Thamen---

MS. THAMEN: Good morning.

CHAIR YOUNG: ---good morning. Good morning. Now, are you here on behalf of IARP?

MS. THAMEN: I am.

CHAIR YOUNG: Okay. Very good. Well, if I can get you to go ahead and just place your left hand on the Bible and raise your right hand.

CATHY THAMEN

HAVING FIRST BEEN DULY SWORN, was examined and

testified as follows:

CHAIR YOUNG: All right. You'll also have forty minutes. Feel free not to take it all.

MS. THAMEN: Don't worry. It won't take forty, not at all. My name is Cathy Thamen. I am the president elect of IARP. IARP is an organization – IARP of the Carolinas is an organization, International Association of Rehabilitation Professionals. We have approximately two hundred members in IARP of the Carolinas. Over eighty-five percent of those reside in North Carolina and practice at least part of their practice as workers' comp in North Carolina, so I'm speaking on behalf of that group today. I have no legal training. I have learned long ago not to argue with lawyers, that it's fruitless, that they are trained to do it, and I am not. We are not commenting today from a legal perspective. We understand that the rehab subset of rules is a small section of all the rules that you all have worked so hard to rewrite here, but those are the sections that we'd like to have some comments about. IARP Board consists of Carla Marshburn who's here today. She is the president. She's also the senior vice-president of Carolina Case Management. I am the current president elect, and I'm vice-president at

Southern Rehab Network. Nancy Wells is the immediate past president. Nancy is the president of Carolina Case Management. Adele Dooring (phonetic) is here today. Adele is a senior vocational supervisor with Southern Rehab Network, soon to retire. I'm so jealous. Tonya Ballard is our treasurer. Tonya is a senior vocational case manager from Carolina Case Management. Cindy Boyd is a member at large, formerly with the Commission as a nurse. She is now nurse liaison with Duke Rehab. George Page is a member at large. He is president and owner of Page Rehabilitation Services. Chad Betters is a professor at Winston-Salem State University, and he is a member at large. And Donna Irby is a medical supervisor with Southern Rehab Network, and she is a member at large, so that comprises the Board, and then we do have a number of members in the Carolinas. Before I begin my remarks, I'd like to take just a moment to mark the loss of two very important rehab professionals known to the Commission for many years and to many of the parties here today. In the last couple of months, we have lost Nancy Stewart and Brian Preston, and both have served the rehab profession well and have served injured workers in North Carolina very well, and their loss is a deep loss for all of us on a personal and

professional level, but I just wanted to take a moment to publicly recognize their service. Okay. Today, the comments I'd like to make include Subchapter 10C of the North Carolina Industrial Commission Rules for the Utilization of Rehabilitation Professionals in Workers' Comp Claims. I'll begin with .0103 where we talk about definitions. This definition in the proposed rule has struck out, including a personal interview with the injured worker.

COMMISSIONER CHEATHAM: Just a minute. Which definition---

MS. THAMEN: I beg your pardon.

COMMISSIONER CHEATHAM: ---are you referring to?

MS. THAMEN: 2(a), line eighteen if you have the printout.

COMMISSIONER CHEATHAM: Yep. 2(a)?

MS. THAMEN: Okay. Line 2(a), yes, ma'am – "case assessment; including a personal interview with the injured worker." That has been been struck, and we feel strongly that medical case managers, as well as vocational case managers need to have a personal interview in order to set a rapport. Establishing a relationship with your injured worker whether you're a nurse or a vocational professional requires establishment of a rapport, and so we feel that there

needs to be personal involvement there. To anticipate a question you might have, we do not necessarily say that telephonic case management cannot be personal. If a nurse is spending time on the telephone with an injured worker, that is personal. To us then the question doesn't become whether or not it's personal; it's how long is telephonic appropriate. That's not addressed by the rule, and we're not necessarily addressing that, but in anticipation of the question that would – that would rule out telephonic, no, not necessarily, we don't believe it would. Let's see, line 25 to 27, which is (3) under this section, it defines vocational rehabilitation. This is a lengthy definition where it begins to speak of, on line 27, "…defined by Item (5) of this rule or applicable statute and to substantially increase the employee's wage-earning capacity." We'd move to strike. We can't do that, but we recommend that we strike substantially increase wage-earning capacity. That's never been the goal of vocational rehab. The goal of vocational rehab is to help a person get to the place that they can be based on their individual abilities, their limitations, their education, any retraining that might be available to them and where we can help them fit back into the society and to the workforce,

so it's a very highly individualized thing, and you never would have a guarantee that it would substantially increase their wages. Now all of us would love to have the case where we place a person and it does substantially increase their wages, and that does happen, but those occasions are rare, so we feel that it's an inappropriate thing to try to have the rehab professional be responsible for substantially increasing the wage-earning capacity. Okay. Moving on to .0105(d), "To qualify as rehabilitation professional, a rehabilitation professional must:" – and then we have qualifications, (1), which are listed (A) through (H). We agree with those qualifications. We propose adding (I) and adding professional vocational evaluator. This is a relatively new designation. There are a lot of these folks in North Carolina, primarily because Chad Betters at Winston-Salem State has been so active in recruiting people for that, but we recommend this because the certified vocational evaluator credential is not very well supported anymore. It does still exist, but there's not a lot of support for it, so we'd like to see PVEs be able to be included in this. At the end of Section (I) that we would propose to add, we would like to insert the word "or" because the

way that it currently reads, we fear that it indicates that we must do both of those things, which we don't all work for the state, so don't think the state budget can handle us now, so we'd like it to just be clear that you have either one of the certifications under letter [sic] (1) or that you comply to number (2). Moving on to .0106, Professional Responsibility of the Rehabilitation Professional in Workers' Compensation Claims, on line 18, we do not believe that experts and case consultants should be included in this rule. Historically, the rehab rules have applied to case management, so applying this to experts and consultants we think brings a great deal of confusion. Experts and consultants are not necessarily coordinating or providing rehabilitation services. What they are doing is either serving as an educator to the Commission or perhaps providing an opinion in one specific aspect of a case, so we disagree that those folks should be included in the rehab rules.

COMMISSIONER CHEATHAM: Can you point me to exactly where in .0106 you're referencing? I do not have line numbers.

MS. THAMEN: Okay. Under .0106, it's under (d)---

COMMISSIONER CHEATHAM: Uh-huh.

MS. THAMEN: ---"As case consultants or expert witnesses, rehabilitation professionals shall provide unbiased, objective opinions."

COMMISSIONER CHEATHAM: Uh-huh.

MS. THAMEN: Are you with me?

COMMISSIONER CHEATHAM: I am.

MS. THAMEN: Okay. We believe that consultants and expert witnesses should be struck and that it should simply say rehabilitation professionals shall provide unbiased, objective opinions.

COMMISSIONER CHEATHAM: Right. Thank you.

MS. THAMEN: Thank you. Any other questions about that? Thank you. Okay. We also have some concerns that we can't yet put a firm finger on, but we worry that there may occasionally be a conflict in some of our applicable codes of ethics and things that are required by the statute. The IARP membership has been asked to submit some of those examples, and we are waiting for those, and they will be with our written comments that will be submitted after today, and I can't tell you one off the top of my head today, but I do have a concern should we ever find ourselves in a position where the workers' comp statute requires that one thing happen, but our code of ethics indicates that something else should happen, where does the line

fall? Where is the decision with the statute? So we would like some clarification of that. Okay. Moving on to, let's see, .0106, and this would be under, let's see – this would be under – it looks like (1)(g) that's struck through. It's line 22 on my copy, but it's under (e) that's been struck to (f) and (f) has been struck, and then it looks like a number (1), although it could be a letter. It says, "A rehab professional shall not [consist –] conduct or assist any party in claims negotiation or investigative activities during his or her assignment in the case." We're very uncomfortable with that wording. We don't think we should ever be doing that. Just because we're no longer working on the case, we don't believe that we should be able to have any part of the negotiation or providing investigation. That's not what we do as rehab professionals, and, in fact, that would be against our codes of ethics.

COMMISSIONER CHEATHAM: Now, what is your issue with the rule?

MS. THAMEN: The rule is that it says during our assignment.

COMMISSIONER CHEATHAM: Okay.

MS. THAMEN: We'd just like to end the sentence at investigative activities. We just don't want people

to think that they might be free to do this after their case is closed. We don't think there would be many who would, but it's a possibility and we find it unethical. Did I address your question?

COMMISSIONER CHEATHAM: Uh-huh.

MS. THAMEN: Okay. All right. Continuing to .0107, under Communication, this would be – first of all, we'd like to propose adding something to this section. After lines – well, let's see, three through five, which is the very beginning, the insurance carrier – this would be under (a). "The insurance carrier shall notify the Commission and all parties on a Form 25N…," etcetera, "…and the purpose of the rehab involvement." We'd like to add that the rehab professional – I'm sorry - I'm looking at the wrong line - that the Commission would also forward a letter to the injured worker and/or attorney if represented to document the Commission's expectation of cooperation with the rehabilitation program upfront. We feel that by adding an expectation of compliance upfront that it avoids a lot of wasted time, wasted energy, wasted money, more motions for the Executive Secretary to see, that we could overcome some of that and just move on with the rehab program from the get-go, so we would request that be added. Also, it

appears in this section that the summary of the rules has been left out. I know how hard the Commission worked to produce that summary. I also understand that at this point, you would have to rewrite the summary before these rules went into effect in order to have a summary to present, but that summary is very valuable to the injured workers. We can certainly hand them a copy of the rules, but I think most of them have benefited from having the summary. I'm not sure how defense and plaintiff would feel about that; would be interested to hear, but as rehab professionals, we feel like they would benefit from having the summary rather than having to be given the entire packet of rules. There's one other thing we'd like to recommend adding here. In the law – the new reformed law, it indicates that employers can get medical information that may not be related to the claim, but might have some impact, so we'd like to see a section here that would say some sort of language that would indicate that we could get additional information, language that makes the following point: Rehab professionals are allowed to obtain medical information outside of the immediate claim treatment records when the parties are in agreement for the rehabilitation professional to facilitate the

gathering of such information. We're not asking that we have the rights that the employers have. That would put us too squarely on one side or the other, but if all the parties are in agreement that for whatever reason they'd like us to obtain the information, we'd like it to be easy for us to be able to do that. Okay. Also, in this section, this is the section that talks about the first meeting occurring in the attorney's office. We would like to see that---

UNIDENTIFIED COMMISSIONER: Which number are you---?

MS. THAMEN: I'm sorry. Let me go back to my other copy – page twelve. I have them marked out by page numbers and lines. It's easier for me that way. Line sixteen to twenty – okay – this is the very end of that section. It's (i). I believe it's (i).

UNIDENTIFIED COMMISSIONER: .0107(i)?

MS. THAMEN: Yes. Let's see – sixteen to twenty. No, no. I'm sorry. Line nine – it's further up than that. It's under – it looks like an L, (h) – (1)(h), perhaps. Again, it looks like an L or a 1 that's struck through with an H. "If requested by the injured worker or his attorney"---

CHAIR YOUNG: Yes.

MS. THAMEN: Okay.

CHAIR YOUNG: (h).

MS. THAMEN: ---"the initial meeting of the injured worker and rehab professional shall take place at the office of the worker's attorney and shall occur within twenty days of the request." We would like to – we don't like the word "shall" there. We prefer – or what we prefer to hear it say is this: We believe this should remain as originally written and state, the initial meeting of the injured worker and the rehabilitation professional shall, if requested by the injured worker's attorney, take place at the office of the injured worker's attorney and shall occur within twenty days of the request. So it's not that different, but that feels friendlier to us. We just prefer that language. We don't have a problem with meeting in the attorney's office, and we find that that enhances communication from the start, not in one hundred percent of the cases, but in many cases that enhances our relationship with the attorney and it assists the attorney, especially someone who may not have worked with a particular case manager before, to be able to have a face-to-face and an understanding that, okay, this is a person I can work with or maybe this is a person I'm not sure I want to work with, but

it allows us to establish a better rapport that way. Now we're down to section – that's perhaps a (j). "If the rehab professional believes the injured worker is not complying with the provision of rehab services…"

CHAIR YOUNG: Looks like a (j).

MS. THAMEN: That's (j)? Okay. That's – this section – we don't think this section applies to rehab professionals. We think compliance is a legal issue and that this should be addressed by the attorneys and the Commission. We don't think it's the responsibility of the rehab professional to prove or disprove the compliance of the individual with the statute. We recommend adding to – I'm sorry. That's compliance. I've mixed up in another part there, but we just don't think that this is our job. We've been asked to do this a couple of times since the new law went into effect last June, but it feels to us that this is a legal argument and that we should not be making legal arguments. Our job is to do rehabilitation. It's to try to assist people with return to work. Yes, we have to document it if they aren't doing what has been agreed to do, but compliance is a legal term, and we don't feel we have any place in that. Okay. I'm moving on to .0109. Okay. This would be letter (d), "When an employee

requests retraining….” Okay. We would propose adding a number 6 there that would read something to the effect, the rehabilitation professional’s assessment of the injured worker’s ability to successfully complete the requested education or training and obtain related work at the completion of the education or training, so we feel like if we’re going to address retraining and reeducation, that’s great. Many times we’re requesting that on behalf of the injured worker anyway, but we also need to be able to insert our professional judgment as to is this a good part of a plan. Okay. .0109(d) – oh, we just did (d), so now we’re going on to – oh, line thirty-three just had some confusing – that’s – this is – it talks about – it’s under (a) struck through, which is now (e). It’s just confusing sentence structure. We just seek some clarification as to what was actually meant by that sentence. It talks about “The rehab professional shall obtain from the medical provider work restrictions that address the demands of any proposed employment. If ordered by a physician, the rehab professional shall schedule an appointment with a third-party provider to evaluate an injured worker’s functional capacity, physical or impairments to work.” We just feel like there must be a word there or some

meaning there that's missing, and we just request some clarification there. Okay. This takes us to (g). It was (c) struck through and is now – no, (g), (h) – it's down to (h). (d) struck through; now (h). For those of you with line numbers, line nine. Okay. We believe that this should remain as it was originally written in the rehab rules. I'm sorry – wrong line. Losing my place here. We're down to page – okay. Sorry - my fault. All right. We think that this comment about the DOT should not be in here. We think this should remain as it was in the original rehab rules. The *Dictionary of Occupational Titles* is outdated, and the Department of Labor has decided not to update the DOT. Now the Social Security Administration has made a decision that they're going to attempt their own update, but there's no timeframe for when this is going to happen, so we feel like it would not be wise to take the DOT and the *Handbook for Analyzing Jobs* which are companion documents and are now outdated to use for all jobs analysis in workers' comp situations. There are many jobs that many workers' comp claimants now have that are not in the DOT, and when you go to the DOT and you try to find the best guess or the closest thing, many times you come up with something that's completely different

from the actual job the person is doing. With the advent of really good, onsite job analysis by trained rehab professionals, we have an opportunity to use the DOT when appropriate, but you also see in writing and many times in photography and/or video what the job actually requires, and this can be more helpful to the physician in making a determination about whether or not this person ought to be doing that job than having to depend solely on information from an outdated document. All right. Moving to .0110 – and this would be – this is under – it looks like (c) that has been stricken. Oh, it's up – no, that's not correct. It's up at the top. It's under (a) that was stricken and is now (b). It's where that term "manifest injustice" comes up. Now we're not lawyers. We've looked it up. We've read the definitions, and we find it quite scary and just find it inappropriate to workers' compensation rehab case management. I don't know if there are other areas of the comp law that it might apply, but in dealing with the rehabilitation professional and the work that we do to help injured workers, we cannot imagine manifest injustice occurring. It just does not seem plausible to us. It's just a term we find objectionable. We also do recommend down at – also under (b) where the Executive

Secretary's Office - motions are filed to the "…Secretary's Office and served upon all parties and the rehab professional," it would just make us feel better if you'd add that word "simultaneously" after rehab professional, so we always know that we get the motion if there's a motion to remove at the same time everybody else receives that. Okay. Section .0200 – again, I am not speaking from a legal perspective. We are speaking from the perspective of rehabilitation professionals. It is for the Commission and the lawyers to determine, and I guess the rule-making committee, all the legal aspects of this, but we find it disturbing that the rules would ever be suspended. If we are going to have rules, then we feel like we should all be following the rules. And why would the rules be suspended either to help us or hurt us? We feel like if we have rules, we need to follow them, so we do object to an ability to suspend the rules, with all due respect. And then .0202, Sanctions, under (a), "For ineffective delivery of rehabilitation services, failure to comply with applicable laws, rules, regulations…," etcetera, etcetera, etcetera. We would like to see the Commission may prohibit or restrict a rehabilitation professional or group of rehab professionals' further participation by

particular rehab professionals. We would – we would not like to see "shall." The word "shall" indicates that you're going to be forced to do that any time there's an issue brought up that you may find objectionable. Having worked with the Commission for many years, I know that there are times when people can come to you and say this was the situation, this was not my intent and people are able to move on, or there are situations where a case can be transferred to someone else and the case can move forward, but we would like to see the word "may" instead of "shall" there. In addition, we would like to see healthcare providers not included in this. We don't perceive them as part of the rehabilitation process so far as case management is concerned. They are providers and therapists, so we suggest finishing that sentence about failure to respond to lawful orders this way: Rehabilitation professionals or rehabilitation companies, period. Again, we do strenuously object to the term "manifest injustice" anywhere in the document that refers to rehabilitation. Do you have any questions?

CHAIR YOUNG: Any questions for Ms. Thamen? No, ma'am.

MS. THAMEN: Thank you very much for your time,

and we will submit our comments in writing before the deadline.

CHAIR YOUNG: All right. Very good. You don't have any today to submit to the---

MS. THAMEN: No, not today.

CHAIR YOUNG: ---reporter? All right. Thank you, Ms. Thamen.

(SPEAKER DISMISSED)

CHAIR YOUNG: We're going to keep moving forward here. We'll go with Mr. Hank Patterson at this time who I believe is speaking on behalf of himself. Mr. Patterson, good morning.

MR. PATTERSON: Good morning.

CHAIR YOUNG: Could I get you to please, sir, place your left hand on the Bible and raise your right hand?

HENRY N. PATTERSON, JR.

HAVING FIRST BEEN DULY SWORN, was examined and testified as follows:

CHAIR YOUNG: Thank you, sir. Go ahead and state your name and for whom you represent and any rules that you will be addressing today, if you'd outline those, please.

MR. PATTERSON: Yes. My name is Henry N. Patterson, Jr., and I practice law in Chapel Hill,

with Patterson and Harkavy. My firm is counsel to the North Carolina State AFL-CIO. However, I'm not here today on behalf of the AFL-CIO. My remarks do not necessarily reflect the views of the North Carolina State AFL-CIO, although I hope at some point I can convince them of this and discuss this. Let me – let me just say a few things. First, let me say I'm going to file extensive, written comments following this hearing, commenting on some areas that I had not planned to comment on based on the discussion here this morning. I want to say initially that I guess I've practiced before the Commission for more than forty years, and during that time, I've been – I've chaired like several Commission committees or advisory council committees, and this is – our system is a good system, and it's – and changes, even though they look small, may have major impacts on the system, so I think we need to all be very cautious on what we suggest and do that may change a system that works pretty well. In fact, last week the National Academy of Social Insurance published some statistics on the cost to employers in the different states in workers' compensation, and North Carolina costs for employer payroll was below the medium, and we all know from national studies that our benefits are adequate or

generous compared to other states, so we have a good system that's worked well over many years. Let me first – and I think that my concern first – or often it's first just for the – I think for the system. That is, is the system going to – you know, is the change going to affect the way the system works? So that – let me – let me first say – let me first mention my point of discovery. There's a proposal that the Commission's discovery provisions be expanded to include request for production of documents. Now I was chair in 1998 of the last committee at the Commission to study discovery. That committee was made up of former Commissioner Mavretic, myself, I believe former Deputy Commissioner Hedrick, Executive Secretary Stacy [sic] Weaver and so forth, and we spent considerable time discussing discovery. The Act mandates that discovery and other – the processes, procedures in discovery under – says – 97-80 of the Act – "…shall be as summary and simple as reasonably may be," so that's the guiding principle, that discovery should be simple. Now in Wisconsin, there's no discovery. There are no interrogatories. There are no depositions. There's just no discovery, and their system is held up as a model of efficiency. And then there are other state systems that have extensive

discovery corresponding with what we'd see in the civil justice system, and I think Bruce Hamilton this morning said that there was no – you know, we should avoid an attempt to try to make this a civil system entirely, so I would say that any changes to discovery that has worked fairly well should be undertaken carefully. I don't know how – myself, I don't know how you justify authorizing request for production when we have Rule 607 which already requires the production of documents by a party following, you know, receipt of a letter or request for those documents in writing, so it looks like to me that request for production duplicates in part, that complicates things, requires more paperwork, more formality. I just don't personally see any basis for expanding – you know, expanding discovery. If anything, we need to be looking at contracting discovery, but based on my experience, much of the discovery I receive and respond to is simply a canned interrogatories that often don't have anything to do with my claim at all that I'm dealing with, and so if anything, we – you know, we tried to tighten these up in 1998 and 1999, but if anything, we should be looking at tightening these up further, and we certainly shouldn't be changing these provisions in my

view unless we have a very careful consideration by a committee at the Commission of this, probably at a time other than now - this time when we're making all these other changes. Vernon Sumwalt discussed my second point - that is, the forms. The Commission forms – many of the Commission forms themselves are very sensitive - the Form 60, the 63, the 21, the 26 and 26A. And we go back in our jurisprudence in workers' compensation, we have – often have discussion by the Courts of the particular forms, and so a little small change in the language in the form may make a major difference in rights under the Act, and I don't believe that the adoption of the forms themselves are subject to the APA or should be, but I do believe as part of these rules, there should be a rule that indicates that before the Commission changes a form or adopts a new form, that the Commission should publish that form for comment by – you know, by the public. And based on some informal discussions with the Office of Administrative Hearings, I believe that's possible. That is, it's not necessary to say the form itself is subject to the APA, but provide that before forms are adopted, they are, again, published in some way and there's opportunity for comments so the Commission has that benefit of that. One other thing I wanted to

comment on briefly – and again, I'm going to expand on this in my written comment, and I will myself personally try to go to the Office of Administrative Hearings and try to explore this a little more and what language could be used to get to that end, but it's very important again that the forms be carefully constructed, as we all appreciate. Last point – 18(k), this question of Rule 405 - this – the purpose of 97-18(k) was to make sure that questions of reinstatement of compensation for employees whose compensation had either been unilaterally terminated or terminated pursuant to Commission orders was acted on quickly by the Commission, so that the imperative there is that the – they're to be considered on a preemptive basis, which means before anything else. The – before 18 – 97-18(k), reinstatement of compensation in those same situations could be accomplished by a motion. The North Carolina Bar Association forms manual predating 97-18(k) includes a motion for reinstatement of compensation so that those motions could be filed. There was no provision for – necessarily for a telephonic hearing and – but they didn't have to be heard on a preemptive basis. I fail to see the merits of an argument that the Commission by providing the opportunity for the defendants to

make their views known and to make their arguments known and in fact to hear from the plaintiff before a ruling on the motion is in some way not sanctioned by the statute or not contemplated by the statute.

CHAIR YOUNG: Mr. Patterson---

MR. PATTERSON: Yes?

CHAIR YOUNG: ---you have two minutes.

MR. PATTERSON: And so that's – it seems to me that's just providing some additional due process and additional opportunity. I think the Commission has done an excellent job in trying to craft an appropriate rule to address the 18 – 97-18(k) question. Thank you.

COMMISSIONER MEYER: I have one question, Mr. Patterson.

MR. PATTERSON: Yes?

COMMISSIONER MEYER: Are you proposing any particular – with regard to the forms' issue, are you proposing an addition or amendment to any existing rule, or are you proposing a new rule to address the issues of the forms?

MR. PATTERSON: I believe that would be a new rule.

COMMISSIONER MEYER: Okay.

MR. PATTERSON: Now you would be more familiar,

but I think that it's just not dealt with.

COMMISSIONER MEYER: Yeah, it appears that it's not dealt with, but I just wanted to make sure I understood---

MR. PATTERSON: Right.

COMMISSIONER MEYER: ---your position.

MR. PATTERSON: And I think – I don't feel comfortable myself saying this is the language you use unless I went over and sat down formally and met with the Office of Administrative Hearings, and I have talked with them at telephone and they did indicate that what I was suggesting could be done appropriately, but I'm not – and I will – before September 14th, I'll make a specific proposal on that. Thank you very much.

CHAIR YOUNG: Thank you, Mr. Patterson.

(SPEAKER DISMISSED)

CHAIR YOUNG: At this point, I'd like to go ahead and call Alison Crews forward. After Ms. Crews speaks, we will then take a five-minute recess. We will return and Jane Rouse will speak, Steve Keene, Brian Allen and John McMillan. Ms. Crews, if you'd come forward, please. You do have forty minutes. You're speaking, Ms. Crews, I believe on behalf of Rehabilitation Management. Is that right?

MS. CREWS: I won't take that long.

CHAIR YOUNG: All right. If you would place your left hand on the Bible and raise your right hand.

ALISON CREWS

HAVING FIRST BEEN DULY SWORN, was examined and testified as follows:

CHAIR YOUNG: All right. Ms. Crews, you may go ahead and state your name, with whom you're affiliated and the proposed rules that you will be addressing today.

MS. CREWS: My name is Alison Crews. I'm a case management supervisor for Rehabilitation Management, Incorporated, hereafter will be referred to as RMI because I can't say that that many times. It's too long. I'm here today to speak on behalf of the owners of RMI, Jerry Pruitt and Beth Revis (phonetic). They were not able to be here today. RMI has reviewed the proposed rehabilitation rule changes related to - in the recent reform in the workers' compensation law in North Carolina. I want to start out by saying we appreciate the efforts of the Commission to amend the rules in accordance with House Bill 709 and also in - taking into consideration our concerns. The owners of RMI have related the following concerns regarding the proposed rules: I'll start with the definitions - the

definition of suitable employment. The old definition of suitable employment remains and the amended rules of the new definition is not spelled out with the distinction between pre-MMI and post-MMI. It's RMI's position that this definition should be spelled out as it was in the previous rules and as – and as it is in the new law. In the comments that I will submit, I have the language of the law also written in here. The second position refers to the definition of vocational rehabilitation, the phrase, "…and to substantial increase employee's wage-earning capacity." RMI's position is this should be removed from the definition of vocational rehabilitation. The most significant portion of the new definition of suitable employment is that wages have been removed from that definition. As based on the new reform laws, there's no requirement that the post-MMI job offer include any specific likelihood that the claimant will advance to their pre-injury average weekly wage.

CHAIR YOUNG: Ms. Crews, could you step a little closer to the microphone? You're fading a little bit on us. Thank you.

MS. CREWS: Sorry. I have – drop off the end of my sentences. The third concern that we would like to

discuss - is that better?

CHAIR YOUNG: A little bit.

THE COURT REPORTER: It doesn't amplify. It's only built to record.

CHAIR YOUNG: I understand, but up here---

MS. CREWS: I---

CHAIR YOUNG: ---we're having difficulty. We have a roar above us, so I was just trying to see if we could – go ahead.

MS. CREWS: Okay. I'll try to be louder. The third issue that we would like to address is interaction with physicians. It is our position that as part of the definitions of medical rehabilitation and vocational rehabilitation, RPs should have the same reasonable access to medical information as outlined in the law 97-26 – I'm sorry – 25.6. RMI's position is in written communications to the physicians, such as in the case as with a jobsite analysis. The precedent set forth in the law regarding providing a copy to the employee within ten days of a response from the physician should apply, which will bring me to the next concern. It's also under the vocational rehabilitation. (g), it says, "The worker or the worker's attorney shall have seven business days from the mailing of the description to

notify the RP, all parties and the physician of any objections or amendments thereto. The job description and the objections or amendments, if any, shall be submitted to the physician simultaneously." RMI does not agree that an attorney can amend a job description. We understand objections, but amending a job description. It is also our position that this seems to counter to the law. The law specifies any job is reasonable as long as the physician agrees it is part of the treatment or rehabilitation plan of the injured worker. Fifth, under vocational rehabilitation, (h), it says you shall reference the DOT number. RMI does not agree that the DOT should be the sole reference utilized and should not be required on the JSA. We believe it should be removed. And last, RMI has concerns that the rules do not reflect the new statutes in the law pertaining to vocational rehabilitation, and feels that vocational rehabilitation should reflect the framework of the new law. An example, the new law does not reference the federal hierarchy of return to work. However, this priority to return to work remains in the framework of the proposed revisions to the new rules. RMI does not agree this should be included as proposed in the revised rules, but rather modified to reflect the

language of the new law. N.C.G.S. 97-32.2 – it says vocational rehabilitation, (f), in the law - it gives the priority of return to work saying, "Return-to-work options should be considered with order of priority given to returning the employee to suitable employment with the current employer, returning the employee to suitable employment with a new employer, and, if appropriate, formal education or vocational training to prepare the employee for suitable employment with the current employer or a new employer." Thank you for your time.

CHAIR YOUNG: Are there any questions for Ms. Crews? No questions. All right. Thank you, Ms. Crews. You have nothing written to submit today---

MS. CREWS: I do.

CHAIR YOUNG: ---to the court reporter, do you? Would you kindly hand that to the court reporter? I think that's Exhibit 3 [sic] at this moment, I believe. Go ahead and have that marked. We'll get that into the record.

(Exhibit Number 4 is marked for identification and admitted into evidence.)

CHAIR YOUNG: We will stand in recess for five

minutes. And then we will return and Ms. Jane Rouse will be up next.

(OFF THE RECORD)

CHAIR YOUNG: All right. We're back on the record this morning in our public hearing regarding the proposed rules. At this time, Jane Rouse will begin. Ms. Rouse, would you place your left hand on the Bible and raise your right hand?

JANE ROUSE

HAVING FIRST BEEN DULY SWORN, was examined and testified as follows:

CHAIR YOUNG: All right. Ms. Rouse, you will have forty minutes as you're speaking on behalf of Southern Rehab.

MS. ROUSE: And it won't take that long.

CHAIR YOUNG: It won't take that long. All right. You have forty minutes.

MS. ROUSE: Okay.

CHAIR YOUNG: And you may begin.

MS. ROUSE: My name is Jane Rouse, and I'm president of Southern Rehab Network, a medical and vocational case management company. I represent fifty – approximately fifty medical and vocational case managers that work in North Carolina. I am here to speak about the rehab rules. I am an RN, and I

have a Master's in Rehab Counseling. I'm certified as a Carolina – I mean as a CCM - Carolina Case Management - I'm sorry – certified case manager.

UNIDENTIFIED SPEAKER: She don't work for us.

MS. ROUSE: I don't work for her. Certified rehab counselor, certified disability management specialist and a licensed professional counselor. I've been doing this job for thirty-one years, which makes me feel bad, but I was around with the original start of the rules, and what I would like to stress – the spirit of the rules. They were a joint effort by all parties to establish guidelines to promote cooperation and promote the professionalism of rehab of the injured worker. In paraphrasing a national rehab definition, it is an effort to return an individual to as normal a lifestyle as possible that they had prior to injury. We now have credentialed, experienced rehab professionals, both medical and vocational, with the intent of assisting the injured worker in their recovery and return to the workplace. For the most part, our people like the rules. It gives everyone an idea of our job and gives us guidelines and backup when we're asked to do things that are outside our boundaries or not allowed to do things in a timely manner. I agree with the IARP

recommendations of the updated rules. Also of note, a couple of additions, on our interactions with the physicians, page – I go by the page thirteen, but I have it as 10C .0108, the first sentence.

UNIDENTIFIED COMMISSIONER: Under (a)?

MS. ROUSE: Yeah. Uh-huh. Yes, under (a), when they stated the identification. We've recently come under an issue with this where some doctors' offices were asking our case managers to give their driver's license and their car keys while we were there to prove who we were. Well, my people took offense because you have these things called security, identity theft and all that kind of stuff these days. Plus, if the car keys are locked up in a drawer while they're at a doctor's office, you can't go home if they go to lunch. So we propose that you just add a little statement that that may be a company ID or professional business card, and I think most people do that, but I agree. That needs – you know, you need to show who you are when you go into a doctor's office. It helps all their personnel keep things on track. Do – okay. I've already said that. Also, down the page on line twenty-nine of that, it says – no, number (5), it says, "The injured worker or attorney has consented to the communications," and it kind of

leaves it at that. Can you just please add verbal or in writing because that way, there's just no question? It just makes it easier. In regard to vocational placement, I don't know of any vocational person that would not like to have the perfect case and have – and help someone become much more than they were prior to they got hurt. The adjustor for sure, I'm assuming, would have a better case to settle. The injured worker would be better off later on. Yet, we have to deal with what we have and by using all criteria in an assessment to get them the best possible outcome that we can, and that hierarchy that's in the national rules, I would say – or nationally accepted and that were in the old rules, I totally – you know, that's the way you have to go. I can remember at one point in time when we did rehab that they wouldn't allow self-employment. Well, that may be a viable entity these days. It is for a lot of people that have not been injured, but then again, you've already looked at everything else and you've looked at retraining prior to considering things like that. To promote a cooperative effort and do what we could to improve the industry, we met seven or eight years ago with the Commissioners and gave them our plan to assist in this effort, and all this does is promote the rules.

Number one, we established the registry. We now have a registry that you can go to – all parties – to see if this person is qualified. You can't get on the registry unless you are qualified. Number two, we set up education for all rehab professionals. A program was established and approved by all parties for a class to teach the rules and give feedback to promote cooperation. To date, we have eight hundred and thirty some people that have taken this six and half hour class. We now have over a hundred, and I have five or six sitting on my desk that I have to send back, saying we're full for the Webinar in October. Everyone but three of these people are out of state, all the way from Oregon, Washington State, New York, Pennsylvania, Chicago, Florida. They're from everywhere and from companies I've never heard of, so therefore, those – most of these people are telephonic. This has been an eye-opening experience to see the number of people that were not even aware we had rules. Now a lot of them know, and I'm sure a much better percentage of cooperation and adherence to the rules will come out of this. Peer review – this was also suggested, and although not formalized, the advisory committee has been an excellent program that we ourselves can go to if we have a question about

whether we should or shouldn't do things. In conclusion, we as rehab professionals have over the years tried to promote our occupation, and we only want respect, input and acknowledgement that we are experts in our fields just like PTs, OTs, docs. We don't want to be adjustors. We don't want to be lawyers. We just want to do our jobs and help the injured worker return to his or her pre-injury status or as close to that as possible. I stand behind our professional organization, and I'm proud of my employees and trust that we're out there trying to do the right thing. Let us do our jobs, give us reasonable rules, and the injured worker will hopefully benefit beyond the claim. Thank you.

CHAIR YOUNG: Any questions? Any questions? All right. Do you have a summary by chance, Ms. Rouse, of your written comments?

MS. ROUSE: No, but I will.

CHAIR YOUNG: All right. No problem. No problem at all.

(SPEAKER DISMISSED)

CHAIR YOUNG: All right. Steve Keene, if you'd come forward. And also in the meantime, two others signed up this morning to speak – Brian Allen and John McMillan. Are there others who may have come in a

little bit later who wish to speak who have not signed up? If you need to, you need to see Ms. Cronk (phonetic) over here at the desk and sign up please at this time. All right. Mr. Keene, if you'd place your left hand on the Bible and raise your right hand.

STEVE KEENE

HAVING FIRST BEEN DULY SWORN, was examined and testified as follows:

CHAIR YOUNG: Thank you. If you'd state your name, with whom you are here and any particular rules that you wish to address.

MR. KEENE: Thank you. May it please the Commission, my name is Steve Keene. I'm general counsel for the North Carolina Medical Society here in Raleigh. We're the statewide professional association for physicians, and we also have some physician assistant members in our organization. My only goal this morning is to identify some specific provisions of the proposed rule package that we intend to address in the formal comments we'll be submitting before the record is closed in a few weeks. First, I'd like to mention under section 10A .0410, Communication for Medical Information, we support this provision because we believe it resolves some ambiguity regarding whether 97-25.6(c)(2) authorizes an employer request

medical information on all of the issues addressed in the existing medical status questionnaire without the employee's express authorization. Many medical practices are familiar with this form, and we think its continued use is appropriate. The next provision is under that same section, .0502, Compromise Settlement Agreements. We support this as it relates to the handling of unpaid medical expenses. The current practice leaves the potential for, and has resulted in, unpaid medical providers being uninformed about the status of the case and pending payments and making resolution of accounts very impractical in some circumstances. The rule would make this a more transparent and fair process. The next provision is .0613, Expert Witnesses and Fees. We also support that provision. We believe it will provide a timely and transparent method for compensation of experts and the timeframes we believe are reasonable. As to .0614, Medical Provider Fee Dispute Procedure, we support that provision, and we believe it would result in more consistent attention to, and resolution of, medical fee disputes. Same section, .1001, Preauthorization for Medical Treatment - we appreciate the tremendous amount of work that's gone into this provision. We do anticipate providing further input

on this provision in the written comments we plan to submit before the commenting period. Because this provision is not actually addressing the rule that was in place prior to the APA re-adoption requirement, we believe the Commission should take or could take additional time if needed to be sure this rule is ready for implementation. The next section is under section 10F .0101, Electronic Medical Billing and Payment Requirement. We strongly support this provision. We believe it will bring work comp transactions closer to the current electronic standards used across the country and more broadly in the healthcare industry, and it will allow medical practices, billing companies, clearing houses and carriers to automate how workers' comp medical bills and payments are processed and reduce paperwork, which is – which is good for all of those entities I described and for the system generally. The last comment is on – in section 10J .0101, Fees for Medical Compensation. 97-26(a) requires that the Commission should "…periodically review the schedule and make revisions." We don't believe over time this provision has been implemented correctly simply because the schedule has not received the level of attention and review we believe is appropriate. It's telling that

the schedule is based on the 1995 Medicare fee schedule. We acknowledge that this is just one of many rules that the Commission is required to readopt by year's end, but we believe the medical fee schedule needs attention at the Commission's earliest opportunity, and that concludes my comments.

CHAIR YOUNG: All right. Are there any questions at all? Any questions? All right. Thank you, sir.

MR. KEENE: Thank you.

CHAIR YOUNG: We appreciate it.

(SPEAKER DISMISSED)

CHAIR YOUNG: All right. At this time, Brian Allen, Progressive Medical, if you'd come forward, sir.

MR. ALLEN: Thank you.

CHAIR YOUNG: Place your hand on the Bible and raise your right hand.

BRIAN ALLEN

HAVING FIRST BEEN DULY SWORN, was examined and testified as follows:

CHAIR YOUNG: Thank you, sir.

MR. ALLEN: Chair Young, members of the Commission, I appreciate the opportunity to be here. My name is Brian Allen. I'm the vice-president of government affairs for Progressive Medical, Inc., and

two other companies at our enterprise – Stone River Pharmacy Solutions and P2P, which is an electronic billing provider. Progressive Medical is a work comp pharmacy PBM, and Stone River Pharmacy Solutions is a third-party billing processor. We accept assignment of claims from pharmacies and process those claims for them which allows the pharmacy to kind of keep their workflows in their normal routine, and it avoids them having to create a whole back shop just to process work comp claims which typically represent less than five percent of their business so – and then P2P is a large provider of electronic billing services in work comp around the country. We provide services to both payers and to providers and help them take their bills, put them into an electronic format and get those processed, so we have a few recommendations regarding Rule 10F, the electronic billing rule. And under the Definitions section which is .0102, we would recommend adding the definition of a processing agent. Too often, they're not recognized in anywhere in the rule or statute, and then when questions arise, they don't have standing to be able to address those questions, and so we would just recommend that they be recognized in the system, and we'll provide some written comments that will help maybe give you some

guidance on how that should look. In section .0103, we would recommend that you add a paragraph (c) that would allow for mutually agreed upon formats. In the work comp world now, there's already a lot of electronic transaction taking place between different entities, and we would certainly not want to discourage them from continuing to do that, and some of their formats are close, but not exactly aligned with the standard that you've aligned, but they do include all of the data elements that you're looking for, and if they're already in place, we don't know that there's a real compelling need to force them into another standard as long as they're transmitting the information that's necessary to process the bill, so we'd certainly just encourage you to add something---

COMMISSIONER MEYER: Can I---

MR. ALLEN: ---align for mutually agreed upon formats.

COMMISSIONER MEYER: ---make sure where you're referring to?

MR. ALLEN: So it's---

COMMISSIONER MEYER: .0103?

MR. ALLEN: Yeah, .0103.

COMMISSIONER MEYER: (c)?

MR. ALLEN: Yeah, we would just suggest maybe

adding a paragraph (c)?

COMMISSIONER MEYER: Adding a (c).

MR. ALLEN: But just says, you know, that they – you can use mutually agreed upon formats as long as they contain all the data elements, and we'll provide that in written comment as well before the---

COMMISSIONER MEYER: And (b) does---

MR. ALLEN: ---close of the time period.

COMMISSIONER MEYER: ---not address that?

MR. ALLEN: Well, it's not real clear. (b) talks about a direct entry model, and these may or may not be direct entry models, and so we weren't sure if it covered it, or maybe you could just add in there---

COMMISSIONER MEYER: Well, I guess what my question was the language "…provided the methodology complies with the data content requirements of the adopted formats and these rules."

MR. ALLEN: Right. No, I think that part of it is. It's the beginning of that sentence where it says direct entry---

COMMISSIONER MEYER: Okay.

MR. ALLEN: ---may be allowed. That direct entry may – we're not sure how you're defining that, so I guess there's just some ambiguity there as to whether or not that would cover our needs, so---

COMMISSIONER MEYER: Okay.

MR. ALLEN: ---however you want to fix it, we're thrilled. You know, we'll make some recommendations. I can look at that and – that paragraph two if you'd like and maybe make some modifications, some suggestions if you'd like, so we can certainly do that. And then in section .0105, the paragraph (5) - it actually calls for allowing two days for an acknowledgement on a transaction for the receipt of the bill. Two - we would recommend adding business days to that and maybe expanding it to three. We can pretty generally get it done within two business days, but if it comes in like on a Friday night, we're not going to get it out by Sunday. It's just not going to happen, so we'd really like to have business days, and I think everywhere else where there's a longer time period it's not as critical because we can usually fit within those timeframes, but if we add business days, then maybe give us one day because ninety percent of the time we can get it done in two days, but if there's some kind of a hiccup in the – in the exchange, it could create a problem, so that extra day just gives you a little bit of a cushion so you're not generating, you know, a noncompliance by accident. You know, it's going to allow for some of that

flexibility there. And then in section .0107, there's a line that says – in section – in paragraph (a) that says that "…sufficient specific detail to allow the responder to easily identify the information required to resolve the issue…." We have some concern about that because we're not really sure how that's going to be judged. It's a little bit – I mean it – it's a little bit vague, actually, and you're asking for specific information, but we're not really sure like what specificity you're going to look at to judge us by. In paragraph (b), you talk about, you know, accepting the ASC X12 or the NCPDP Rejection Codes which come with their own predefined descriptions. So are you---? We're not sure of it. Are you saying that those predefined descriptions are okay, or are you asking for a greater specificity on that because that's a – that's a whole different level of programming that we don't currently do? So we're not sure exactly what you're trying to get at there, so we can talk through that as some other point in time, not – you know, not at this time. This is probably not the right format for that, but we're just a little bit concerned about what that really means and how that will be judged because we want to comply.

COMMISSIONER MEYER: Just be sure to include that

in your comment.

MR. ALLEN: Yeah, we will. We want to comply. We just want to make sure that - you know, that the regulatory burden doesn't become so great that we're starting a program with thousands of codes that we don't have right now trying to get to a level of specificity that you're looking for, so there's sort of a balance there. There's kind of a cost benefit you have to look at, but we're sensitive to the fact that payers and providers both kind of need to know what these – you know, without having to do a lot of manual research, so we'll – we can – we'll certainly offer some suggestions there as well. And then just generally, it looks to me like you're really trying to comply with the IAIABC standards which we'd recommend that you do because that's kind of what we're pushing around the country. We've been involved in that on a national level. And also we'd note that it looks – we would recommend – I think it's in there, but you're looking at requiring the NCPDP .0 standard for pharmacy, which is what we currently support and use, and we were actually on the committee that – or helped NCPDP develop the standard for work comp, so we'd certainly recommend that. And then it – the rule doesn't specify, but I'm hoping and encouraging you to

adopt a companion guide at some point in the future that allows for more – most of the states have done this with a little adopted companion guide that gives more detail as to what each field represents and how it should be treated, and I sort of assumed in the rule that that's what's going to happen. I just want to make sure that is going to happen. And then also we find in some jurisdictions where they've been a little bit more prone to regulating fees and things that happen between providers, and we would just encourage you to kind of stay away from that and just kind of allow the marketplace to sort of move this thing forward. It worked well in group health way back when group health started in the electronic world. It will work well in work comp, and I think the more we try to restrict some of the activity I think the less creative and less beneficial the solutions become, and we certainly want to – we want to come up with the most creative and most efficient solution as possible, and if we do a lot of restriction upfront, it may inhibit that. We just want you to allow the marketplace to kind of do what it needs to do, so that's the end of my comments, and I'm open to any questions you might have.

CHAIR YOUNG: Are there any questions for

Mr. Allen? Thank you, sir.

MR. ALLEN: Okay. Thanks very much.

CHAIR YOUNG: We look forward to your written comments.

MR. ALLEN: Appreciate it. Thanks for allowing me to be here.

CHAIR YOUNG: Thank you.

(SPEAKER DISMISSED)

CHAIR YOUNG: All right. John McMillan, come forward please, sir, from AIA. Good morning.

MR. MCMILLAN: Good morning.

CHAIR YOUNG: Good morning, sir. If you'd place your left hand on the Bible and raise your right hand.

JOHN MCMILLAN

HAVING FIRST BEEN DULY SWORN, was examined and testified as follows:

CHAIR YOUNG: Thank you, sir. You may proceed. Tell us---

MR. MCMILLAN: My name is John McMillan. I'm a lawyer with Manning, Fulton and Skinner in Raleigh. I represent the American Insurance Association, a trade association of approximately three hundred insurance companies writing workers' compensation and other forms of property and casualty insurance across the country. We will provide a comprehensive set of

comments to the rules well before the – before the deadline, but I do want to highlight two proposed rules this morning and just say a couple of things about that. First is 10A .0301 dealing with proof of coverage which eliminates the possibility of using the certification by the Rate Bureau of coverage by an employer. In light of the passage of House Bill 237 that became law on July the 1st that requires the Rate Bureau to provide you with this information, we would contend that requiring a redundant submission of employer information to the Commission will just make things harder for employers and for you if you can rely on the Rate Bureau information which will be coming to you as a result of the passage of that House Bill 237. The second is dealing with electronic payment of costs – 10A .0105 - requiring, instead of permitting, electronic payment of fees and costs to the Industrial Commission. I am told that that will be of some concern for some of the smaller companies. I have inquired as to whether or not any state mandates that, and I have been told that they know of no state that does mandate that. I would hope that you would reconsider that rule and make it permissive. We all understand that companies are more and more coming to the use of electronic payments and it will

come in time, but mandating it may be a burden to some states, and that's really all I have to say this morning, but they will provide you with written comments.

CHAIR YOUNG: Well, we'll certainly look forward to your written comments. Are there any questions for Mr. McMillan? Thank you, sir, for coming---

MR. MCMILLAN: Thank you very much.

CHAIR YOUNG: ---this morning.

(SPEAKER DISMISSED)

CHAIR YOUNG: Were there others that wish to speak today that have not signed up yet?

UNIDENTIFIED SPEAKER: Mr. Farah wants to speak.

CHAIR YOUNG: Okay. Thank you. Mr. Farah, if you'd come forward, please.

MR. FARAH: I'm Victor Farah from Farah and Cammarano and forgive me---

CHAIR YOUNG: Yes, sir. If I can get you to place your left hand on---

MR. FARAH: Oh. Sorry.

CHAIR YOUNG: ---the Bible and raise your right hand.

VICTOR FARAH

HAVING FIRST BEEN DULY SWORN, was examined and testified as follows:

CHAIR YOUNG: Thank you, sir. You may proceed.

MR. FARAH: I'm Victor Farah from Farah and Cammarano and forgive me for not wearing my jacket, but some of the earlier speakers just really got me steaming, and if I didn't take it off, I was going to probably explode. You know the---

CHAIR YOUNG: Yeah. Let me ask you, Mr. Farah, are you here representing yourself or another organization?

MR. FARAH: My firm.

CHAIR YOUNG: Your firm?

MR. FARAH: Uh-huh.

CHAIR YOUNG: All right. Well, you will have twenty minutes.

MR. FARAH: Oh. Thank you. I hope to not take that long. And, you know, the last few days I've been watching this Mars landing thing. I don't know how many of you have been watching that, but they said after all this time and 2 billion dollars it's like – they said, in seven minutes two thousand things have to all come together exactly right or else the thing will be a failure, and I kept thinking, you know, that's what y'all have been doing. I mean y'all have been for I guess the last seventeen months or so doing all this stuff where all this stuff has to come

together just right, and I want to just congratulate you on a really good job done. Of course, there's always going to be tweaks, but I was fortunate enough to see it by providing comments, and I want to thank y'all for all you did to include as many people as you did. I will try to not be as much of a blowhard as I usually am and try and be as matter of fact as possible. One of the ones that I don't think anybody raised, although I think Steve Keene might have been alluding to it, in Rule 10J .0101(g), this is the rule about that the carrier has to pay the medical bills for referrals made by the authorized treating physician, and basically, if I understand what you've done is you've picked out the old Rule 407 and you've put it substantially into this rule. It looks like that's what you've done, and I think that's right. I do want to point out though that you have kept in from the old Rule 407 that basically they have to pay the referrals by the authorized treating. You've added "…for the compensable injury or body part…," but then you've kept in "…unless the physician has been requested to obtain authorization for referral or tests; provided…" such compliance doesn't unreasonably delay it. My recollection is that that language in Rule 407 goes all the way back to predating the

addition of 97-25.3 and never got changed, so as you all know, and you've heard us talk about a lot, 97-25.3 talks about what preauthorization can be required for, and that ain't them, so you can't – it would be inconsistent with the statute to allow them to require authorization for referrals and tests in the absence of some other utilization review or other rule that gets adopted permitting it, but those are not permitted under the statute. Another that has come up under that rule, and maybe this is the place for it. There have been concerns from the worker community that when the medical travel hasn't been paid - you know, the greater than ten miles each way thing - and then a motion gets filed, and then there's a request for the ten percent, there seems to be a difference of opinion and maybe even inconsistent results as to whether the reimbursement to the worker for the travel expense is subject to the rule for compensation being due, and therefore, 18(g), I think it is, or whether it's a medical bill under 18 or what, so I think maybe clarifying it at some point when is there a ten percent penalty on the – on the reimbursement. The costs discussion – and this is the general discussion over a number of the rules, and, you know, I had to do a lot of negotiating. We had to

do a lot of negotiating with Julia and – Julia Dixon. She makes very compelling arguments, but sometimes, she just tweaks things just a little bit. 97-80(b) is I think a pretty clear statutory provision about what the Commission may do, and what it says is in 97-80(b), a Commissioner, a member, "…shall have the power […] to tax costs against the parties…." Now I believe her point was, oh, well, that means that you tax them equally against both parties. Well, it doesn't say that. You know, I think any sort of fair reading of it means that the Commission gets to choose which party they're doing. There are a number of other places throughout the statute where it specifically says the employer shall pay certain costs, fees, etcetera, but I would respectfully submit that where the statute says it is taxed to the employer, that means only to the employer. Where it says the parties, the Commission simply chooses applying its discretion and other applicable standards as to which party, if any, gets taxed those costs. Also, I had to spend a lot of time with my friend, Bruce Hamilton, and I think he was the one that addressed this, but in Rule 405, you know, the defense has made this argument, and Hank Patterson started to address it. They've made this argument several times,

not liking what the Commission did in adopting the Form 23 procedure, and that's pursuant to 18(k). And I think once again if we just read the statute – and, you know, I was there. I helped write it, and you'll notice there are some specific words in here that make it very clear it's a motions procedure, and that is, if you'd look to 97-18(k), after an introductory clause, it says, "…the employee may move for reinstatement of compensation on a form prescribed by the Commission," so to now turn around later and say, oh, well, the Form 23 and the motion and the hearing - process for hearing the motion isn't what's anticipated I just don't think that's consistent with what it says there. Now the procedure that you set up following the Form 23 I think was to try and set forth a due process sort of right rather than saying – I mean if you look at this, this would mean that if you're only going to do what's in the statute, you could just say, okay, they filed a motion, Commission just decides it however they want. No right to be heard, no additional documents, so, you know, I think be careful what you ask for because I don't know that a rule was absolutely necessary to implement this, but in implementing it, I think you tried to protect due process and have it move fairly quickly. And I think

this is true of all the motions procedures. You know, there is various times where motions are specifically called for, and then there's other parts where it just talks about what the Commission can do. And, you know, it says the Commission may enter orders. You know, it's – even though – and I would agree with Bruce, maybe it is time to have a statutory authority for motions, administrative-type proceedings, but until we do, I think it's very easy to at least infer from the statute that the legislature intended that certain things get done without having the 97-83, -84 hearings because those are the ones that require the detailed findings of fact under the statute, Opinion and Award and all the case law that interprets it, but to say that you're going to not do things by procedures by which you handle motions and applications I think would unduly burden the system, and like Hank Patterson said, you know, it's working fairly well, something like that. To take that interpretation I think could be a nightmare. In the rehab rules – I've told some of my friends in the rehab community during the break I wish they would have maybe had more of a dialogue with us on some of the concerns. The IARP comments – for the most part, we don't have too much objection to them, but we will

submit some written comments, but I'm sort of at a loss to understand the concern. And I will say with respect to RMI, this was an example. I think their comments were an example of one of the concerns I've had about rehab for the longest time. Y'all have heard me spout off about it a lot. The idea here, as you know, in the legislation was there were a number of tradeoffs and this was supposed to be a package. You don't just look at the individual things. And as you all know, the worker side, if you will, took hits on various things - reducing the period of temp total, the taking the wage out of the suitable employment definition, adding the thing about lying on the job application. You know, so there were things that were sort of the worker – that the employer wanted – the APA – with respect to get it. It may not have been the Defense Bar, but it was the employer's side that wanted this craziness, so those things were things that the – that the defense side got, if you will. Some of the things in exchange were the clarification of the reinstatement, the fast reinstatement provision. That was for the workers. The codification of a voc rehab benefit was for the workers. That's something that one of the senators known very well to you really pushed for. We agreed,

and that's one of the things that the workers got. Okay. Now that was tied in very much with the suitable employment, to the sort of removal or the vaguer reason – the definition, but again, the concern that I heard from the rehab folks that they shouldn't be told that they have to shoot for something to substantially increase the earning capacity - I'm not sure where they're getting that because the Statute 97-32.2(c) specifically says, "Vocational rehabilitation services shall include a vocational assessment and the formulation of an individualized written rehab plan with the goal of substantially increasing the employee's wage-earning capacity," so you took that out of the statutes, so that is what they're supposed to do. You know, can they help improve their quality of life and other things that go along with the rehab process? Of course, but when it talks about what you're doing as far as work goes, it's to substantially increase the earning capacity, and should there be any doubt about that, 97-32.2(f) says, "Job placement activities may commence after completion of an individualized written rehabilitation plan," so basically it's referring back to that amount of detail where it says what the plan is. The goal of the plan is to substantially increase the pay, and

then, of course, you get to the point where if the person is not working or making less than seventy-five percent, that triggers their right – the worker's right to seek retraining through community college or university system, so the IARP folks did say they would like to add to that part. Like, I think you did right about saying when there is a training request, you have to say, you know, where's the class, how long is it going to take, etcetera. You know, it's sort of to measure that it's really cost effective and really might work. The IARP folks said that they would also like to add to that their independent professional judgment about whether it's likely to succeed. I would suggest to you that I don't think that belongs there because the things that you have in there are just objective information. The opportunity to say that I don't think this is really a good plan can go somewhere else, but this is supposed to be the evaluation of the employee's request, so I'd be a little careful, especially if folks like RMI are on the case where they're going to seem to just, you know, want to do whatever it is they're saying, but to allow people who have historically not had the role of being a benefit to the injured worker, but unfortunately, being more of an adjusting – part of

the adjusting process for the defense, I don't really want to hear their opinion. I just want the objective facts, so I'd suggest to you that you do that. The expectation of compliance upfront – I'm not sure that that's really necessary. You know, you could put that in the summary under the employee's obligations, and that would be a good place for it, and it's at least implied there. We do agree with the rehab folks very strongly on that statement of compliance thing. I understand where it came from. The amendment – you know, all the times where there's a suspension of benefits, it's telling y'all and y'all need to put in any orders suspending what the person has to do to come back into compliance, so, you know, we – I see that that's I believe where the idea of trying to get at least somebody because y'all aren't voc rehab counselors - you want somebody to say, okay, what is it that needs to get done? I think I – that that makes sense, but I think that each side can just sort of argue that out in the – in the proceeding because, remember, it's only one that's going to establish an order for a subsequent proceeding, but to try and put it on the rehab professional when the rest of the statutory scheme is trying to enhance the level of cooperation and benefit - I think to put them in the

position of, first, assuming there's noncompliance just because the employer is asked - you know, employer files the order for compliance or the Form 24, and then they say so tell me what they have to do to comply. In there is an assumption that they're out of compliance which really doesn't make sense because under the existing rule and one you've carried over, if the worker isn't doing something, the counselor already under the rules is supposed to tell the worker and their attorney if represented what do they need to do, so it will already be in the notes. So if they tell them what they need to do, it will be in the report, so it will be available for y'all to use to determine, oh, I see, the person is missing too many appointments or they're sabotaging the job search. Whatever it is, you'll already see it because if the RP is doing what the rules say, they've already said what needs to be done for compliance. That's all I have to say.

CHAIR YOUNG: Okay. Any questions for Mr. Farah? All right. You will submit your written comments---

MR. FARAH: Yes.

CHAIR YOUNG: ---at a later time? All right. Thank you, Mr. Farah.

(SPEAKER DISMISSED)

CHAIR YOUNG: Are there any others, Ms. Cronk, that are on the list to speak today? I also need to do something a little unorthodox. At the outset, I announced that parties speaking today on behalf of groups or associations would have forty minutes and those speaking on behalf of themselves would have twenty minutes. Mr. Patterson, I think I only gave you ten minutes, as a matter of fact, so I'm going to offer you an opportunity now to speak for ten more if you'd like. I – it's---

MR. PATTERSON: No, thank you.

CHAIR YOUNG: Okay. Best comment I've heard all day. All right. Thank you so much. We do have a couple of housekeeping matters that we need to attend to. It will take us about two minutes. If you would just be at ease for us for a moment, we'll come back on the record after that and finish things out. All right. Thank you. Let's go off the record. Thank you. All right.

(OFF THE RECORD)

CHAIR YOUNG: All right. We're going back on the record this morning. Thank you for indulging us. We had a few housekeeping matters to attend to. I want to thank you all for participating this morning in the public hearing. I want to remind you that the period

for the written comments pursuant to the Public Rule-Making Notice will be held open through the close of business on September the 14th of 2012. If you have those comments, please, please submit them to us as soon as possible. Please do not wait till the last day to submit those comments. You would – we would also request that you submit those comments in writing – written comments and electronically. When we receive them electronically from you, we can scan them onto our website and that way you can see all the comments that have come back. If you should choose to reply to any of those comments, you still only have until September 14th in which to reply to those comments. All right? We appreciate your time. We're going to recess right now for the morning session, and we have no one else signed up yet to come back this afternoon, and we will move forward, and then just adjourn at a later time – a later time today. All right. Thank you again for your time. We appreciate your comments, and it's good to see so many folks who are concerned about these issues. Thank you.

(OFF THE RECORD)

CHAIR YOUNG: I can't find them. Hold on a minute. Amber, do you have my---?

UNIDENTIFIED SPEAKER: I have – I have an extra

copy.

CHAIR YOUNG: You got an extra copy? All right. We're back on the record here today. We have – thank you, Ms. Cronk. We have Commissioner Danny McDonald, Commissioner Bernadine Ballance, Commissioner Linda Cheatham, Commissioner Staci Meyer, Commissioner Tammy Nance and myself, Pam Young, and we're back on the record on August the 6th. We reconvened at one o'clock to move forward with our public hearing this morning regarding the proposed rules. After a full house this morning, we recessed for lunch at approximately eleven forty-five and came back on the record at one o'clock. We have been here. It is now one twenty-six, on August 6th, and so far, there are no participants or no witnesses to sign up. Therefore, we will at this time conclude the public hearing regarding the proposed rules this August 6th day of 2012, and at this time, we will move to adjourn. Thank you. We'll go off the record.

(OFF THE RECORD)

CHAIR YOUNG: This is Pam Young back on the record on August the 6th of 2012 regarding the public hearings for the proposed rules. It's one twenty-nine in the afternoon. I just wanted to add for the record the final comment that the written comments and the

comments made at the hearing today will be made part of the public record of these proceedings. At this time, this hearing is now adjourned. Thank you.

(WHEREUPON, THE HEARING WAS ADJOURNED.)

RECORDED BY MACHINE

TRANSCRIBED BY: Lisa D. Dollar, Graham Erlacher and Associates

STATE OF NORTH CAROLINA

COUNTY OF FORSYTH

C E R T I F I C A T E

I, Cameron H. Brown, Notary Public, in and for the State of North Carolina, County of Guilford, do hereby certify that the foregoing one hundred and ten (110) pages prepared under my supervision are a true and accurate transcription of the testimony of this trial which was tape recorded by Graham Erlacher & Associates.

I further certify that I have no financial interest in the outcome of this action. Nor am I a relative, employee, attorney or counsel for any of the parties.

WITNESS my Hand and Seal on this 19th day of August 2012.

My commission expires on January 28, 2017.

Cameron H. Brown

NOTARY PUBLIC

OFFICIAL SEAL
Notary Public, North Carolina
COUNTY OF FORSYTH
CAMERON H. BROWN
My Commission Expires 1-28-17

PENGAD 800-631-6989
EXHIBIT
1
8-6-2012

TITLE 04 – DEPARTMENT OF COMMERCE

***Notice** is hereby given in accordance with G.S. 150B-21.2 that the NC Industrial Commission intends to adopt the rules cited as 04 NCAC 10A .0106-.0107, .0410, .0618-.0619, .0704, .1001; 10B .0208; 10C .0201-.0202; 10D .0111; 10E .0102, .0201-.0204, .0301-.0302; 10F .0101, .0104-.0109; 10H .0206-.0207; 10I .0204-.0205; amend the rules cited as 04 NCAC 10A .0101-.0105, .0201, .0301-.0302, .0401-.0406, .0408-.0409, .0501-.0503, .0601-.0617, .0701-.0703, .0801-.0802, .0901-.0902; 10B .0101-.0104, .0201-.0207, .0301-.0303, .0305, .0307-.0308, .0310, .0401-.0404, .0501, .0503; 10C .0101, 0103, .0105-.0110; 10D .0101-.0102, .0104-.0110; 10E .0101; 10F .0102-.0103; 10G .0101-.0112; 10H .0101, .0201-.0205; 10I .0101-.0102; 10I .0201-.0203; 10J .0101; and repeal the rules cited as 04 NCAC 10A .0407, .0803; 10B .0304, .0306, .0309, .0502; 10C .0102; 10D .0103.*

Link to agency website pursuant to G.S. 150B-19.1(c): *http://www.ic.nc.gov/newrules/*

Proposed Effective Date: *January 1, 2013*

Public Hearing:
Date:
Time:
Location:

Reason for Proposed Action: *These rules are being amended in accordance with S.L. 2011-287, which newly subjects the Industrial Commission to the Administrative Procedure Act (APA) rule-making requirements in Chapter 150B of the General Statutes.*

Procedure by which a person can object to the agency on a proposed rule: *A person may object to the agency on a proposed rule by providing written comments to: Amber Cronk, NC Industrial Commission, 4336 Mail Service Center, Raleigh, NC 27699-4366.*

Comments may be submitted to: *Amber Cronk, NC Industrial Commission, 4336 Mail Service Center, Raleigh, NC 27699-4336*

Comment period ends: *September 14, 2012*

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

- ☐ **State funds affected**
- ☐ **Environmental permitting of DOT affected**
  Analysis submitted to Board of Transportation
- ☐ **Local funds affected**
  Date submitted to OSBM:
- ☐ **Substantial economic impact (≥$500,000)**
- ☒ **Approved by OSBM**
- ☐ **No fiscal note required**

Notice of Text

CHAPTER 10 - INDUSTRIAL COMMISSION

SUBCHAPTER 10A - WORKERS' COMPENSATION RULES

SECTION .0100 - ADMINISTRATION

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

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

Authority G.S. 97-80(a).

04 NCAC 10A .0102 OFFICIAL FORMS

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

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

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

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

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

Authority G.S. 97-80(a); 97-81(a).

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

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

~~Form 17 Workers' Compensation Notice~~
~~Form 18 Notice of Accident to Employer and Claim of Employee or His Personal Representative or Dependents (N.C.G.S. 97-24)~~
~~Form 18B Claim by Employee or His Personal Representative or Dependents for Workers' Compensation Benefits for Lung Damage, Including Asbestosis, Silicosis, and Byssinosis (N.C.G.S. 97-53)~~
~~Form 18M Employee's Claim for Additional Medical Compensation~~
~~Form 19 Employer's Report of Employee's Injury to the Industrial Commission~~
~~Form 21 Agreement for Compensation for Disability Pursuant to N.C.G.S 97-82~~
~~Form 22 Statement of Days Worked and Earnings of Injured Employee (Wage Chart)~~
~~Form 24 Application to Terminate or Suspend Payment of Compensation Pursuant to N.C.G.S. 97-18.1~~
~~Form 25C Authorization for Rehabilitation Professional to Obtain Medical Records of Current Treatment~~
~~Form 25D Dentist's Itemized Statement of Charges for Treatment and Certification of Treatment Disability~~
~~Form 25M Physician's Itemized Statement of Charges for Treatment and Certification of Treatment of Disability~~
~~Form 25N Notice to the Industrial Commission of Assignment of Rehabilitation Professional~~
~~Form 25R Evaluation for Permanent Impairment~~
~~Form 25T Itemized Statement of Charges for Travel~~
~~Form 25P Itemized Statement of Charges for Drugs~~
~~Form UB-92 Hospital Bill~~
~~Form 26 Supplemental Agreement as to Payment of Compensation Pursuant to N.C.GS. 97-82~~
~~Form 26D Agreement for Compensation Under N.C.G.S. 97-37~~
~~Form 28 Return to Work Report~~
~~Form 28B Report of Employer or Carrier/Administrator of Compensation and Medical Compensation Paid and Notice of Right to Additional Medical Compensation~~
~~Form 28T Notice of Termination of Compensation by Reason of Trial Return to Work Pursuant to N.C.G.S. 97-18.1(b) and N.C.G.S. 97-32.1~~
~~Form 28U Employee's Request that Compensation be Reinstated After Unsuccessful Trial Return to Work Pursuant to N.C.G.S. 97-32.1~~
~~Form 29 Supplementary Report for Fatal Accidents~~
~~Form 30 Agreement for Compensation for Death~~
~~Form 30D Notice of Death Award (Approval of Agreement)~~
~~Form 31 Application for Lump Sum Award~~
~~Form 33 Request that Claim be Assigned for Hearing~~
~~Form 33R Response to Request that Claim be Assigned for Hearing~~
~~Form 36 Subpoena for Witness and Subpoena to Produce Items or Documents~~

Proposed Rules

~~Form 42 Application for Appointment of Guardian Ad Litem~~
~~Form 44 Application for Review~~
~~Form 50 Itemized Statement of Charge for Nursing~~
~~Form 51 Consolidated Fiscal Annual Report of "Medical Only" and "Lost Time" Cases~~
~~Form 60 Employer's Admission of Employee's Right to Compensation Pursuant to N.C.G.S. 97-18(b)~~
~~Form 61 Denial of Workers' Compensation Claim Pursuant to N.C.G.S. 97-18(c) and (d)~~
~~Form 62 Notice of Reinstatement of Compensation Pursuant to N.C.G.S 97-32.1 and N.C.G.S. 97-18(b)~~
~~Form 63 Notice to Employee of Payment of Compensation Without Prejudice to Later Deny the Claim Pursuant to N.C.G.S. 97-18(d)~~
~~Form 90 Report of Earnings~~
~~Form IZ-510 Medical Bill Analysis Used for Approval and Reduction of Medical Bills~~
~~Form MCS2 Petition for Order Referring Case to Mediated Settlement Conference~~
~~Form MCS4 Designation of Mediator~~
~~Form MCS5 Report of Mediator~~
~~Form MCS6 Mediator's Declaration of Interest and Qualifications~~
~~Form MCS7 Report of Evaluator~~
~~Form MSC8 Mediated Settlement Agreement~~

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

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

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

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

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

~~Form I Order for Third Party Recovery Distribution per N.C.G.S. 97-10.2~~
~~Form IIa Order Approving Compromise Settlement Agreement (admitted liability, medical paid) and Third Party Distribution~~
~~Form IIb Order Approving Compromise Settlement Agreement (denied liability, unpaid medical) and Third Party Distribution~~
~~Form IIIa Order for Approving Compromise Settlement Agreements (admitted liability, medical paid)~~
~~Form IIIb Order for Approving Compromise Settlement Agreements (denied liability, unpaid medical)~~

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

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

Authority G.S. 97-22; 97-24; 97-58; 97-80(a); 97-81.

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

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

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

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

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

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

Authority G.S. 97-80(a); 97-92.

04 NCAC 10A .0105 ELECTRONIC PAYMENT OF COSTS

Electronic payment is ~~authorized~~ required for fees and costs owed to the ~~North Carolina Industrial~~ Commission. ~~The Industrial Commission shall implement guidelines to facilitate electronic payment.~~

Authority G.S. 97-80(a).

04 NCAC 10A .0106 FILING OF ANNUAL REPORT REQUIREMENT

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

Authority G.S. 97-80(a); 97-92; 97-93.

04 NCAC 10A .0107 COMPUTATION OF TIME

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

Authority G.S. 97-80.

SECTION .0200 – NOTICE OF ACT

04 NCAC 10A .0201 POSTING REQUIREMENT FOR EMPLOYERS

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

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

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

(1) name of insurer;
(2) policy number; and
(3) dates of coverage.

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

Authority G.S. 97-80(a); 97-93.

SECTION .0300 - INSURANCE

04 NCAC 10A .0301 PROOF OF INSURANCE COVERAGE

(a) Every employer subject to the provisions of the Workers' Compensation Act shall file with the ~~Industrial~~ Commission proof that it has obtained workers' compensation ~~insurance~~ insurance, and shall post notice of proof of insurance to employees consistent with Rule .0201 of this Subchapter. ~~pursuant to the insurance provisions of the Act. This requirement may be satisfied by~~:

~~(1) A notice from the employer's insurance carrier, through the North Carolina Rate Bureau, certifying that coverage has been received.~~

~~(2) A notice from the North Carolina Department of Insurance, through the Rate Bureau, certifying that the employer has qualified as a self-insured employer or as a member of a self-insurance fund pursuant to the Act.~~

~~(3) All employers have an affirmative obligation to report to the Rate Bureau any charges in coverage within 30 days.~~

~~(4) All employers must notify the Department of Insurance when it becomes a member of a self-insurance fund.~~

(b) Upon actual notice of a workers' compensation claim or upon reporting a workers' compensation claim to a carrier, third party administrator, servicing agent, professional employer organization as defined in G.S. 58-89A-5(14), or the Commission, all employers shall provide the injured worker with the name of their insurance carrier and policy number or shall inform the injured worker of their self-insured status, membership in a self-insurance group or relationship with a professional employer organization that provides the insurance coverage.

(c) Every carrier, third party administrator, servicing agent, or other entity filing a Form 19 *Employer's Report of Employee's Injury or Occupational Disease to the Industrial Commission* shall identify by name and address any professional employer organization and the name of the client company employing the employee who is the subject of the Form 19 *Employer's Report of Employee's Injury or Occupational Disease to the Industrial Commission.*

(d) A professional employer organization shall, within 30 days of initiation or termination of the professional employer organization's relationship with any client company, notify the Commission of either the initiation or termination of the relationship and the status of the client company's workers' compensation coverage.
(e) Upon notice from the Commission that an employer is non-insured, coverage has lapsed or been canceled, or coverage or self-insured status cannot be verified, an employer shall show proof of coverage to the Commission by:

(1) a certificate of insurance issued by the insurance agent who procured workers' compensation insurance on behalf of the employer;
(2) submitting a copy of the letter of approval, license or amended license with subsidiary information, if applicable, from the North Carolina Department of Insurance notifying or indicating the employer has qualified as a self-insured employer for workers' compensation purposes;
(3) submitting a copy of the Form 18WC Application for Membership indicating the employer is a member of a self-insurance group or fund;
(4) submitting a copy of a declaration of coverage page from an insurance policy procured in another state that indicates North Carolina is a covered jurisdiction under the workers' compensation policy;
(5) submitting the names of the general contractor, subcontractor, professional employer organization or other entity that has provided workers' compensation coverage for the employer; provided however, that coverage shall be verified by the Commission in order to be removed from the non-insured docket; or
(6) submitting other documentation or information relevant to the workers' compensation claim upon request of the Commission.

(f) A principal contractor, intermediate contractor or subcontractor may satisfy the requirements of G.S. 97-19 by obtaining a certificate of insurance from the insurance agent who procured insurance on behalf of the contractor or subcontractor. If the principal contractor, intermediate contractor or subcontractor allows its insurance to lapse or ceases to qualify as a self-insured employer, the principal contractor, intermediate contractor or subcontractor shall, within 24 hours, notify any contractor to whom it has provided a certificate of insurance that the certificate is no longer valid.

Authority G.S. 97-19; 97-80(a); 97-93.

04 NCAC 10A .0302 REQUIRED CONTACT INFORMATION FROM CARRIERS

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

Authority G.S. 97-80(a); 97-94.

SECTION .0400 – DISABILITY, COMPENSATION, FEES

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

(a) ~~If~~ When the injured employee is not paid wages for the entire day on which the injury occurred, the seven-day waiting period prescribed by the Act shall include the day of injury regardless of the hour of the injury.
(b) ~~If~~ When the injured employee is paid wages for the entire day on which ~~he is injured~~ the injury occurred and fails to return to work on his next regular workday because of the injury, the seven-day waiting period shall begin with the first calendar day following ~~his~~ the injury, even though this may or may not be a regularly scheduled workday.
(c) All days, or parts of days, when the injured employee is unable to earn a full day's wages, or is not paid a full day's wages due to injury, shall be counted in computing the waiting period even though the days may not be consecutive, or regularly scheduled workdays. ~~and even though these are not regularly scheduled workdays.~~
(d) ~~If~~ There is no seven-day waiting period when the permanent partial disability ~~period, when~~ period added to the temporary disability period, exceeds 21 ~~days, there is no waiting period.~~ days.

Authority G.S. 97-28; 97-80(a).

04 NCAC 10A .0402 SUBMISSION OF EARNINGS STATEMENT REQUIRED

(a) Upon request of the employee or the Commission, the employer shall submit a verified statement of the specific days worked and the earnings of the employee during the 52-week period immediately preceding the injury to the Commission and the employee's attorney of record or the employee, if not represented.
(b) In all cases involving a fractional part of a week, the ~~daily~~ average weekly wage shall be computed ~~on the basis of one-seventh of the average weekly wage.~~ based upon the applicable fractional portion of the week worked.

Authority G.S. 97-2(5); 97-18(b); 97-80(a); 97-81.

04 NCAC 10A .0403 MANNER OF PAYMENT OF COMPENSATION

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

Authority G.S. 97-18; 97-80(a).

04 NCAC 10A .0404 TERMINATION AND SUSPENSION OF COMPENSATION

(a) Payments of compensation undertaken pursuant to an award of the ~~Industrial~~ Commission shall continue until the terms of the award have been ~~fully~~ satisfied. ~~In cases where~~ Where the award is to pay compensation during disability, there is a rebuttable presumption that disability continues until the employee returns to suitable employment. No application to terminate or suspend compensation shall be approved by the Commission without a formal hearing if the effect of ~~such~~ the approval is to set aside the provisions of an award of the ~~Industrial~~ Commission.
(b) When an employer, ~~or carrier/administrator~~ carrier, or administrator seeks to terminate or suspend temporary total disability compensation being paid pursuant to ~~G.S. § 97-29~~ G.S. 97-29 for a reason other than those specified in ~~G.S. § 97-18(d), payment without prejudice,~~ G.S. 97-18(d) (payment without prejudice), or ~~G.S. § 97-18.1(b), trial return to work,~~ G.S. 97-18.1(b) (trial return to work), or G.S. 97-29(b) (expiration of 500-week limit on disability compensation (only for claims arising on or after June 24, 2011)), the employer, ~~or carrier/administrator~~ carrier, or administrator shall notify ~~the employee and~~ the employee's attorney of ~~record,~~ record or the employee, if ~~any~~ not represented, on Form 24, "~~Application to Stop Payment of Compensation.~~" *Application to Terminate or Suspend Payment of Compensation.* This form requests:

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

(c) The employer, ~~or carrier/administrator~~ carrier, or administrator shall specify the ~~legal~~ grounds and the alleged facts supporting the application, and shall complete the blank space in the "Important Notice to Employee" portion of Form 24 *Application to Terminate or Suspend Payment of Compensation* by inserting a date 17 days from the date the employer, ~~or carrier/administrator~~ carrier, or administrator ~~deposits the completed Form 24 in the mail to the employee and the employee's attorney of record, if any. The original of the Form 24 and the attached documents shall be sent to the Industrial Commission at the same time and by the same method by which a copy of the Form 24 and attached documents are sent to the employee and the employee's attorney of record, if any.~~ serves the completed Form 24 *Application to Terminate or Suspend Payment of Compensation* on the employee's attorney of record or the employee, if not represented, by e-mail, facsimile or U.S. Mail. The Form 24 *Application to Terminate or Suspend Payment of Compensation* and attached documents shall be sent to the Commission via upload to the Electronic Document Fee Portal, and shall be contemporaneously served on plaintiff's counsel by e-mail or facsimile, or on plaintiff, if unrepresented, by U.S. Mail. If the Form 24 *Application to Terminate or Suspend Payment of Compensation* is served by U.S. Mail, a copy shall also be uploaded to the Electronic Document Fee Portal.
(d) The Form 24 *Application to Terminate or Suspend Payment of Compensation* shall specify the number of pages of documents attached which are to be considered by the ~~Industrial~~ Commission. Failure to specify the number of pages ~~may~~ shall result in the refusal of the ~~Industrial~~ Commission to accept the same for filing. If the employee or the employee's attorney of ~~record, if any,~~ record objects by the date inserted on the employer's Form ~~24,~~ 24 *Application to Terminate or Suspend Payment of Compensation,* ~~or within such additional reasonable time as the Industrial Commission may allow,~~ the ~~Industrial~~ Commission shall set the case for an informal hearing, unless waived by the parties in favor of a formal hearing. The objection shall be accompanied by all currently available supporting documentation. A copy of any objection shall be ~~sent, with any supporting documents,~~ contemporaneously served on ~~to~~ the ~~employer~~ employer, ~~and carrier/administrator.~~ carrier, or administrator. The Form 24 *Application to Terminate or Suspend Payment of Compensation* or objection may be supplemented with any additional relevant documentation received after the initial filing. The term "~~carrier/administrator~~" "carrier" or "administrator" also includes any successor in ~~interest.~~ interest in the pending claim.
~~(c)~~(e) If an employee does not object within the allowed time, the ~~Industrial~~ Commission shall review the Form 24 *Application to Terminate or Suspend Payment of Compensation* and any attached documentation, and an Administrative Decision and Order ~~may~~ shall be rendered without an informal hearing as to whether ~~compensation shall be terminated or suspended,~~ there is a sufficient basis under the Workers' Compensation Act to terminate or suspend compensation, except as provided in ~~paragraph (f) below.~~ Paragraph (g) of this Rule. Either party may seek review of the Administrative Decision and Order as provided by ~~4 NCAC 10A .0703.~~ Rule .0703 of this Subchapter.
~~(d)~~(f) If the employee timely objects to the Form ~~24,~~ 24 *Application to Terminate or Suspend Payment of Compensation,* the ~~Industrial~~ Commission shall conduct an informal hearing within 25 days of the receipt by the ~~Industrial~~ Commission of the Form ~~24, unless the time is extended for good cause shown.~~ 24 *Application to Terminate or Suspend Payment of Compensation.* The informal hearing may be by telephone conference between the ~~Industrial~~ Commission and the parties or their attorneys of record. ~~record, if any. When good cause is~~

~~shown, the~~ The informal hearing may be conducted with the parties or their attorneys of ~~record, if any,~~ record personally present with the ~~Industrial Commission~~ Commission. ~~in Raleigh or such other location as is selected by the Industrial Commission.~~ The ~~Industrial~~ Commission shall make arrangements for the informal hearing with a view towards conducting the hearing in the most expeditious ~~manner~~ manner. ~~under the circumstances. Except for good cause shown, the~~ The informal hearing shall be no more than 30 minutes, with each side given 10 minutes to present its case and five minutes for rebuttal. Notwithstanding the above, the employer, ~~or carrier/administrator~~ carrier, or administrator may waive the right to an informal hearing, and proceed to a formal hearing by filing a request for hearing on a Form ~~33.~~ 33 *Request that Claim be Assigned for Hearing.* ~~A decision on the application shall be made within five days after the completion of the informal hearing.~~

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

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

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

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

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

Authority G.S. 97-18(c); G.S. 97-18(d); 97-32.2(g); 97-80(a).

04 NCAC 10A .0404A TRIAL RETURN TO WORK

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

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

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

compensation. Instead, ~~in such circumstances,~~ the ~~employer~~ employer, ~~or carrier/administrator~~ carrier, or administrator shall ~~promptly~~ return a Form 28U *Employee's Request that Compensation be Reinstated after Unsuccessful Trial Return to Work* to ~~the employee and~~ the employee's attorney of ~~record, if any,~~ or the employee, if unrepresented, along with a statement explaining the reason the Form 28U *Employee's Request that Compensation be Reinstated after Unsuccessful Trial Return to Work* is being returned and the reason compensation is not being reinstated.

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

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

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

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

(1) ~~"Medical only" cases, defined as~~ cases in which the employee is not absent from work for more than one day ~~and~~ or in which medical expenses are less than two thousand dollars ($2,000); ~~the amount periodically established by the Industrial Commission in its Minutes;~~

(2) ~~Cases~~ cases in which the employee has missed fewer than eight days from work;

(3) ~~Cases~~ cases ~~wherein~~ in which the employee has been released to return to work by an authorized treating physician as specified in ~~subsection 2 above~~ Paragraph (b) of this Rule without restriction or limitation except that if the physician, within 45 days of the employee's return to work date, determines that the employee is not able to perform the job duties assigned, then the ~~employer~~ employer, ~~or carrier/administrator~~ carrier, or administrator ~~must~~ shall resume benefits. If within the same time period, the physician determines that the employee may work only with restrictions, then the employee is entitled to a resumption of benefits commencing as of the date of the report, unless the employer is able to offer employment consistent with the restrictions, in which case a trial return to work period shall be deemed to have commenced at the time of the employee's initial return to work;

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

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

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

Authority G.S. 97-18(h); 97-29; 97-32.1; 97-80(a).

04 NCAC 10A .0405 REINSTATEMENT OF COMPENSATION

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

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

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

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

(a) In a claim in which the employer, carrier, or administrator has admitted liability, when an employee seeks reinstatement of compensation on a basis other than a request for review of an award pursuant to G.S. 97-47, the employee may notify the employer, carrier, or administrator, and the employer's, carrier's, or administrator's attorney of record, on a Form 23 *Application to Reinstate Payment of Disability Compensation*, or by the filing of a Form 33 *Request that Claim be Assigned for Hearing*.

(b) When reinstatement is sought by the filing of a Form 23 *Application to Reinstate Payment of Disability Compensation*, the original Form 23 *Application to Reinstate Payment of Disability Compensation* and the attached documents shall be sent to the Commission at the same time and by the same method by which a copy of the Form 23 and attached documents are sent to the employer, carrier, or administrator and the employer's, carrier's, or administrator's attorney of record. The Form 23 *Application to Reinstate Payment of Disability Compensation* shall specify the number of pages of documents attached which are to be considered by the Commission. Failure to specify the number of pages shall result in the refusal of the Commission to accept the same for filing. Upon receipt of the Form 23

Application to Reinstate Payment of Disability Compensation, the Commission shall notify the employer, carrier, or administrator that the Form 23 *Application to Reinstate Payment of Disability Compensation* has been received by providing a copy of a Form 23 *Application to Reinstate Payment of Disability Compensation* via facsimile or electronic mail. Within 10 days of the receipt of the Form 23 *Application to Reinstate Payment of Disability Compensation* from the Commission, the employer, carrier, or administrator shall complete Section B of the Form 23 *Application to Reinstate Payment of Disability Compensation* and send it to the Commission and to the employee, or the employee's attorney of record, at the same time and by the same method by which the form is sent to the Commission.

(c) If the employer, carrier, or administrator does not contest the reinstatement of compensation, the Commission shall review the Form 23 *Application to Reinstate Payment of Disability Compensation* and any attached documentation and, without a hearing, render an Administrative Decision and Order as to whether the compensation shall be reinstated. This Administrative Decision and Order shall be rendered within five days of the expiration of the time within which the employer, carrier, or administrator could have filed a response to the Form 23 *Application to Reinstate Payment of Disability Compensation.*

(d) If the employer, carrier, or administrator contests the reinstatement of compensation, the Commission shall schedule an informal hearing to take place within seven days of the receipt of the completed Form 23 *Application to Reinstate Payment of Disability Compensation* response from the employer, carrier, or administrator. The informal hearing shall be conducted by telephone conference between the Commission, the parties, and the parties' attorneys of record. The Commission shall make arrangements for the informal hearingwith a view towards conducting the hearing in the most expeditious manner under the circumstances. The informal hearing shall be no more than 30 minutes, with each side being given 10 minutes to present its case and five minutes for rebuttal. An Administrative Decision and Order shall be rendered regarding the Form 23 *Application to Reinstate Payment of Disability Compensation* within five business days after the completion of the informal hearing.

(e) If the Commission is unable to render a decision after the informal hearing, the Commission shall issue an order to that effect, that shall be in lieu of a Form 33 *Request that Claim be Assigned for Hearing*, and the case shall be placed on the formal hearing docket. If additional issues are to be addressed, the employee, employer, carrier, or administrator shall within 30 days of the date of the Administrative Decision and Order, file a Form 33 *Request that Claim be Assigned for Hearing* or notify the Commission that a formal hearing is not currently necessary. The Commission shall issue an order to that effect, which shall be in lieu of a Form 33 *Request that Claim be Assigned for Hearing*, and the case shall be placed on the formal hearing docket. If additional issues are to be addressed, the employee, employer, carrier, or administrator shall within 30 days of the Date of the Administrative Decision and Order file a Form 33 *Request that Claim be Assigned for Hearing* or notify the Commission that a formal hearing is not currently necessary.

(f) Either party may appeal the Administrative Decision and Order of the Commission as provided by Rule .0703 of this Subchapter. The Deputy Commissioner shall conduct a hearing de novo. The hearing shall be set without delay and shall not require the filing of a Form 33 *Request that Claim be Assigned for Hearing*. If the Deputy Commissioner reverses an order previously denying a Form 23 *Application to Reinstate Payment of Disability Compensation*, the employer, carrier, or administrator shall resume compensation or otherwise comply with the Deputy Commissioner's decision, notwithstanding any appeal or application for review to the Full Commission of the decision under G.S. 97-85.

(g) Notwithstanding Paragraph (f) of this Rule, the employee may waive the right to an informal hearing and proceed to a formal hearing before a Deputy Commissioner by filing a Form 33 *Request that Claim be Assigned for Hearing*. If the parties, or the parties' attorneys of record, agree that an informal hearing regarding the Form 23 *Application to Reinstate Payment of Disability Compensation* is not necessary, they may so notify the Commission, and an Administrative Decision and Order shall be rendered based on the Form 23 *Application to Reinstate Payment of Disability Compensation*, response, and documentation submitted.

Authority G.S. 97-18(k); 97-80(a).

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

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

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

(1) used to determine the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest,

(2) set monthly by the Internal Revenue Service for Section 7520 interest rates, and

(3) found in the Index of Applicable Federal Rate (AFR) Rulings. The Index of AFR Rulings is hereby incorporated by reference and includes subsequent amendments and editions. A copy may be obtained at no charge from the Internal Revenue Service's website, http://www.irs.gov/app/picklist/list/federalRates.html, or upon request, at the offices of the Commission, located in the Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, between the hours of 8:00 a.m. and 5:00 p.m.

Authority G.S. 97-40; 97-44; 97-80(a).

04 NCAC 10A .0407 FEES FOR MEDICAL COMPENSATION

~~(a) Subject to the provisions of G.S. 97-25.3, Preauthorization, the Industrial Commission shall adopt and publish a Fee Schedule, pursuant to the provisions of G.S. 97-26(a), fixingmaximum fees, except for hospital fees pursuant to G.S. 97-26(b), which may be charged for medical, surgical, nursing, dental, and rehabilitative services, and medicines, sick travel, and other treatment, including medical and surgical supplies, original artificial members as may reasonably be necessary at the end of the healing period and the replacement of such artificial members when reasonably necessitated by ordinary use or medical circumstances. The fees prescribed in the applicable published Fee~~

~~Schedule shall govern and apply in all cases. However, in special hardship cases where sufficient reason is demonstrated to the Industrial Commission, fees in excess of those so published may be allowed. Persons who disagree with the allowance of such fees in any case may make application for and obtain a full review of the matter before the Industrial Commission as in all other cases provided. Copies of this published Fee Schedule may be obtained from the Industrial Commission's authorized vendor.~~

~~(b) A provider of medical compensation shall submit its statement for services within 75 days of the rendition of the service or if treatment is longer, within 30 days after the end of the month during which multiple treatments were provided, or within such other reasonable period of time as allowed by the Industrial Commission. However, in cases where liability is initially denied but subsequently admitted or determined by the Industrial Commission, the time for submission of medical bills shall run from the time the health care provider received notice of the admission or determination of liability. Within 30 days of receipt of the statement, the employer, carrier, or managed care organization, or administrator on its behalf, shall pay or submit the statement to the Industrial Commission for approval or send the provider written objections to the statement. If an employer, carrier/administrator or managed care organization disputes a portion of the provider's bill, itshall pay the uncontested portion of the bill and shall resolve disputes regarding the balance of the charges through its contractual arrangement or through the Industrial Commission. If any bill for medical compensation services is not paid within 60 days after it has been approved by the Industrial Commission and returned to the responsible party, or, when the employee is receiving treatment through a managed care organization, within 60 days after the bill has been properly submitted to an insurer or managed care organization, there shall be added to such unpaid bill an amount equal to 10 percent, which shall be paid at the same time as, but in addition to, such bill, unless late payment is excused by the Industrial Commission. When the 10 percent addition to the bill is uncontested, payment shall be made to the provider without notifying or seeking approval from the Industrial Commission. When the percent addition to the bill is contested, any party may request a hearing by the Industrial Commission pursuant to G.S 9783, and G.S 97-84.~~

~~(c) When the responsible party seeks an audit of hospital charges, and has paid the hospital charges in full, the payee hospital, upon request, shall provide all reasonable access and copies of appropriate records, without charge or fee, to the person(s) chosen by the payor to review and audit the records.~~

~~(d) The responsible employer or carrier/administrator shall pay the statements of medical compensation providers to whom the employee has been referred by the authorized treating physician, unless said physician has been requested to obtain authorization for referrals or tests; provided that compliance with such request does not unreasonably delay the treatment or service to be rendered to the employe.~~

~~(e) It is the responsibility of the carrier, self-insured employer, group insured as certified by the North Carolina Department of Insurance, and statutory self-insured (state agency or political subdivision) to submit on a yearly basis a Form 51, Consolidated Fiscal Annual Report of "Medical Only" and "Lost Time" Cases.~~

~~(f) Employees shall be entitled to reimbursement for sick travel when the travel is medically necessary and the mileage is 20 or more miles, round trip, at a rate to be established periodically by the Industrial Commission in its Minutes. Employees shall be entitled to lodging and meal expenses, at a rate to be periodically Industrial Commission in its Minutes, when it is medically necessary that the employee stay overnight at a location away from the employee's usual place of residence. An employee shall be entitled to reimbursement for the costs of parking or a vehicle for hire, when the costs are medically necessary, at the actual costs of the expenses, unless the Industrial Commission determines the expenses were not reasonable.~~

~~(g) Any employer/carrier/administrator denying a claim in which medical care has previously been authorized shall be responsible for all costs incurred prior to the date notice of denial is provided to each health care provider to whom authorization has been previously given.~~

Authority G.S. 97-18(i); 97-25.6; 97-26; 97-80(a); 138-6.

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

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

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

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

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

~~Administrative Decision shall have the effect of staying the decision, provided that the stay may be dissolved in the discretion of the Commission for good cause shown.~~
(c) The parties may, by agreement or stipulation as consistent with the Workers' Compensation Act, provide for additional medical compensation.
~~(e)~~(d) This Rule applies to injuries ~~by accident~~ occurring on or after July 5, 1994.

Authority G.S. 97-25.1; 97-80(a).

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. § 9722.~~
~~(2)~~(a) An employer shall notify the Commission of the occurrence of a death resulting from an injury or occupational disease allegedly arising out of and in the course of employment by ~~timely~~ filing a Form 19 *Employer's Report of Employee's Injury or Occupational Disease to the Industrial Commission* within five days of knowledge thereof. In addition, an ~~employer~~ employer, ~~or carrier/administrator~~ carrier, or administrator shall file with the ~~Industrial~~ Commission a Form ~~29, "Supplementary Report for Fatal Accidents,"~~ 29 *Supplemental Report for Fatal Accidents*, within 45 days of knowledge of a death or allegation of death resulting from an injury or occupational disease arising out of and in the course of employment.
~~(b) Identifying Beneficiaries~~
~~(1)~~(b) An ~~employer~~ employer, ~~or carrier/administrator~~ carrier, or administrator shall make a good faith effort to discover the names and addresses of decedent's beneficiaries under G.S. 97-38 and identify them on the Form ~~29.~~ 29 *Supplemental Report for Fatal Accident.*
~~(2)~~(c) In all cases involving minors or incompetents who are potential beneficiaries, a guardian *ad litem* shall be appointed pursuant to ~~4 NCAC 10A .0604.~~ Rule .0604 of this Subchapter.
~~(3)~~(d) If an issue exists as to whether a person is a beneficiary under G.S. ~~§~~ 97-38, the employer, ~~or carrier/administrator~~ carrier, administrator, ~~and/or~~ or any person asserting a claim for benefits may file a Form 33 ~~Request for Hearing~~ *Request that Claim be Assigned for Hearing* for a determination by a Deputy Commissioner.
~~(c) Liability Accepted by Employer~~
~~(1)~~(e) If the employer, ~~or carrier/administrator~~ carrier, or administrator accepts liability for a claim involving an employee's death and there are no ~~apparent~~ issues necessitating a hearing for determination of beneficiaries ~~and/or~~ or their respective rights, the parties shall submit an agreement ~~Agreement for Compensation for Death~~ executed by all interested parties or their representatives ~~on Industrial~~ to the ~~Commission Form 30.~~ Commission. All agreements ~~must~~ shall be submitted to the ~~Industrial~~ Commission on a Form 30 *Agreement for Compensation for Death* as set forth in ~~4 NCAC 10A .501(4), (5), and (6).~~ Rule .0501 of this Subchapter.
~~(2)~~(f) ~~Said~~ The agreement shall be submitted along with all relevant supporting documents, including death certificate of the employee, any relevant marriage certificate and birth certificates for any dependents.
~~(d) Liability Denied by Employer~~
~~(1)~~(g) If the ~~employer~~ employer, ~~or carrier/administrator~~ carrier, or administrator denies liability for a claim involving an employee's death, the ~~employer~~ employer, ~~or carrier/administrator~~ carrier, or administrator shall send a letter of denial to all potential beneficiaries, their attorneys of record, if any, all known health care providers that have submitted bills to the ~~employer~~ employer, ~~or carrier/administrator~~ carrier, or administrator, and the ~~Industrial~~ Commission. The denial letter shall ~~specifically~~ state the reasons for the denial and shall further advise of a right to hearing.
~~(2)~~(h) Any potential beneficiary, ~~or~~ the employer, ~~or carrier/administrator~~ the carrier, or the administrator may request a hearing as provided in Rule ~~602.~~ .0602 of this Subchapter.
~~(e) Payment of Death Benefits~~
~~(1)~~(i) Upon approval ~~of~~ by the ~~Industrial~~ Commission of a Form ~~30,~~ 30 *Agreement for Compensation for Death*, or the issuance of a final order of the ~~Industrial~~ Commission directing payment of death benefits pursuant to ~~G.S. § 97-38,~~ G.S. 97-38, payment ~~may~~ shall be made by the ~~employer~~ employer, ~~or carrier/administrator~~ carrier, or administrator directly to the beneficiaries, with the following exceptions: (1) any applicable award of attorney fees shall be paid directly to the attorney; and (2) benefits due to a minor or incompetent.
~~(A)~~(j) ~~Subject to the discretion of the Industrial Commission, any~~ Any benefits due to a minor pursuant to ~~G.S. § 97-38~~ G.S. 97-38 ~~may~~ shall be paid directly to the parent as natural guardian of the minor for the use and benefit of the minor if the minor remains in the physical custody of the parent as natural guardian. If the minor is not in the physical custody of the parent as natural guardian, ~~the Industrial Commission may order that~~ payment shall be made through some other ~~proper~~ person appointed by a court of competent ~~jurisdiction.~~ jurisdiction or to such other person under such terms as the Commission finds is in the best interests of the parties. When a beneficiary reaches the age of 18, any remaining benefits shall be paid directly to the beneficiary.
~~(B)~~(k) In order to protect the interests of ~~an incompetent beneficiary,~~ a beneficiary who is incompetent, the ~~Industrial~~ Commission ~~in its discretion may~~ shall order that benefits be paid to the beneficiary's ~~duly~~ appointed general guardian for the beneficiary's exclusive use and benefit, or to the Clerk of Court in the county in which ~~he~~ the beneficiary resides for the beneficiary's exclusive use and benefit as determined by the Clerk of Court.
~~(C)~~(l) Upon a change in circumstances, any interested party may request that the ~~Industrial~~ Commission amend the terms of any award with respect to a minor or incompetent to direct payment to another party on behalf of the minor or incompetent. ~~When a beneficiary reaches the age of 18, any remaining benefits shall be paid directly to the beneficiary.~~
~~(2)~~(m) In the case of ~~commuted benefits,~~ benefits commuted to present value, only those sums ~~which~~ that have not accrued at the time of the entry of the Order are subject to commutation.
~~(f) Procedure for Award of Death Benefits Based on Stipulated Facts~~

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

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

- ~~(A)~~(1) a stipulation regarding all jurisdictional matters;
- ~~(B)~~(2) the decedent's name, social security number, employer, insurance carrier or servicing agent, and the date of the injury giving rise to this claim;
- ~~(C)~~(3) a Form 22 *Statement of Days Worked or Earnings of Injured Employee* or stipulation as to average weekly wage;
- ~~(D)~~(4) any affidavits regarding dependents;
- ~~(E)~~(5) the death certificate;
- ~~(F)~~(6) ~~I.C.~~ a Form ~~29,~~ *29 Supplemental Report for Fatal Accidents;*
- ~~(G)~~(7) Guardian ~~ad Litem~~ *ad litem* forms, if any beneficiary is a minor or incompetent;
- ~~(H)~~(8) proof of beneficiary status, such as marriage license, birth certificate, or divorce decree;
- ~~(I)~~(9) medical records, if any;
- ~~(J)~~(10) a statement of payment of medical expenses incurred, if any; and
- ~~(K)~~(11) a funeral bill or stipulation as to payment of the funeral benefit.

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

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

Authority G.S. 97-38; 97-39; 97-80(a).

04 NCAC 10A .0410 COMMUNICATION FOR MEDICAL INFORMATION

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

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

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

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

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

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

Authority G.S. 97-25.6; 97-80(a).

SECTION .0500 – AGREEMENTS

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

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

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

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

(d) The ~~employer~~ employer, ~~or carrier/administrator,~~ carrier, administrator, or the attorney of record, if any, shall provide ~~the employee and~~ the employee's attorney of ~~record, if any,~~ record or the employee, if unrepresented, a copy of a Form ~~21,~~ 21 *Agreement for Compensation*

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

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

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

Authority G.S. 97-18; 97-80(a); 97-82.

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 is the subject of this agreement.
- ~~(4)~~(2) ~~That the~~ The ~~employer~~ employer, ~~or carrier/administrator will~~ carrier or administrator shall 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 predates the current injury or occupational disease. This Subparagraph does not apply upon a showing of: ~~The parties will be relieved of this duty only upon a showing that providing such information creates an~~
  - (A) unreasonable burden upon ~~them~~ the parties; ~~This subsection of the Rule shall not apply where~~
  - (B) the employee is represented by counsel; or
  - (C) even if the employee is not represented by counsel, where the employee or counsel certifies that total wage loss due to an injury or occupational disease is not being claimed.

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

- (1) The ~~material~~ relevant medical, vocational, and rehabilitation reports known to exist, including ~~but not limited to~~ those pertinent to the employee's future earning capacity, ~~must~~ are ~~be~~ submitted with the agreement to the ~~Industrial~~ Commission by the employer, ~~the carrier/administrator,~~ carrier, administrator, or the attorney for the employer.
- (2) The parties and all attorneys of record ~~must~~ have signed the agreement.
- (3) ~~The settlement agreement must contain a list of all of the known medical expenses of the employee related to the injury to the date of the settlement agreement, including medical expenses that the employer or insurance carrier disputes, when the employer or carrier has not agreed to pay all medical expenses of the employee related to the injury up to the date of the settlement agreement.~~ In a claim where liability is admitted or otherwise has been established, the employer, carrier, or administrator has undertaken to pay all medical expenses for the compensable injury to the date of the settlement agreement.
- (4) ~~If there are unpaid medical expenses which the employer or insurance carrier agree to pay under the settlement agreement, the agreement must contain a list of these unpaid medical expenses, if known, that will be paid by the~~

~~employer or insurance carrier.~~ In a claim where liability is denied or the compensability of a particular medical condition is denied, the employer, carrier, or administrator shall undertake to pay all the disputed unpaid medical expenses to the date of the settlement agreement unless the Commission approves the non-payment of the unpaid medical bills by employer, carrier, or administrator due to the issues in dispute.

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

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

(7) The settlement agreement provides that a party who has agreed to pay a disputed unpaid medical expense shall notify in writing the unpaid medical provider of the party's responsibility to pay the unpaid medical expense. Other unpaid medical providers shall be notified in writing of the completion of the settlement by the party specified in the settlement agreement

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

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

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

~~(5)~~(9) The settlement agreement ~~must contain~~ contains a finding that the positions of the parties to the agreement are reasonable as to the payment of medical expenses.

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

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

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

Authority G.S. 97-17; 97-80(a); 97-82.

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

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

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

Authority G.S. 97-18(h); 97-80(a).

SECTION .0600 – CLAIMS ADMINISTRATION AND PROCEDURES

04 NCAC 10A .0601 EMPLOYER'S OBLIGTIONS UPON NOTICE; DENIAL OF LIABILTY; AND SANCTIONS

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

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

(1) ~~Notify~~ File a Form 60 *Employer's Admission of Employee's Right to Compensation* to notify the Commission and the employee in writing that ~~it~~ the employer is admitting the employee's right to compensation and, if applicable, satisfy the requirements for payment of compensation under G.S. 97-18(b).

(2) ~~Notify~~ File a Form 61 *Denial of Workers' Compensation Claim* to notify the Commission and the employee that ~~it~~ the employer denies the employee's right to compensation consistent with G.S. 97-18(c).

(3) File a Form 63 *Notice to Employee of Payment of Compensation Without Prejudice* ~~Initiate payments without prejudice and without liability and satisfy the requirements of~~consistent with G.S. 97-18(d).

~~For purposes of this Rule, reasonable sanctions shall not prohibit the employer or its insurance carrier from contesting the compensability of and its liability for the claim.~~

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

~~(c)~~(b) ~~If the employer or insurance carrier denies~~ When liability in any ~~case,~~ case is denied, the employer or insurance carrier shall provide a ~~detailed~~ statement of the basis of denial ~~must~~ that shall be set forth in a letter of denial or Form ~~61,~~ 61 *Denial of Workers' Compensation Claim*, and which shall be sent to the ~~plaintiff or his~~ employee's attorney of ~~record, if any~~ record or the employee, if unrepresented, all known health care providers ~~which~~ who have submitted bills to the ~~employer/carrier,~~ employer or carrier, and the ~~Industrial~~ Commission. ~~The detailed statement of the basis of denial shall set forth a statement of the facts, as alleged by the employer, concerning the injury or any other matter in dispute; a statement identifying the source, by name or date and type of document, of the facts alleged by the employer; and a statement explaining why the facts, as alleged by the employer, do not entitle the employee to workers' compensation benefits~~

Authority G.S. 97-18; 97-80(a); 97-81(a).

04 NCAC 10A .0602 REQUEST FOR HEARING

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

(1) ~~The~~ the basis of the disagreement between the parties, including a statement of the ~~specific~~ issues raised by the requesting ~~party.~~ party;

(2) ~~The~~ the date of ~~the injury.~~ injury;

(3) ~~The~~ the part of the body ~~injured.~~ injured;

(4) ~~The~~ the city and county where the injury ~~occurred.~~ occurred;

(5) ~~The~~ the names and addresses of all doctors and other expert witnesses whose testimony is needed by the requesting ~~party.~~ party;

(6) ~~The~~ the names of all lay witnesses to be called to testify for the requesting ~~party.~~ party;

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

(8) ~~The~~ the telephone ~~number(s)~~ number(s), ~~and address(es)~~ email address(es), and mailing address(es) of the party(ies) requesting the ~~hearing.~~ hearing and their legal counsel.

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

Authority G.S. 97-80(a); 97-83.

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

(a) No later than 45 days from receipt of ~~the Request~~ a request for ~~Hearing,~~ hearing from an employee, the self-insured employer, insurance carrier, or counsel for the defendant(s) shall file with the ~~Industrial~~ Commission a response to the ~~Request~~ request for ~~Hearing.~~ hearing. If a defendant files a request for hearing, the employee is not required to respond.

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

(1) ~~The~~ the basis of the disagreement between the parties, including a statement of the ~~specific~~ issues raised by the plaintiff which are conceded and the ~~specific~~ issues raised by the plaintiff which are ~~denied.~~ denied;

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

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

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

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

(6) ~~The~~ the names of all lay witnesses known by the defendant(s) whose testimony is to be ~~taken.~~ taken;

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

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

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

Authority G.S. 97-80(a); 97-83.

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

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

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

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

Authority G.S. 1A-1, Rule 17; 97-50; 97-79(e);97-80(a); 97-91.

04 NCAC 10A .0605 DISCOVERY

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

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

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

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

~~(c)~~(4) If there is an objection to or other failure to answer an interrogatory, the party submitting the interrogatories may move the ~~Industrial~~ Commission for an order compelling answer. If the ~~Industrial~~ Commission orders answer to an interrogatory within a time certain and no answer is made or the objection is still lodged, the ~~Industrial~~ Commission may issue an order with ~~appropriate~~ sanctions, including ~~but not limited to~~ the sanctions specified in ~~Rule 37 of the North Carolina Rules of Civil Procedure.~~ G.S. 1A-1, Rule 37.

~~(2)~~(5) Interrogatories may relate to matters ~~which~~ that are not privileged, ~~which~~ that are relevant to an issue ~~presently~~ in dispute, or ~~which~~ that the requesting party reasonably believes may later be disputed. ~~Signature~~ The signature of a party or attorney serving interrogatories constitutes a certificate by such person that he or she has personally read each of the interrogatories, that no such interrogatory will oppress a party or cause any unnecessary expense or delay, that the information requested is not known or equally available to the requesting party, and that the interrogatory relates to an issue presently in dispute or which the requesting party reasonably believes may later be in dispute. A party may serve an interrogatory, however, to obtain verification of facts relating to an issue presently in dispute. Answers to interrogatories may be used to the extent permitted by ~~the rules of evidence.~~ Chapter 8C of the North Carolina General Statutes.

(6) Up to the time a matter is calendared for a hearing, parties may serve requests for production of documents without leave of the Commission.

~~(3)~~(7) Additional methods of discovery as provided by the North Carolina Rules of Civil Procedure may be used only upon motion ~~and approval by the Industrial Commission~~ or by agreement of the parties. The Commission shall approve the motion to prevent manifest injustice, promote judicial economy, or expedite a decision in the public interest.

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

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

(a) notices of depositions;

(b) discovery requests and responses pertinent to a pending motion;
(c) responses to discovery following a motion or order to compel; and
(d) post-hearing discovery requests and responses.
The above listed documents shall be filed with the Commission, as well as served on the opposing party.

~~(5)~~(9) Sanctions ~~may~~ shall be imposed under this Rule for failure to comply with a Commission order compelling discovery. A motion by a party or its attorney to compel discovery under this Rule and ~~4 NCAC 10A .607~~ Rule .0607 of this Subchapter shall represent that informal means of resolving the discovery dispute have been attempted in good faith and state ~~briefly~~ the opposing parties' position or that there has been a reasonable attempt to contact the opposing party and ascertain its position. The parties shall not submit motions to compel production of information otherwise obtainable under G.S. 97-25.6.

Authority G.S. 97-80(a); 97-80(f).

04 NCAC 10A .0606 DISCOVERY - POST HEARING

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

(1) to prevent manifest injustice;
(2) to promote judicial economy; or
(3) to expedite a decision in the public interest.

Authority G.S. 97-80(a); 97-80(f).

04 NCAC 10A .0607 DISCOVERY OF RECORDS AND REPORTS

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

Authority G.S. 97-80(a); 97-80(b); 97-80(f).

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

(a) ~~At the outset of taking a statement,~~ Upon the request of the employer or his agent to take a written or a recorded statement, the employer or his agent shall advise the employee that the statement ~~is being taken to~~ may be used ~~in part~~ to determine whether the claim will be paid or denied. Any plaintiff who gives his or her employer, ~~or~~ its carrier, or any agent either a written or recorded statement of the facts and circumstances surrounding his or her injury shall be furnished a copy of ~~such~~ the statement within 45 days after request. Further, any plaintiff who shall give a written or recorded statement of the facts and circumstances surrounding his injury shall, without request, be furnished a copy no less than 45 days from the filing of a Form 33 *Request that Claim be Assigned for Hearing*. ~~Such~~ The copy shall be furnished at the expense of the person, firm or corporation at whose direction the statement was taken.
(b) If any person, firm or corporation fails to comply with this ~~rule,~~ Rule, ~~then an order may be entered by~~ a Commissioner or Deputy Commissioner shall enter an order prohibiting that person, firm or corporation, or its representative, from introducing the statement into evidence or using any part of ~~it.~~ the statement.

Authority G.S. 97-80(a).

04 NCAC 10A .0609 MOTIONS PRACTICE IN CONTESTED CASES

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

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

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

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

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

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

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

(c) Motions before the Full Commission:

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

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

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

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

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

~~(c)~~(e) Motions to continue or remove a case from the hearing calendar on which the case is set ~~must~~ shall be made ~~well in advance~~ as much in advance as possible of the scheduled hearing and may be made in written or oral form. In all ~~cases~~ cases, the moving party ~~must~~ shall provide ~~just cause~~ the basis for the motion and state that the other parties have been advised of the motion and relate the position, if known, of the other parties regarding the motion. Oral motions ~~must~~ shall be followed with a written ~~confirmation~~ motion from the moving party.

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

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

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

(1) ~~Written~~ written communications, such as a proposed order or legal memorandum, prepared pursuant to the Commission's instructions;

(2) ~~Written~~ written communications relative to emergencies, changed circumstances, or scheduling matters that may affect the procedural status of a case such as a request for a continuance due to the health of a litigant or an attorney;

(3) ~~Written~~ written communications sent to the tribunal with the consent of the opposing lawyer or opposing ~~party~~ party, if unrepresented; and

(4) ~~Any~~ any other communication permitted by law or the~~rules~~ Rules ~~or procedures~~ of the Commission.

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

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

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

Authority G.S. 97-79(b); 97-80(a); 97-84; 97-91.

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

~~(a) Expedited Medical Motions:~~

~~(1)~~(a) ~~Medical~~ Medical motions pursuant to G.S. 97-25 brought before the Office of the Executive Secretary for ~~an administrative~~ a ruling shall comply with applicable provisions of Rule .0609 of this Subchapter and shall be submitted electronically to medicalmotions@ic.nc.gov, unless electronic submission is unavailable to the party.

~~(2)~~(b) A party may file with the ~~Deputy Commissioner~~ Docket Section a request for ~~an administrative~~ a ruling on a medical motion. A party, also, may appeal an Order from the Executive Secretary's Office on ~~an Expedited~~ a Medical Motion by giving notice of appeal to the ~~Dockets Department~~ Docket Section within 15 days of receipt of the Order or receipt of the ruling on a Motion to Reconsider the Order filed pursuant to Rule ~~703(1).~~ .0703(b) of this Subchapter. The Motion shall contain a designation as ~~an administrative "Expedited Medical~~ a "Medical Motion", documentation in support of the request, including the most recent medical ~~record/s~~ record(s),~~and~~ a representation that informal means of resolving the ~~issue~~ issues have been attempted in good faith, and the opposing party's position, if known.

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

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

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

(c) A Deputy Commissioner shall conduct a Pre-Trial Conference as soon as possible to clarify the issues. Parties may consent to a review of the contested issues by electronic mail submission of only relevant medical records and opinion letters. Depositions deemed necessary by the Deputy Commissioner shall be set on an expedited schedule at the expense of defendants. Requests for independent medical examinations shall be denied unless there is a demonstrated need for the evaluation. The parties shall provide the deposition transcript to the Deputy Commissioner as soon as possible. Written arguments and briefs shall be filed within five days after the record is closed.

~~(3)~~(d) A party may appeal an Order by a Deputy Commissioner on ~~an Expedited~~ a Medical Motion by giving notice of appeal to the Full Commission within 15 days of receipt of the Order or receipt of the ruling on a Motion to Reconsider the Order filed pursuant to Rule ~~703(1).~~ .0703(b) of this Subchapter.

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

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

A letter expressing an intent to appeal a Deputy Commissioner's Order on an Medical Motion shall be considered notice of appeal to the Full Commission, provided that the letter specifies the Order from which appeal is taken. After receipt of notice of appeal, the appeal shall be acknowledged by the Docket Section within three days by sending an Order under the name of the Chair of the Panel to which the appeal is assigned. The parties may file briefs on an abbreviated schedule when necessary for a determination of the issues. The panel chair shall also determine if oral arguments are to be by telephone, in person, or waived. All correspondence, briefs, or motions related to the appeal shall be addressed to the panel chair with a copy to the law clerk of the panel chair.

(e) If the motion requests a second opinion examination pursuant to G.S. 97-25, the motion shall specify whether the plaintiff has made a prior written request to the defendants for the examination, as well as the date of the request and the date of the denial, f any.

~~(b) Emergency Medical Motions:~~

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

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

~~(B)~~(2) ~~An~~ an explanation of the need for a shortened time period for review, including any hardship that warrantsimmediate ~~attention/action~~ attention or action by the ~~Commission.~~ Commission;

~~(C)~~(3) ~~A~~ a statement of the time-sensitive nature of the ~~request, with specificity.~~ request;

~~(D)~~(4) ~~Detailed~~ dates and times related to the issue raised and to the date a ruling is ~~requested.~~ requested;

~~(E)~~(5) ~~Documentation~~ documentation in support of the request, including the most recent medical ~~records.~~ records; and

~~(F)~~(6) ~~A~~ a representation that informal means of resolving the issue have been attempted in good faith, and the opposing party's position, if known.

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

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

~~(A)~~(1) ~~Emergency Medical Motions and responses thereto~~ if filed with the Executive Secretary's ~~Office~~ Office, ~~shall be submitted to~~ ~~medicalmotions@ic.nc.gov.~~ medicalmotions@ic.nc.gov;

~~(B)~~(2) ~~Emergency Medical Motions~~ if filed with the Chief Deputy Commissioner, ~~shall be submitted electronically directly~~ to the Chief Deputy Commissioner and ~~his/her~~ his or her legal ~~assistant.~~ assistant; or

~~(C)~~(3) ~~Emergency Medical Motions~~ if filed with the Chair of the Commission ~~shall be submitted electronically~~ to the Chair, ~~his/her~~ his or her legal assistant, and ~~his/her~~ his or her law clerk.

Authority G.S. 97-25; 97-78(f)(2); 97-78(g)(2); 97-80(a).

04 NCAC 10A .0610 PRE-TRIAL AGREEMENT

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

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

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

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

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

~~(b)~~(d) Any party may request a pre-trial conference ~~when that party deems that such a conference would~~ to aid in settling the case or resolving ~~some~~ contested issues prior to trial. Requests for such pre-trial conferences shall be directed to the Commissioner or Deputy Commissioner before whom the claim has been ~~calendared, or to the Team Coordinator for the geographical area, if any.~~ calendared.

Authority G.S. 97-80(a); 97-80(b); 97-83.

04 NCAC 10A .0611 HEARINGS BEFORE THE COMMISSION

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

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

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

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

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

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

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

Authority G.S. 97-79; 97-80(a); 97-84; 97-91.

04 NCAC 10A .0612 DEPOSITIONS AND ADDITIONAL HEARINGS

(a) The parties may, by agreement or stipulation with notice to the Commission, conduct depositions for discovery prior to the hearing before the Deputy Commissioner.

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

~~(b)~~(c) In cases where a party, or an attorney for either party, refuses to stipulate medical reports and the case ~~must be~~ is reset or depositions ordered for testimony of medical witnesses, a Commissioner or Deputy Commissioner may ~~in his discretion~~ assess the costs of such hearing or depositions, including reasonable attorney fees, against the party who refused the ~~stipulation.~~ stipulation, pursuant to G.S. 97-88 and G.S. 97-88.1.

~~(c)~~(d) ~~Except under unusual circumstances, all~~ All ~~lay~~ evidence and witnesses other than those tendered as an expert witness ~~must~~ shall be offered at the ~~initial hearing.~~ hearing before the Deputy Commissioner. ~~Lay~~ Non-expert evidence ~~can only~~ may be offered after the ~~initial~~ hearing before the Deputy Commissioner by order of a Commissioner or Deputy Commissioner. The costs of obtaining ~~lay~~ non-expert testimony by deposition shall be borne by the party making the request unless otherwise ordered by the ~~Commission.~~ Commission as required to prevent manifest injustice and to promote judicial economy.

Authority G.S. 97-80(a); 97-88; 97-88.1.

04 NCAC 10A .0613 EXPERT WITNESSES AND FEES

~~(a) Dismissals:~~

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

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

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

~~(b) Removals:~~

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

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

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

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

(a) The parties shall file with the Deputy Commissioner within 15 days following the trial, a list identifying all expert witnesses to be deposed and the dates of their depositions.

(b) Within 10 days after each expert witness deposition, defendants' counsel shall submit to the Deputy Commissioner, via email, a request to approve the expert's fee. In these requests, counsel shall provide to the Deputy Commissioner, in a cover letter along with the invoice (if provided to counsel), the following:

(1) the name of the expert deposed;
(2) his or her practice's name;
(3) his or her fax number;
(4) his or her area of specialty and board certifications, if any;
(5) the length of the deposition; and
(6) the length of time the expert spent preparing, excluding any time meeting withparties' counsel, for the deposition.

Counsel shall submit a proposed Order that shows the expert's name, practice name and fax number under the "Appearances" section.

(c) Failure to make payment to an expert witness within 30 days following the entry of a fee order shall result in the assesment of a 10 percent penalty payable to the expert witness.

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

Authority G.S. 97-18(i); 97-80(a); 97-80(f).

04 NCAC 10A .0614 MEDICAL 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 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 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 provider.

(c) When an employer or carrier does not respond to a medical provider's Form 26I inquiry regarding a medical fee dispute within 20 days, or denies liability as a Form 26I response, the medical 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 provider and the employer or carrier in an effort to resolve the dispute.

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

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

(1) the Commission file number, if known;

(2) the employee's name, address, and last four digits of his or her social security number;

(3) the date of injury and a description of the workplace injury, including the body parts known to be affected;

(4) an itemized list of the medical fees in dispute, including CPT codes relating specific charges to the Workers' Compensation Medical Fee Schedule, and explanations directly relating each charge to the employee's workplace injury;

(5) a copy of the Form 26I *Medical Provider Dispute Resolution Questionnaire* submitted by the Medical Provider, including all accompanying materials, and any response received back by the Medical Provider from the employer or carrier contacted;

(6) a copy of the written request for assistance submitted to the Medical Fees Section;

(7) a copy of the written summary by the Medical Fees Section of the informal resolution process and outcome;

(8) a sworn affidavit by the Medical Provider that states:

(A) the Medical Provider has treated the employee;

(B) the medical fees itemized by the Medical Provider are current and unpaid; and

(C) the Medical Provider reasonably believes that the employer or carrier named on the Form 26I *Medical Provider Dispute Resolution Questionnaire* is obligated to pay the fees under the Workers' Compensation Act; and

(9) a certification of service upon both the employee and the employer or carrier named on the Form 26I *Medical Provider Dispute Resolution Questionnaire.*

(g) A medical provider who has been denied intervention may request a review by the Commission by filing a written request with the Docket Section of the Industrial Commission within 10 days of receipt of the order denying intervention.

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

(1) a statement of facts necessary to an understanding of the issue(s);

(2) a statement of the relief sought;

(3) a copy of the motion to intervene, including all attachments required by Paragraph (f) of this Rule; and

(4) a copy of the order denying intervention.

(i) Within 10 days after service of a request for review by the Commission, any party to the workers' compensation claim may file a response, including supporting affidavits or documentation not previously file with the Commission.

(j) The Commission's determination shall be made on the basis of the request for review and any response(s), including supporting documentation. No briefs or oral argument are allowed by the Commission.

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

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

(m) Discovery by a medical provider shall be allowed following a Commission order allowing intervention but is limited to matters related to the medical fee dispute.

(n) A medical provider who has intervened in a workers' compensation claim may obtain a hearing before the Commission on a medical fee dispute by filing an Industrial Commission Form 33I *Intervenor's Request that Claim be Assigned for Hearing* and paying a filing fee.

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

Authority G.S. 97-26(i); 97-80(a).

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

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

(a) A claim may be removed from a hearing calendar by motion of the party requesting the hearing or by the Commission upon its own motion to prevent manifest injustice, promote judicial economy, or expedite a decision in the public interest.
(b) Upon settlement of a case or approval of a form agreement, the parties shall submit a request to remove a case from a hearing calendar and a proposed Order.
(c) After a case has been removed from a hearing calendar, the case may be reset on a hearing calendar by Order of the Commission or filing of a Form 33 *Request that Claim be Assigned for Hearing* by the party requesting a hearing.

Authority G.S. 97-80(a); 97-84; 97-91.

04 NCAC 10A .0616 DISMISSALS

~~(a) Services of Foreign Language Interpreters Required. When a person who does not speak or understand the English language is called to testify in a hearing, other than in an informal hearing conducted pursuant to G.S. 97-18.1, the person, whether a party or a witness shall be assisted by a qualified foreign language interpreter.~~
~~(b) Qualifications of Interpreters. To qualify as a foreign interpreter, a person must possess sufficient experience and education, or a combination of experience and education, speaking and understanding English and the foreign language to be interpreted, to qualify as an expert witness pursuant to G.S. 1C-1, Rule 702. A person qualified as an interpreter under this Rule shall not be interested in the claim and must make a declaration under oath or affirmation to interpret accurately, truthfully and without any additions or deletions, all questions propounded to the witness and all responses thereto.~~
~~(c) Notice to Industrial Commission and Opposing Party of Need for Interpreter. Any party who is unable to speak or understand English, or who intends to call as a witness a person who is unable to speak or understand English, shall so notify the Industrial Commission and the opposing party, in writing, not less than 21 days prior to the date of the hearing. The notice shall state with specificity the language(s) that must be interpreted for the Commission.~~
~~(d) Designation of Interpreter. Upon receiving or giving the notice required in Paragraph (3) of this Rule, the employer or insurer shall retain a qualified, disinterested interpreter, either agreed upon by the parties or approved by the Industrial Commission, to appear at the hearing and interpret the testimony of all persons for whom the notice in Paragraph (3) of this Rule has been given or received.~~
~~(e) Interpreter Fees. The interpreter's fee shall constitute a cost as contemplated by G.S. 97-80. A qualified interpreter who interprets testimony for the Industrial Commission shall be entitled to payment of the fee agreed upon by the interpreter and employer or insurer that retained the interpreter. Except in cases where a claim for compensation has been prosecuted without reasonable ground, the fee agreed upon by the interpreter and employer or insurer shall be paid by the employer or insurer. Where it is ultimately determined by the Commission that the request for an interpreter was unfounded, attendant costs may be assessed against the movant.~~
~~(f) Interpreter Ethics. Foreign language interpreters shall abide by the code of ethical conduct for court interpreters promulgated by the North Carolina Administrative Office of the Courts and adopted by the Industrial Commission and shall interpret as word for word as is practicable, without editing, commenting, or summarizing, testimony or other communications.~~
(a) No claim filed under the Workers' Compensation Act shall be dismissed without prejudice, except upon order of the Commission in the interest of justice. No voluntary dismissal shall be granted after the record in a case is closed. Unless otherwise ordered by the Commission in the interest of justice, a plaintiff shall have one year from the date of the Order of Voluntary Dismissal Without Prejudice to refile his claim.
(b) Upon notice and opportunity to be heard, any claim may be dismissed with or without prejudice by the Commission on its own motion or by motion of any party if the Commission finds that the party failed to prosecute or to comply with the rules in this Subchapter or any Order of the Commission.
(c) When a plaintiff has not requested a hearing within two years of the filing of the Order removing the case from a hearing calendar and has not pursued the claim, upon notice and opportunity to be heard, any claim shall be dismissed with prejudice by the Commission, on its own motion or by motion of any party.

Authority G.S. 97-80(a); 97-84; 97-91.

04 NCAC 10A .0617 ATTORNEYS RETAINED FOR PROCEEDINGS

~~Consistent with the provisions in G.S. 97-84, 97-85, and 97-86, the Commission shall establish guidelines for the electronic submission, including electronic mail and facsimile, of documents and communications.~~
(a) Any attorney who is retained by a party in a proceeding before the Commission shall comply with the applicable rules of the North Carolina State Bar. A copy of a notice of representation shall be served upon all other counsel and all unrepresented parties. Thereafter, all notices required to be served on a party shall be served upon the attorney. No direct contact or communication concerning contested matters may be made with a represented party by the opposing party or any person on its behalf, without the attorney's permission except as permitted by G.S. 97-32 or other applicable law.
(b) Any attorney who wishes to withdraw from representation in a proceeding before the Commission shall file with the Commission, in writing a Motion to Withdraw that contains a statement of reasons for the request and that the request has been served on the client. The attorney shall make reasonable efforts to ascertain the last known address of the client and shall include this information in the motion. A Motion to Withdraw before an award is made shall state whether the withdrawing attorney requests an attorney's fee from the represented party once an award of compensation is made or approved.
(c) An attorney may withdraw from representation only for good cause shown and by written order of the Commission. The issuance of an award of the Commission does not release an attorney as the attorney of record.

(d) An attorney withdrawing from representation whose client wishes to appeal an Order, Decision, or Award to the Full Commission shall timely file a notice of appeal, as set out by this Subchapter, on behalf of his or her client either before or with his or her Motion to Withdraw.
(e) Motions to Withdraw shall be submitted electronically to attorneywithdrawals@ic.nc.gov, unless electronic submission is unavailable to the parties. The Motion to Withdraw shall include a proposed Order that includes, in the appearances, the last known address of any pro se party, or the contact information of new counsel, if such counsel has been retained. The proposed Order shall include fax numbers for all parties, if known.

Authority G.S. 97-80(a); 97-90; 97-91.

04 NCAC 10A .0618 DISQUALIFICATION OF A COMMISSIONER OR DEPUTY COMMISSIONER
Commissioners or Deputy Commissioners may recuse themselves from the hearing of any case before the Commission. In the interest of justice, a majority of the Full Commission may remove a Commissioner or Deputy Commissioner from the hearing of a case.

Authority G.S. 97-79(b); 97-80(a).

04 NCAC 10A .0619 FOREIGN LANGUAGE INTERPRETERS
(a) When a person who does not speak or understand the English language is called to testify in a hearing, other than in an informal hearing conducted pursuant to G.S. 97-18.1, the person, whether a party or a witness, shall be assisted by a qualified foreign language interpreter.
(b) To qualify as a foreign language interpreter, a person shall possess sufficient experience and education, or a combination of experience and education, speaking and understanding English and the foreign language to be interpreted, to qualify as an expert witness pursuant to G.S. 8C-1, Rule 702. A person qualified as an interpreter under this Rule shall not be interested in the claim and shall make a declaration under oath or affirmation to interpret accurately, truthfully and without any additions or deletions, all questions propounded to the witness and all responses thereto.
(c) Any party who is unable to speak or understand English, or who intends to call as a witness a person who is unable to speak or understand English, shall so notify the Commission and the opposing party, in writing, not less than 21 days prior to the date of the hearing. The notice shall state the language(s) that shall be interpreted for the Commission.
(d) Upon receiving or giving the notice required in Paragraph (c) of this Rule, the employer or insurer shall retain a disinterested interpreter, who possesses the qualifications listed in Paragraph (b) of this Rule, to appear at the hearing and interpret the testimony of all persons for whom the notice in Paragraph (c) of this Rule has been given or received.
(e) The interpreter's fee shall constitute a cost as contemplated by G.S. 97-80. A qualified interpreter who interprets testimony for the Commission is entitled to payment of the fee agreed upon by the interpreter and employer or insurer that retained the interpreter. Except in cases where a claim for compensation has been prosecuted without reasonable ground, the fee agreed upon by the interpreter and employer or insurer shall be paid by the employer or insurer. Where the Commission ultimately determines thatthe request for an interpreter was unfounded, attendant costs shall be assessed against the movant.
(f) Foreign language interpreters shall abide by the Code of Conduct and Ethics of Foreign Language Interpreters and Translators, contained in Part 4 of Policies and Best Practices for the Use of Foreign Language Interpreting and Translating Services in the North Carolina Court System and promulgated by the North Carolina Administrative Office of the Courts, and shall interpret, as word for word as is practicable, without editing, commenting, or summarizing, testimony or other communications. The Code of Conduct and Ethics of Foreign Language Interpreters and Translators is hereby incorporated by reference and includes subsequent amendments and editions. A copy may be obtained at no charge from the North Carolina Administrative Office of the Court's website, http://www.nccourts.org/Citizens/CPrograms/Foreign/Documents/guidelines.pdf, or upon request, at the offices of the Commission, located in the Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, between the hours of 8:00 a.m. and 5:00 p.m.

Authority G.S. 97-79(b); 97-80(a).

SECTION .0700 – APPEALS

04 NCAC 10A .0701 REVIEW BY THE FULL COMMISSION
(a) A letter expressing ~~an intent to appeal shall be~~ a request for review is considered ~~notice of appeal~~ an application of review to the Full Commission within the meaning of ~~G.S. § 97-85,~~ G.S. 97-85, provided that ~~it~~ the letter specifies the Order or Opinion and Award from which appeal is taken.
(b) After receipt of ~~notice of appeal,~~ a request for review, the ~~Industrial~~ Commission ~~will~~ shall supply to the appellant a Form 44 *Application for Review* upon which appellant ~~must~~ shall state the grounds for the ~~appeal.~~ review. The grounds ~~must~~ shall be stated with particularity, including the ~~specific~~ errors allegedly committed by the Commissioner or Deputy Commissioner and, when applicable, the pages in the transcript on which the alleged errors are recorded. Failure to state with particularity the grounds for ~~appeal~~ review shall result in abandonment of such grounds, as provided in Paragraph ~~(3).~~ (d). Appellant's completed Form 44 *Application for Review* and brief ~~must~~ shall be filed and served within 25 days of appellant's receipt of the transcript or receipt of notice that there will be no transcript.~~transcript, unless the Industrial Commission, in its discretion, waives the use of the Form 44. The time for filing a notice of appeal from the decision of a Deputy Commissioner under these rules shall be tolled until a timely motion to reconsider or to amend the decision has been ruled upon by the Deputy Commissioner.~~

(c) The time for filing a request for review from the decision of a Deputy Commissioner under the Rules in this Subchapter shall be tolled until a timely motion to reconsider or to amend the decision has been ruled upon by the Deputy Commissioner. A motion to reconsider or to amend the decision of a Deputy Commissioner shall be filed within 15 days of receipt of notice of the award.
~~(c)~~(d) ~~Particular grounds~~ Grounds for ~~appeal~~ review not set forth in the ~~application for review~~ Form 44 *Application for Review* ~~shall be~~ are deemed abandoned, and argument thereon shall not be heard before the Full Commission.
~~(d)~~(e) ~~Appellant's~~ Appellant shall file a Form 44 *Application for Review* and brief in support of his grounds for ~~appeal~~ review ~~shall be filed in triplicate~~ with the ~~Industrial~~ Commission, with a certificate indicating service on the appellee, ~~by mail or in person,~~ within 25 days after receipt of the transcript, or receipt of notice that there will be no transcript. ~~Thereafter, appellee~~ The appellee shall have 25 days from service of appellant's brief ~~within which~~ to file a reply brief ~~in triplicate~~ with the ~~Industrial~~ Commission, with written statement of service ~~of copy by mail or in person~~ on appellant. When an appellant fails to file a brief, appellee shall file his brief within 25 days after appellant's time for filing brief has expired. A party who fails to file a brief ~~will~~ shall not be allowed oral argument before the Full Commission. If both parties ~~appeal,~~ request review, they shall each file an appellant's and appellee's brief on the schedule set forth ~~herein.~~ in this Paragraph. If the matter has not been calendared for hearing, any party may file with the Docket Director a written stipulation to a single extension of time not to exceed 15 days. In no event shall the cumulative extensions of time exceed 30 days.
~~(e)~~(f) After ~~notice of appeal~~ request for review has been given to the Full Commission, any motions related to the issues for review before the Full Commission shall be filed ~~in triplicate~~ with the Full Commission, with service on the other parties. Motions related to the issues for review including motions for new trial, to amend the record, or to take additional evidence, filed during the pendency of a request for review to the Full Commission shall be argued before the Full Commission at the time of the hearing of the request for review.
~~(f) No new evidence will be presented to or heard by the Full Commission unless the Commission in its discretion so permits.~~
(g) Cases ~~should~~ shall be cited to the North Carolina ~~Reports~~ Reports, the North Carolina Court of Appeals Reports, or the North Carolina Reporter, and ~~preferably,~~ when possible, to the Southeastern Reporter. Counsel shall not discuss matters outside the record, assert personal opinions or relate personal experiences, or attribute ~~unworthy~~ wrongful acts or motives to opposing counsel.
(h) ~~The Industrial Commission or any one of the parties with permission of the Industrial Commission may waive oral argument before the Full Commission.~~ Upon the request of a party or on its own motion, the Commission may waive oral argument to prevent manifest injustice, promote judicial economy, or expedite a decision in the public interest. In the event of such waiver, the Full Commission ~~will~~ shall file a ~~decision,~~ an award, based on the ~~record, assignments of error~~ record and briefs.
~~(j)~~(i) Briefs to the Full Commission shall not exceed 35 pages, excluding attachments. No page limit ~~shall apply~~ applies to the length of attachments. Briefs shall be prepared ~~entirely~~ using a 12 point ~~font,~~ type, shall be double spaced, and shall be prepared with non-justified right margins. Each page of the brief shall be numbered at the bottom rightof the page. When a party quotes or paraphrases ~~quoting or paraphrasing~~ testimony or other evidence from a transcript of the evidence or from an exhibit in the party's brief, the party shall include, at the end of the sentence in the brief that quotes or paraphrases the testimony or other evidence, a parenthetic entry ~~in the text~~ that designates the source of the quoted or paraphrased material and the page number location within the applicable source. ~~to include the exact page number location within the transcript of the evidence of the information being referenced shall be placed at the end of the sentence citing the information [Example: (T.p.38)].~~ The party shall use "T" for transcript, "Ex" for exhibit, and "p" for page number. For example, if a party quotes or paraphrases material located in the transcript on page 11, the party shall use the following format "(T p 11)", and if a party quotes or paraphrases material located in exhibit three on page 12, the party shall use the following format "(Ex 3 p 12)". When a party quotes or paraphrases ~~quoting or paraphrasing~~ testimony or other evidence in the transcript of a deposition in the party's brief, the party shall include, at the end of the sentence in the brief that quotes or paraphrases the testimony or other evidence from the deposition, a parenthetic entry ~~in the text to include~~ that contains the name of the name of the person deposed and ~~exact~~ the page number location within the transcript of the deposition. ~~of the information being referenced shall be placed at the end of the sentence citing the information. [Example: (Smith p.15)].~~ For example, if a party quotes or paraphrases the testimony of John Smith, located on page 11 of the transcript of the deposition, the party shall use the following format "(Smith p 11)".
~~(i)~~(j) ~~A plaintiff~~ An employee ~~appealing~~ requesting a review of the amount of a disfigurement award shall personally appear before the Full Commission to permit the Full Commission to view the disfigurement.

Authority G.S. 97-80(a); 97-85.

04 NCAC 10A .0702 REVIEW OF ADMINISTRATIVE DECISIONS

~~(a) Except as otherwise provided in G.S. § 97-86, in every case appealed to the North Carolina Court of Appeals, the Rules of Appellate Procedure shall apply. The running of the time for filing and serving a notice of appeal is tolled as to all parties by a timely motion filed by any party to amend, to make additional findings or to reconsider the decision, and the full time for appeal commences to run and is to be computed from the entry of an Order upon any of these motions, in accordance with Rule 3 of the Rules of Appellate Procedure.~~
~~(b) If the parties cannot agree on the record on appeal, appellant shall furnish the Chair of the Industrial Commission, or his designee, one copy of the proposed record on appeal, objections and/or proposed alternative record on appeal along with a timely request tosettle the record on appeal. The hearing to settle the record on appeal shall be held at the offices of the Industrial Commission or by telephone conference. The record on appeal shall be settled in accordance with the provisions of Rule 18(d) of the North Carolina Rules of Appellate Procedure.~~
~~(c) The amount of the appeal bond shall be set by the Chair, or his designee, and may be waived in accordance withG.S. § 97-86.~~
(a) Administrative decisions include orders, decisions, and awards made in a summary manner, without findings of fact, including decisions on applications to approve agreements to pay compensation and medical bills, applications to approve the termination or suspension or the reinstatement of compensation, applications for change in treatment or providers of medical compensation, applications to change the interval of payments, and applications for lump sum payments of compensation shall be reviewed upon the filing of a Motion for Reconsideration with the Commission addressed to the Administrative Officer who made the decisions or may be reviewed by requesting a

hearing within 15 days of receipt of the decisions or receipt of the ruling on a Motion to Reconsider. These issues may also be raised and determined at a subsequent hearing.

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

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

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

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

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

Authority G.S. 97-80(a); 97-85.

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

~~When a case is remanded to the Commission from the appellate courts, each party may file a statement with the Full Commission, supported by a brief if appropriate, setting forth its position on the actions or proceedings, including evidentiary hearings or depositions, required to comply with the court's decision. This statement shall be filed within 30 days of the issuance of the court's mandate and shall be filed with the Commissioner who authored the Full Commission decision or the Chairman of the Industrial Commission if the Commissioner who authored the decision is no longer a member of the Industrial Commission.~~

Authority G.S. 97-80(a).

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

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

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

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

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

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

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

Authority G.S. 97-80(a); 97-86.

04 NCAC 10A .0704 REMAND FROM THE APPELLATE COURTS

When a case is remanded to the Commission from the appellate courts, each party may file a statement, with or without a brief, to the Full Commission setting forth its position on the actions or proceedings, including evidentiary hearings or depositions, required to comply with

the court's decision. This statement shall be filed within 30 days of the issuance of the court's mandate and shall be filed with the Commissioner who authored the Full Commission decision or the Commissioner designated by the Chairman of the Commission if the Commissioner who authored the decision is no longer a member of the Industrial Commission.

Authority G.S. 97-80(a); 97-86.

SECTION .0800 – RULES OF THE COMMISSION

04 NCAC 10A .0801 SUSPENSION OF RULES

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

To prevent manifest injustice to a party, or to expedite a decision in the public interest, the Commission may, except as otherwise provided by the Rules in this Subchapter, suspend or vary the requirements or provisions of any of the rules in this Subchapter in a case pending before the Commission upon application of a party or upon its own initiative, and may order proceedings in accordance with its directions.

Authority G.S. 97-80(a).

04 NCAC 10A .0802 SANCTIONS

(a) ~~Upon failure to comply with any of the aforementioned rules, the Industrial Commission may subject the violator to any of the sanctions outlined in Rule 37 of the North Carolina Rules of Civil Procedure, including reasonable attorney fees to be taxed against the party or his counsel whose conduct necessitates the order.~~ The Commission may, on its own initiative or motion of a party, impose a sanction against a party, or attorney or both when the Commission determines that such party, or attorney, or both failed to comply with the rules in this Subchapter. The Commission may impose sanctions of the type and in the manner prescribed by Rule 37 of the North Carolina Rules of Civil Procedure.

(b) Failure to timely file forms as required by either ~~these~~ the Rules in this Subchapter or pursuant to the Workers' Compensation Act may result in fines or other ~~appropriate~~ sanctions.

Authority G.S. 1A-1, Rule 37; 97-18; 97-80(a); 97-88.1.

04 NCAC 10A .0803 RULEMAKING

~~Prior to adopting, deleting, or amending any Workers' Compensation Rule of the Industrial Commission which affects the substantive rights of parties, the Industrial Commission will give at least 30 days' notice of the proposed change in rules. Such notice will be given by publishing, in a newspaper or newspapers of general circulation in North Carolina, notice of such proposed change. Such notice will include an invitation to any interested party to submit in writing any objection, suggestion or other comment with respect to the proposed rule change or to appear before the Full Commission at a time and place designated in the notice for the purpose of being heard with respect to the proposed rule change.~~

Authority G.S. 97-80(a).

SECTION .0900 – REPORT OF EARNINGS

04 NCAC 10A .0901 CHECK ENDORSEMENT

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

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

Authority G.S. 97-80(a); 97-88.2.

04 NCAC 10A .0902 NOTICE

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

NOTICE TO EMPLOYEE RECEIVING WORKERS' COMPENSATION BENEFITS

> This NOTICE is intended to advise you of important information you ~~need to~~ must know if you are receiving workers' compensation benefits.
> Please TAKE NOTICE of the following:

(a) When you are receiving weekly workers' compensation benefits, you must report any earnings you receive to the insurance company (or employer if the employer is self-insured) that is paying you the benefits. "Earnings" include any cash, wages or salary received from self-employment or from any employment other than the employment where you were injured. Earnings also include commissions, bonuses, and the cash value for all payments received in any form other than cash (e.g., a building custodian receiving a rent-free apartment). ~~Commission bonuses, etc.,~~ Incentives, commissions, bonuses, or other compensation earned before disability but received during the time you are also receiving workers' compensation benefits do not constitute earnings that must be reported.
(b) You must report any work in any business, even if the business lost money or if profits or income were reinvested or paid to others.
(c) Your endorsement on a benefit check or deposit of the check into an account is your ~~statement~~ certification that you have not worked for or earned wages from any business or individual during the period covered by the check, or that you have reported any earnings to the employer or carrier paying you workers' compensation benefits and that ~~believe that~~ you are entitled to receive workers' compensation benefits. Your signature on a benefit check is ~~a~~ further ~~affirmation~~ certification that you have made no material false statement or concealed any material fact regarding your right to receive the benefit check.
(d) Making false statements for the purpose of obtaining workers' compensation benefits may result in civil and criminal penalties.

Authority G.S. 97-80(a); 97-88.2.

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

(a) A self-insured employer, carrier or third-party administrator may require the employee who has filed a claim to complete a Form 90 *Report of Earnings* when reasonably necessary but not more than once every six months.
(b) The Form 90 *Report of Earnings* ~~must~~ shall be sent to the employee by certified mail, return receipt requested, and include a self-addressed stamped envelope for the return of the form. When the employee is represented by an attorney, the Form 90 *Report of Earnings* shall be sent to the attorney for the employee and not to the employee.
(c) The employee shall complete and return the Form 90 *Report of Earnings* within 15 days after receipt of a Form ~~90.~~ 90 *Report of Earnings*. If the employee fails to complete and return the Form 90 *Report of Earnings* within 30 days of receipt of the form, the self-insured employer, carrier or third-party administrator may seek an order from the Executive Secretary allowing the suspension of benefits. The self-insured employer, carrier or third-party administrator shall not suspend benefits without Commission ~~approval.~~approval pursuant to the Workers' Compensation Act. If the Commission suspends benefits for failure to complete and return a Form 90 *Report of Earnings*, the self-insured employer, carrier or third-party administrator shall ~~immediately~~ reinstate benefits to the employee with back payment as soon as the Form 90 *Report of Earnings* is submitted by the employee. If benefits are not ~~immediately~~ reinstated, the employee ~~should~~ shall submit a written request for an Order from the Executive Secretary instructing the self-insured employer, carrier or third-party administrator to reinstate benefits. If the employee's earnings report does not indicate continuing eligibility for partial or total disability compensation, ~~then~~ the self-insured employer, carrier or third-party administrator may apply to the Commission to terminate or modify benefits ~~pursuant to Commission procedure, including~~ by filing a Form ~~24,~~ 24 *Application to Terminate or Suspend Payment of Compensation* ~~26, or 33.~~ or Form 33 *Request that Claim be Assigned for Hearing*.

Authority G.S. 97-80(a); 97-88.2.

SECTION .1000 – PREAUTHORIZATION FOR MEDICAL TREATMENT

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

(a) An insurer that requires preauthorization must establish a preauthorization review policy that describes the process for requesting preauthorization review. The policy must be publicly available on the insurer's website.
(b) As used in this Section:
(1) "insurer" means an insurance carrier, self-insured administrator, managed care organization, employer, or any other entity that conducts preauthorization review;
(2) "preauthorization" means the determination by an insurer that proposed surgical or inpatient treatment is medically necessary; and
(3) "preauthorization review" means a prospective review process conducted by an insurer to determine whether a proposed surgical or inpatient treatment is medically necessary.
(c) As used in this Section, "preauthorization" means the determination by an insurer that proposed surgical or inpatient treatment is medically necessary.
(d) As used in this Section "preauthorization review" means a prospective review process conducted by an insurer to determine whether a proposed surgical or inpatient treatment is medically necessary.
(e) Insurers shall, on an annual basis, electronically submit an electronic copy or link for any medical practice guidelines the insurer utilizes in the preauthorization review process to the Commission at the following electronic site (ftp://ftp.ic.nc.gov) by July 1 of each year.
(f) The insurer shall list in detail each surgical procedure and each inpatient service for which preauthorization review is required. These procedures and services shall be publicly available on the insurer's website.
(g) The preauthorization review policy shall include:

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

(2) procedures via telephone, fax and email for communicating with the preauthorization agent with decision making powers on a pending request for preauthorization (including Peer Review Physicians) on a continuous basis on every business day (which excludes weekends and holidays) between the hours of8:00 a.m. and 8:00 p.m. eastern standard time;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(m) Requests made to the Commission for an extension of time shall be directed to the Office of the Executive Secretary, and shall be simultaneously copied to the requesting medical provider, if any, and to the claimants attorney or to the claimant, if unrepresented.

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

Authority G.S. 97-25.3; 97-80(a).

SUBCHAPTER 10B – TORT CLAIMS RULES

SECTION .0100 – ADMINISTRATION

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

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

Authority G.S. 143-291; 143-300.

04 NCAC 10B .0102 OFFICIAL FORMS

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

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

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

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

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

Authority G.S. 143-300.

04 NCAC 10B .0103 FILING FEES

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

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

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

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

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

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

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

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

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

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

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

Authority G.S. 143-291.2; 143-300.

04 NCAC 10B .0104 FILING BY FACSIMILE TRANSMISSION

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

Authority G.S. 143-291; 143-291.2; 143-297; 143-300.

SECTION .0200 - CLAIMS PROCEDURES

04 NCAC 10B .0201 RULES OF CIVIL PROCEDURE

~~(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~~ Commission, to the extent that ~~such Rules~~ the Rules of Civil Procedure are not inconsistent with the Tort Claims Act. In the event of ~~such~~ an inconsistency, the Tort Claims Act and ~~these~~ the Rules in this Subchapter shall control.

~~(b) In medical malpractice cases filed by or on behalf of prison inmates where the plaintiff is alleging that a health 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 and the defendant has filed a Motion to Dismiss the claim, all discovery is stayed until the following occurs:~~

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

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

~~(B) whether expert testimony is necessary for the plaintiff to prevail; and~~
~~(C) if expert testimony is deemed necessary, whether the plaintiff will be able to produce such testimony on the applicable standard of care.~~

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

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

Authority G.S. 143-300.

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

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

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

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

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

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

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

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

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

(a) In medical malpractice cases filed by or on behalf of prison inmates where the plaintiff is alleging that a health 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 and the defendant has filed a Motion to Dismiss the claim, all discovery is stayed until the following occurs:

(1) A recorded hearing in which no evidence is taken is held before a Deputy Commissioner or a Special Deputy Commissioner for the purpose of determining
(A) whether a claim for medical malpractice has been stated;
(B) whether expert testimony is necessary for the plaintiff to prevail; and
(C) if expert testimony is deemed necessary, whether the plaintiff will be able to produce such testimony on the applicable standard of care.

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

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

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

Authority G.S. 143-300.

04 NCAC 10B .0203 INFANTS AND INCOMPETENTS

~~A Commissioner or Deputy Commissioner may upon the motion of a party or upon his own motion, enlarge the time within which an action must be taken or a document filed pursuant to this Article. If the claim has not been calendared, a Motion for Enlargement of Time should be directed to the Commissioner or Deputy Commissioner designated by the Chair to determine Tort Claim motions. An enlargement of time may be granted either before or after the relevant time requirement has elapsed.~~

(a) Consistent with G.S. 17(b), Infants or incompetents may bring a tort claim action only through their guardian *ad litem*. Upon the written application on a Form 42 *Application for Appointment of Guardian Ad Litem*, the Commission shall appoint a fit and proper person as guardian *ad litem*, if the Commission determines it to be in the best interest of the minor or incompetent. The Commission shall appoint the guardian *ad litem* only after due inquiry as to the fitness of the person to be appointed.

(b) No compensation due or owed to the minor or incompetent shall be paid directly to the guardian *ad litem*.

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

Authority G.S. 143-291; 143-295; 143-300.

04 NCAC 10B .0204 MOTIONS

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

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

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

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

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

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

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

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

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

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

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

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

Authority G.S. 143-296; 143-300.

04 NCAC 10B .0205 MEDIATION

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

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

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

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

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

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

~~(f) In a case in which a Motion to Amend Pleadings has been filed, the Commissioner or Deputy Commissioner may permit amendment of pleadings at the time of the hearing and then proceed to a determination of the case based on the evidence presented at the hearing without requiring additional pleadings.~~
~~(g) Motions to dismiss or for summary judgment for the defendant on the ground that plaintiff has failed to specifically name the individual officer, agent, employee or involuntary servant whose alleged negligence gave rise to the claim, or failure to properly name the department or agency of the State with whom such person was employed, shall be ruled upon following discovery~~.
~~(h) In appropriate cases, motions may be set for hearing before a Commissioner or Deputy Commissioner upon request of either party or upon the Commission's own motion~~.
(a) The parties to tort claims, by agreement or Order of the Commission, shall participate in mediation. Any party participating in mediation is bound by the Rules for Mediated Settlement and Neutral Evaluation Conferences of the Commission found in 04 NCAC 10G, except to the extent the same conflict with the Tort Claims Act or the rules in this Subchapter, in which case the Tort Claims Act and the rules in this Subchapter apply.
(b) Every effort shall be made to make the employee or agent of the named governmental entity or agency available via telecommunication. Mediation shall not be delayed due to the absence or unavailability of the employee or agent of the named governmental entity or agency.
(c) Consistent with 04 NCAC 10G .0101(g), the State shall not be compelled to participate in a mediation or neutral evaluation procedure with a prison inmate.

Authority G.S. 143-295; 143-296; 143-300.

04 NCAC 10B .0206 HEARINGS

(a) The ~~Industrial~~ Commission may, on its own motion, order a hearing, rehearing, or pre-trial conference of any tort claim in dispute.
(b) The ~~Industrial~~ Commission shall set a contested case for hearing in a location deemed convenient to witnesses and the ~~Industrial~~ Commission, and conducive to an early and just resolution of disputed issues.
~~(c) In cases involving a plaintiff who is an inmate in the North Carolina Department of Correction, the Industrial Commission shall set contested cases for hearing as follows:~~
~~(1) In the prison unit where plaintiff is incarcerated or in some other prison facility or secure facility agreed upon by the Industrial Commission and the Attorney General's office; or~~
~~(2) By videoteleconference according to procedures adopted by the Industrial Commission; or~~
~~(3) By telephone conference according to procedures adopted by the Industrial Commission.~~
~~(d)~~(c) The ~~Industrial~~ Commission may issue writs of habeas corpus ad testificandum in cases arising under the Tort Claims Act. Requests for issuance of a writ of habeas corpus ad testificandum ~~should~~ shall be sent to the ~~Dockets Department~~ Docket Section of the ~~Industrial~~ Commission if the case has not been set on a calendar for hearing. If the case has been set ~~for~~ on a hearing calendar, the request ~~should~~ shall be sent to the ~~Deputy~~ Commissioner or Deputy Commissioner before whom the case is set.
~~(e)~~(d) The ~~Industrial~~ Commission shall give ~~reasonable~~ notice of a hearing in every case. A motion for a continuance shall be allowed only ~~in the discretion of a~~ by the Commissioner or Deputy Commissioner before whom the case is ~~set.~~ set if required to prevent manifest injustice. Where a party has not notified the ~~Industrial~~ Commission of the attorney representing the party prior to the mailing of calendars for hearing, notice to that party ~~shall constitute~~ constitutes notice to the party's attorney.
~~(f)~~(e) In cases involving ~~minimal~~ property ~~damage,~~ damage of less than five hundred dollars ($500.00), the Commission ~~may,~~shall, upon its own motion or upon the motion of either party, order a telephonic hearing on the matter.
~~(g) In cases of multiple claim filings by an inmate, the Industrial Commission may consolidate all of the claims for hearing upon the motion of either party or upon the Commission's own motion. Other cases may be consolidated according to Rule 42 of the North Carolina Rules of Civil Procedure.~~
(f) All subpoenas shall be issued in accordance with Rule 45 of the North Carolina Rules of Civil Procedure, with the exception that production of public records or hospital records as provided in Rule 45(c)(2), shall be served upon the Commissioner or Deputy Commissioner before whom the case is calendared, or upon the Docket Section of the Commission should the case not be calendared.
~~(h)~~(g) In the event of inclement weather or natural disaster, hearings set by the Commission shall be cancelled or delayed~~if~~ when the proceedings ~~in~~ before the General Court of Justice ~~are cancelled in~~ the that county ~~in which the Tort Claims hearings are set~~ are cancelled or delayed.

Authority G.S. 143-296; 143-300.

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

~~Hearing costs shall be assessed in each case set for hearing, including those cases which are settled after being calendared and notices mailed, and shall be payable upon submission of a statement by the Industrial Commission. In addition to the filing fee, the Industrial Commission may tax costs against a party. Costs payable to the Industrial Commission are due upon receipt of a bill or statement from the Commission.~~
(a) In tort claims involving a plaintiff who is an inmate in the North Carolina Division of Adult Corrections, the Commission shall set contested cases or motions for hearing as follows:
(1) in the prison unit where plaintiff is incarcerated or in some other prison facility or secure facility; or
(2) by videoteleconference;
(3) by telephone conference.
(b) In cases involving multiple filings by an inmate, the Commission may, in the interest of justice and for judicial economy, consolidate all of the claims for hearing upon the motion of either party or upon the Commission's own motion.

(c) Witnesses incarcerated by the North Carolina Division of Adult Corrections may be subpoenaed by a writ of habeas corpus ad testificandum. Plaintiff shall file an *Application and Writ of Habeas Corpus Ad Testificandum*, with a copy to the defendant, for review and approval by the Deputy Commissioner before whom the matter is calendared for an evidentiary hearing consistent with the Workers' Compensation Act.
(d) All other subpoenas shall be issued in accordance with Rule 45 of the North Carolina Rules of Civil Procedure, with the exception that production of public records or hospital records as provided in Rule 45(c)(2), shall be served upon the Commissioner or Deputy Commissioner before whom the matter is calendared or upon the Docket Section of the Commission should the case not be calendared.

Authority G.S. 97-101.1; 143-296; 143-300.

04 NCAC 10B .0208 HEARING COSTS
Costs relating to tort claims payable to the Commission are due upon receipt of a bill or statement from the Commission.

Authority G.S. 7A-305; 143-291.1; 143-291.2; 143-300.

SECTION .0300 - APPEALS TO FULL COMMISSION

04 NCAC 10B .0301 SCOPE
~~A letter or other document expressing an intent to appeal, which is filed within 15 days of receipt of the Decision and Order of the Industrial Commission, and which clearly sets forth the Decision and Order from which appeal is taken, shall be considered notice of appeal to the Full Commission within the meaning of N.C.G.S. 143-292. Such notice shall include a written statement confirming service of a copy of the notice by mail or in person on the opposing party or parties.~~
The Rules in this Section are the applicable Rules for appeals of cases brought pursuant to Article 31 of Chapter 143 of the General Statutes to the Full Commission.

Authority G.S. 143-292; 143-300.

04 NCAC 10B .0302 NOTICE OF APPEAL TO THE FULL COMMISSION
~~Upon receipt of notice of appeal, the Industrial Commission, after taxing appropriate costs, will prepare and supply to all parties a transcript of the record of the case and decision from which appeal is being taken to the Full Commission.~~
A letter expressing an intent to appeal shall be considered notice of appeal to the Full Commission within the meaning of G.S. 143-292, provided that the letter specifies the Order, Opinion and Award, or Decision and Order from which appeal is taken.

Authority G.S. 143-292; 143-300.

04 NCAC 10B .0303 PROPOSED ISSUES ON APPEAL
(a) The appellant shall, within 25 days of receipt of the transcript of the record, or receipt of notice that there will be no transcript of the record, file ~~in triplicate~~ with the ~~Industrial Commission,~~ Commission a written statement of the proposed issues that the appellant intends to present on appeal. The statement shall certify service ~~of a copy by mail or in person~~ upon the opposing party or parties. The purpose of the proposed~~Proposed~~ issues on appeal ~~are~~ is to facilitate the preparation of the record on appeal and ~~shall~~ does not limit the scope of the issues presented on appeal in appellant's brief.
(b) Failure to file the proposed issues on appeal may result in the dismissal of the appeal either upon the motion of the non-appealing party or upon the Full Commission's own motion.

Authority G.S. 143-292; 143-300; Dogwood Development and Management Co., LLC v. White Oak Transport Co., Inc., 362 N.C. 191 (2008).

04 NCAC 10B .0304 DISMISSALS OF APPEALS
~~Failure to file assignments of error may result in the dismissal of the appeal either upon the Motion of the non-appealing party or upon the Full Commission's own Motion.~~

Authority G.S. 143-300.

04 NCAC 10B .0305 BRIEFS TO THE FULL COMMISSION
~~(a) Appellant's brief shall be filed with the Industrial Commission in triplicate no later than 25 days after receipt of the transcript of the record or receipt of notice that there will be no transcript.~~
~~(b) Thereafter, appellee's brief shall be filed with the Industrial Commission in triplicate no later than 25 days after the service of appellant's brief. When an appellant fails to file a brief, appellee shall file his brief within 25 days after appellant's time for filing a brief has expired. If both parties appeal, they shall each file an appellant's and appellee's brief on the schedule set forth herein. The parties may file with the Docket Director a written stipulation to a single extension of time for each party, not to exceed 30 days, if the matter has not been calendared for hearing.~~

~~(c) A party who fails to file a brief will not be allowed oral argument before the Full Commission. Cases should be cited by North Carolina Reports, and preferably, to Southeastern Reports. Counsel shall not discuss matters outside the record, assert personal opinions or relate personal experiences, or attribute unworthy acts or motives to opposing counsel.~~
~~(d) Each brief filed pursuant to this Rule shall be accompanied by a written certification that the brief has been served by mail or in person upon the opposing party or parties.~~
(a) An appellant shall file a Form 44 *Application for Review* and brief in support of his grounds for review with the Commission, with a certificate indicating service on the appellee, within 25 days after receipt of the transcript, or receipt of notice that there will be no transcript. The appellee shall have 25 days from service of the appellant's brief to file a reply brief with the Commission, with written statement of service on the appellant. When the appellant fails to file a brief, the appellee shall file his brief within 25 days after the appellant's time for filing brief has expired. A party who fails to file a brief shall not be allowed oral argument before the Full Commission. If both parties appeal, they shall each file an appellant's and appellee's brief on the schedule set forth in this Rule. If the matter has not been calendared for hearing, any party may file with the Docket Director a written stipulation to a single extension of time not to exceed 15 days. In no event shall the cumulative extensions of time exceed 30 days.
(b) After request for review has been given to the Full Commission, any motions related to the issues for review before the Full Commission shall be filed with the Full Commission, with service on the other parties. Motions related to the issues for review including motions for new trial, to amend the record, or to take additional evidence, filed during the pendency of a request for review to the Full Commission shall be argued before the Full Commission at the time of the hearing of the request for review.
(c) Cases shall be cited to the North Carolina Reports, the North Carolina Court of Appeals Reports, or the North Carolina Reporter, and when possible, to the Southeastern Reporter. Counsel shall not discuss matters outside the record, assert personal opinions or relate personal experiences, or attribute wrongful acts or motives to opposing counsel.
(d) Briefs to the Full Commission shall not exceed 35 pages, excluding attachments. No page limit applies to the length of attachments. Briefs shall be prepared using a 12 point type, shall be double spaced, and shall be prepared with non-justified right margins. Each page of the brief shall be numbered at the bottom right of the page. When a party quotes or paraphrases testimony or other evidence from a transcript of the evidence or from an exhibit in the party's brief, the party shall include, at the end of the sentence in the brief that quotes or paraphrases the testimony or other evidence, a parenthetic entry that designates the source of the quoted or paraphrased material and the page number location within the applicable source. The party shall use "T" for transcript, "Ex" for exhibit, and "p" for page number. For example, (1) if a party quotes or paraphrases material located in the transcript on page 11, the party shall use the following format "(T p 11)" and (2) if a party quotes or paraphrases material located in exhibit three on page 12, the party shall use the following format "(Ex 3 p 12)". When a party quotes or paraphrases testimony or other evidence in the transcript of a deposition in the party's brief, the party shall include, at the end of the sentence in the brief that quotes or paraphrases the testimony or other evidence from the deposition, a parenthetic entry that contains the name of the person deposed and the page number location within the transcript of the deposition. For example, if a party quotes or paraphrases the testimony of John Smith, located on page 11 of the transcript of the deposition, the party shall use the following format "(Smith p 11)".

Authority G.S. 143-296; 143-300.

04 NCAC 10B .0306 MOTION FOR NEW HEARING
~~A Motion for a New Hearing must be filed in writing, and supported by Affidavit. Such Motions filed during the pendency of an appeal to the Full Commission shall be argued before the Full Commission at the time of the hearing of the appeal.~~

Authority G.S. 143-292; 143-296; 143-300.

04 NCAC 10B .0307 MOTIONS BEFORE THE FULL COMMISSION
~~During the pendency of an appeal to the Full Commission, any motion by either party shall be filed in triplicate with the Industrial Commission and directed to the Chair if the case has not been calendared. If the case has been calendared the motion shall be directed to the Chair of the Full Commission panel before whom the case is set. Every motion shall certify, in writing, that it has been served by mail or in person upon the opposing party or parties. Motions for Reconsideration of a decision of the Full Commission shall be directed to the Commissioner who authored the Decision and Order.~~
(a) After notice of appeal has been given to the Full Commission, any motions related to the claim beforethe Full Commission shall be filed with the Full Commission, with service on the other parties.
(b) A Motion for a New Hearing must be filed in writing, and supported by Affidavit. Motions related to the issues for review including motions for new trial, to amend the record, or to take additional evidence, filed during the pendency of an appeal to the Full Commission shall be argued before the Full Commission at the time of the hearing of the appeal.

Authority G.S. 143-296; 143-300.

04 NCAC 10B .0308 STAYS
WHEN A CASE IS APPEALED TO THE FULL COMMISSION, ~~COMMISSION OR TO THE COURT OF APPEALS, ALL DECISIONS AND ORDERS~~ ORDERS, OPINION AND AWARDS, OR DECISION AND ORDERS OF A DEPUTY COMMISSIONER ~~OR THE FULL COMMISSION~~ ARE STAYED PENDING APPEAL.

Authority G.S. 143-292; 143-296; 143-300.

04 NCAC 10B .0309 NEW EVIDENCE

~~No new evidence will be presented to, or heard by, the Full Commission unless the Commission in its discretion permits.~~

Authority G.S. 143-300.

04 NCAC 10B .0310 WAIVER OF ORAL ARGUMENT

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

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

Authority G.S. 143-292; 143-296; 143-300.

SECTION .0400 - APPEALS TO THE COURT OF APPEALS

04 NCAC 10B .0401 SCOPE

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

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

Authority G.S. 143-293; 143-300.

04 NCAC 10B .0402 STAYS

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

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

Authority G.S. 143-292; 143-294; 143-296; 143-300.

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

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

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

Authority G.S. 143-293; 143-300.

04 NCAC 10B .0404 REMAND FROM APPELLATE COURTS

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

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

Authority G.S. 143-292; 143-296; 143-300.

SECTION .0500 – RULES OF THE COMMISSION

04 NCAC 10B .0501 SUSPENSION OF RULES

~~In the interest of justice, any tort claims Rule may be waived by a Commissioner, Deputy Commissioner, or the Full Commission~~

To prevent manifest injustice to a party, or to expedite a decision in the public interest, the Commission may, except as otherwise provided by the Rules in this Subchapter, suspend or vary the requirements or provisions of any of the Rules in this Subchapter ina case pending before the Commission upon application of a party or upon its own initiative, and may order proceedings in accordance with its directions.

Authority G.S. 143-291; 143-300.

04 NCAC 10B .0502 RULEMAKING

~~Prior to adopting, deleting or amending any Tort Claims Rule of the Industrial Commission which affects the substantive rights of parties, the Industrial Commission will give at least 30 days notice of the proposed change in rules. Such notice will be given by publishing, in a newspaper or newspapers of general circulation in North Carolina, notice of such proposed change. Such notice will include an invitation to any interested party to submit in writing any objection, suggestion or other comment with respect to the proposed rule change or to appear before the Full Commission at a time and place designated in the notice for the purpose of being heard with respect to the proposed rule change.~~

Authority G.S. 143-300.

04 NCAC 10B .0503 SANCTIONS

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

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

Authority G.S. 1A-1, Rule 37; 143-291; 143-296; 143-300.

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

SECTION .0100 – ADMINISTRATION

4 NCAC 10C .0101 APPLICABILTY OF THE RULES

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

(1) ~~All~~ cases in which the employer is obligated to ~~provide~~ provide, or is providing medical compensation, and the injured worker is obligated to accept medical compensation under the Workers' Compensation Act, or in which such compensation is provided by agreement, and during any period when the employer is paying temporary total disability benefits ~~"without prejudice,"~~ without prejudice in accordance with G.S. 97-18(d); and

(2) ~~Any Rehabilitation Professional any rehabilitation professional (hereinafter RP)~~ as defined in Item (1) of Rule .0103 of this Subchapter, who is assigned under the Workers' Compensation Act and approved by the Commission pursuant to ~~Section VI. E.~~ Rule .0105 of this Subchapter.

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

Authority G.S. 97-18(d); 97-25.4; 97-25.5; 97-32.2; 97-80.

4 NCAC 10C .0102 PURPOSE OF THE RULES

~~(a) The purpose of these Rules is to foster professionalism in the provision of rehabilitation services in Industrial Commission cases, such that in all cases the primary concern and commitment of the RP is to the medical and vocational rehabilitation of the injured worker rather than to the personal or pecuniary interests of the parties.~~

~~(b) To this end, these Rules are to be interpreted to promote frank and open cooperation among parties in the rehabilitation process, and to discourage the pursuit of plans or purposes which impede or conflict with the parties' progress toward that goal.~~

Authority G.S. 97-25.4.

4 NCAC 10C .0103 DEFINITIONS

As used in this Subchapter:

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

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

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

~~(d)~~(2) "Medical rehabilitation" ~~refers to~~ means the planning and coordination of health care ~~services.~~ services by a medical case manager or coordinator, with the goal of assisting an injured worker to be restored ~~The goal of medical rehabilitation is to~~

~~assist in the restoration of injured workers~~ as nearly as possible to the ~~workers'~~ worker's pre-injury level of physical function. Medical case management ~~may include but is not limited to~~ includes:

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

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

(c) evaluation of treatment results;

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

(e) referral for further vocational rehabilitation services.

~~(e)~~(3) ~~"Vocational Rehabilitation"~~ "Vocational rehabilitation" ~~refers to~~ means the delivery and coordination of services under an individualized written plan, with the goal of assisting the injured ~~workers~~ worker to return to suitable ~~employment~~employment, as defined by Item (5) of this Rule or applicable statute, and to substantially increase the employee's wage-earning capacity.

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

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

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

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

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

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

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

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

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

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

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

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

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

Authority G.S. 97-2(22); 97-25.4; 97-25.5; 97-32.2; 97-80.

4 NCAC 10C .0105 QUALIFICATIONS REQUIRED

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

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

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

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

~~(1) Requirements for Qualified Rehabilitation Professionals (QRPs):~~
~~(A) Two years of full-time work experience, or its equivalent, in workers' compensation case management, where a minimum of 30 percent of the time was spent in managing medical and/or vocational rehabilitation services to persons with disabling conditions or diseases. This experience should have been within the past 15 years; AND one of the following credentials, or a similar credential determined by the Industrial Commission as a substantial equivalent thereto:~~
~~(i) Certified Rehabilitation Counselor (CRC);~~
~~(ii) Certified Registered Rehabilitation Nurse (CRRN);~~
~~(iii) Certified Disability Management Specialist (CDMS);~~
~~(iv) Certified Vocational Evaluator (CVE);~~
~~(v) Certified Occupational Health Nurse (COHN);~~
~~(vi) Orthopaedic Nurse Certified (ONC);~~
~~(vii) Certified Case Manager (CCM); or~~
~~(B) Employed within the North Carolina Department of Human Resources as a Vocational Rehabilitation Provider;~~
~~(C) The Commission may, through its Minutes, modify the list of credentials contained in subsection (a) above to add or delete appropriate credentials.~~
~~(2) Requirements for Conditional Rehabilitation Professionals (CRPs):~~
~~(A) A CRP is defined as a person who does not meet the requirements for QRP and who wishes to work as an RP in cases subject to this rule, including the following:~~
~~(i) CRC, CRRN, CDMS, CVE, COHN, ONC or CCM without the workers' compensation case management experience required;~~
~~(ii) A post-baccalaureate degree in a health-related field from an accredited institution, plus one year of experience in the provision of rehabilitation services to persons with disabling conditions or diseases;~~
~~(iii) A baccalaureate degree in a health-related field from an accredited institution, plus two years experience in the provision of rehabilitation services to individuals with disabling conditions or diseases; or~~
~~(iv) Current North Carolina licensure as a registered nurse and three years experience in clinical nursing providing care for adults with disabling conditions and diseases.~~
~~(B) In order to work as an RP, a CRP will work under the direct supervision of a QRP until qualifications for a QRP are fulfilled. The supervisor must meet the requirements for providing workers' compensation case management services in North Carolina. Supervision shall include regular case staffing between the CRP and the QRP supervisor, detailed review by the QRP supervisor of all reports, and periodic meetings no less frequently than quarterly. The name, address and telephone number of the supervisor shall be on all documents identifying the CRP. The QRP is responsible to assure that the work of the CRP shall meet all requirements including those of this rule.~~
~~(C) Once an RP meets certification eligibility requirements, an RP may maintain CRP status for a period of two years only~~

(d) To qualify as a qualified rehabilitation professional, a rehabilitation professional must:
(1) possess one of the following certifications:
(A) Certified Rehabilitation Counselor (CRC), as certified by the Commission on Rehabilitation Counselor Certification;
(B) Certified Registered Rehabilitation Nurse (CRRN), as certified by the Rehabilitation Nursing Certification Board;
(C) Certified Disability Management Specialist (CDMS), as certified by the Certification of Disability Management Specialists Commission;
(D) Certified Vocational Evaluator (CVE), as certified by the Commission on Rehabilitation Counselor Certification;
(E) Certified Occupational Health Nurse-Specialist (COHN-S), as certified by the American Board of Occupational Health Nurses;
(F) Certified Occupational Health Nurse (COHN), as certified by the American Board of Occupational Health Nurses;
(G) Orthopaedic Nurse Certified (ONC), as certified by the Orthopaedic Nurses Certification Board; or
(H) Certified Case Manager (CCM), as certified by the Commission for Case Manager Certification.
(2) have prior employment within the North Carolina Department of Health and Human Services as a vocational rehabilitation provider.
(e) A qualified rehabilitation professional must also:
(1) possess two years of full-time work experience, or its equivalent, in workers' compensation case management, where at least thirty percent of the rehabilitation professional's time was spent managing medical or vocational rehabilitation services to persons with disabling conditions or diseases within the past fifteen years; and
(2) complete the comprehensive course entitled, "*Workers' Compensation Case Management in NC: A Basic Primer for Medical and Vocational Case Managers*," provided by the Commission or the International Association of Rehabilitation Professionals of the Carolinas.

(f) To maintain "qualified" status, a rehabilitation professional shall attend a two-hour refresher course every five years, beginning with the date of the original course completion. Rehabilitation professionals who completed the course in its pilot phase prior to March 17, 2011 have until July 1, 2016 to meet the refresher program mandate.
(g) Effective July 1, 2013, any rehabilitation professional on the Commission's Registry of Workers' Compensation Rehabilitation Professionals who does not hold a certificate of completion for the mandated course shall lose "qualified" rehabilitation professional status and may to work as a conditional rehabilitation professional under supervision of a qualified rehabilitation professional for no longer than six months before completing the required course.
(h) After July 1, 2013, any rehabilitation professional who begins providing rehabilitation services in cases subject to the Rules in this Subchapter shall have six months to obtain a certificate of completion of the mandated course.
(i) The Commission shall oversee the implementation and ongoing administration of the mandated course and training.
(j) Conditional rehabilitation professionals permitted to provide services in cases subject to the Rules in this Subchapter include:

(1) individuals who possesses one of the certifications for qualified rehabilitation professionals listed in Subparagraph (d) and (e) of this Rule, but who does not possess the workers' compensation case management experience required by the Rules in this Subchapter;
(2) individuals with a post-baccalaureate degree in a health-related field from an institution accredited by an agency recognized by the United States Department of Education and one year of experience providing rehabilitation services to persons with disabling conditions or diseases;
(3 individuals with a baccalaureate degree in a health-related field from an institution accredited by an agency recognized by the United States Department of Education and two years of experience providing rehabilitation services to individuals with disabling conditions or diseases; and
(4) individuals with current North Carolina licensure as a registered nurse and three years of experience in clinical nursing providing care for adults with disabling conditions and diseases.

(k) To provide services as a rehabilitation professional in cases subject to the Rules in this Subchapter, a conditional rehabilitation professional must work under the direct supervision of a qualified rehabilitation professional, who shall ensure that the conditional rehabilitation professional's work meets the requirements of the Rules in this Subchapter and any applicable statute, and whose name, address and telephone number shall be on all documents identifying the conditional rehabilitation professional.
(l) As used in this Rule, direct supervision includes regular case review between the conditional rehabilitation professional and the qualified rehabilitation professional supervisor, review by the qualified rehabilitation professional supervisor of all reports, and periodic meetings that occur at least on a quarterly basis.
(m) A rehabilitation professional may maintain conditional rehabilitation professional status for a period of two years only. To continue providing services as a rehabilitation professional in cases subject to the Rules in this Subchapter beyond the two year period, the conditional rehabilitation professional must obtain the qualifications for a qualified rehabilitation professional listed under Paragraph (d) of this Rule.
(n) Rehabilitation professionals shall, upon request, provide a resume of their qualifications and credentials during initial meetings with parties and health care providers.

Authority: G.S. 97-25.4; 97-32.2; 97-25.5; 97-80.

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 ~~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 Certifieds, the Code of Ethics for Nurses;
(3) for Certified Disability Management Specialists, the Certification of Disability Management Specialists Commission Code of Professional Conduct;
(4) for Certified Occupational Health Nurses and Certified Occupational Health Nurse-Specialists, the American Association of Occupational Health Nurses, Inc. Code of Ethics; and
(5) for Certified Case Managers, the Code of Professional Conduct for Case Managers.

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

(1) for Certified Rehabilitation Counselors and Certified Vocational Evaluators, the Commission on Rehabilitation Counselor Certification Code of Professional Ethics), http://www.crccertification.com/filebin/pdf/CRCCodeOfEthics.pdf;

(2) for Certified Registered Rehabilitation Nurses and Orthopaedic Nurse Certifieds, the Code of Ethics for Nurses, http://www.nursingworld.org/MainMenuCategories/EthicsStandards/CodeofEthicsforNurses/Codeof-Ethics.pdf;

(3) for Certified Disability Management Specialists, the Certification of Disability Management Specialists Commission Code of Professional Conduct, http://new.cdms.org/docs/CDMS%20Code%20of%20Professional%20Conduct%2008012011.pdf;

(4) for Certified Occupational Health Nurses and Certified Occupational Health Nurse-Specialists, the American Association of Occupational Health Nurses, Inc. Code of Ethics,https://www.aaohn.org/dmdocuments/Code_of_Ethics_2009.pdf; and

(5) for Certified Case Managers, the Code of Professional Conduct for Case Managers http://www.ccmcertification.org/sites/default/files/downloads/2012/CCMC_Code_of_Conduct%202-22-12.pdf.

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

~~(f) Prohibited Conduct:~~

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

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

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

Authority G.S. 97-25.4; 97-32.2; 97-25.5; 97-80.

4 NCAC 10C .0107 COMMUNICATION

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

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

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

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

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

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

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

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

~~(g)~~(f) The ~~RP~~ rehabilitation professional shall make periodic written reports documenting accurately and completely the substance of all ~~significant~~ activity in the case, including ~~the~~ rehabilitation ~~activity~~activity. ~~defined above, which reports shall be provided to all parties at the same time. A worker not represented by counsel shall be furnished~~ The rehabilitation professional shall furnish a worker who is unrepresented by counsel with a copy of each periodic report, or, in the alternative, the ~~RP~~ rehabilitation professional shall advise the worker either orally or in writing (at least as often as reports are produced) as to the plan for and progress of the case, and ~~shall advise the worker~~ that ~~he or she~~ the worker has the right to request a copy of the reports under ~~Industrial Commission Rule~~ 4 NCAC 10A .0607.

~~(h)~~(g) Frequency and timing of periodic reports ~~will~~ shall be determined at the time of referral and ~~will~~ shall depend ~~upon~~ on the type of service provided. ~~However, prompt~~ Communication of ~~significant~~ activity to all parties by telephone, ~~telecopier,~~ facsimile, electronic media, or letter ~~should~~ must occur when information ~~pertinent~~ relevant to the rehabilitation process is obtained, ~~when~~ changes or revisions are

recommended or occur in medical or vocational treatment plans, or on any other occasion when the worker's understanding and cooperation is ~~important~~ critical to the implementation of the rehabilitation plan.

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

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

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

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

Authority G.S. 97-25.4; 97-25.5; 97-32.2; 97-2(19); 97-80.

4 NCAC 10C .0108 INTERACTION WITH PHYSICIANS

(a) At the initial visit with a physician the ~~RP~~ rehabilitation professional shall provide ~~professional~~ identification and ~~shall~~ explain the ~~RP's~~ rehabilitation professional's role in the case.

(b) In all cases, the ~~RP~~ rehabilitation professional shall advise the worker that ~~he or she~~ the worker has the right to a private examination by the medical provider outside of the presence of the ~~RP.~~rehabilitation professional. If the worker prefers, he or she may request that the ~~RP~~ rehabilitation professional accompany him or her during the examination. However, if the worker or the worker's attorney notifies the ~~RP~~ rehabilitation professional in writing that the worker desires a private examination, no subsequent waiver of that right shall be effective unless the waiver is ~~revoked~~ made in writing by the worker or, if represented, by the worker's attorney.

(c) If the ~~RP~~ rehabilitation professional~~wishes~~ needs to have a an ~~personal~~ in-person conference with the physician following an examination, the ~~RP~~ rehabilitation professional~~should~~ shall reserve with the physician sufficient appointment time for ~~a~~ the conference. The worker ~~must~~ shall be offered the opportunity to attend ~~this~~ the conference with the physician. If the worker or the physician does not consent to a joint conference, or if in the physician's opinion it is medically contraindicated for the worker to participate in the conference, the ~~RP~~ rehabilitation professional ~~will~~ shall note this in his or her report, ~~and~~ may ~~in such case~~ communicate directly with the physician, and shall report the substance of the communication.

(d) When the ~~RP~~ rehabilitation professional determines that it is necessary to communicate with a physician other than at a joint meeting, the ~~RP~~ rehabilitation professional shall first notify the injured worker, or ~~his/her~~ his or her attorney if represented, of the ~~RP's~~ rehabilitation professional's intent to communicate and the reasons therefore. The ~~RP~~ rehabilitation professional~~need~~ is not required to obtain the injured worker's or his or her attorney's prior consent ~~for the following types of communication:~~ if:

(1) The communication is limited to scheduling issues or requests for time-sensitive medical records;
(2) A medical emergency is involved;
(3) The injured worker's health or medical treatment would either be adversely affected by a delay or benefited by immediate action;
(4) The communication is limited to advising the physician of the employer or carrier approval for recommended testing or treatment;
(5) The injured worker or attorney has consented to ~~such~~ the ~~communications~~ communications; ~~through a valid, current authorization;~~
(6) The communication is initiated by the physician; or
(7) The injured worker failed to show up for a scheduled appointment or arrived at a time other than the scheduled appointment time.

~~Whenever an RP~~ When a rehabilitation professional communicates with a physician without the prior consent or presence of the injured worker, the ~~RP~~ rehabilitation professional must ~~promptly~~ document the reasons for and the substance of the communication and ~~promptly~~ report ~~such~~ the reasons and substance to the injured worker or his or her attorney, if represented, pursuant to Rule ~~VI.~~ .0106 of this Subchapter.

~~(e) The RP may assist in scheduling second opinions requested by the treating physician, as well as supporting treatment. In such case, the worker shall receive at least 10 calendar days notice of an appointment for a second opinion unless otherwise agreed by the parties or required by statute.~~

~~(f) The RP may assist in obtaining from the treating physician an opinion as to the degree of permanent partial impairment retained by the worker at maximum medical improvement. The decision to obtain a second physician's opinion on the degree of impairment is not within the practice of rehabilitation. However, if requested by the party who desires a second opinion, the RP may assemble information, schedule, coordinate, and, with the worker's consent, attend the appointment with that physician.~~

~~(g) If a party requests a second opinion or an independent medical examination, the RP's involvement is limited to assembling and forwarding medical records and information, and scheduling, coordinating, and, with the worker's consent, attending the appointment with that physician.~~

(e) The following guidelines apply to interactions regarding impairment ratings, independent medical examinations, second opinions or consults:

(1) Rehabilitation professionals shall not initiate a request for impairment ratings, second opinions or independent medical examinations. Rehabilitation professionals may communicate the requests to medical providers, injured workers and carriers, and shall clearly communicate the source of the requests.

(2) When a party or medical provider requests a consult, second opinion or independent medical examination, the rehabilitation professional may assemble and forward medical records and information, schedule and coordinate an appointment, and, if the worker consents, have a joint meeting with the medical provider and the worker after a private exam, if requested.

(3) When any such exam is requested by the carrier, the worker shall receive at least 10 calendar days' notice of the appointment unless the parties agree otherwise or unless otherwise required by statute.

~~(h)~~(f) The ~~RP~~ rehabilitation professional shall simultaneously send ~~copies to~~ the parties copies of all written communications ~~to~~ with medical care ~~providers,~~ providers and shall accurately and completely record and report all oral communications.

Authority G.S. 97-25.4; 97-25.5; 97-32.2; 97-80.

4 NCAC 10C .0109 VOCATIONAL REHABILITATION SERVICES AND RETURN TO WORK

(a) When performing the vocational assessment and formulating and drafting the individualized written rehabilitation plan for the employee required by G.S. 97-32.2(c), the vocational rehabilitation professional shall follow G.S. 97-32.2.

(b) Job placement activities may not be commenced until after a vocational assessment and an individualized written rehabilitation plan for vocational rehabilitation services specifying the goals and the priority for return-to-work options have been completed in the case in accordance with G.S. 97-32.2. Job placement activities shall be directed only toward prospective employers offering the opportunity for suitable employment, as defined by Item (5) of Rule .0103 of this Subchapter or by applicable statute.

(c) Return-to-work options shall be considered in the following order of priority:

(1) current job. current employer;

(2) new job, current employer;

(3) on-the-job training, current employer;

(4) new job, new employer;

(5) on-the-job training, new employer;

(6) formal education or vocational training to prepare worker for job with current or new employer; and

(7) self-employment, only when its feasibility is documented with reference to the employee's aptitudes and training, adequate capitalization, and market conditions.

(d) When an employee requests retraining or education as permitted in G.S. 97-32.2(a), the vocational rehabilitation professional shall provide a written assessment of the employee's request, which includes an evaluation of:

(1) the retraining or education requested;

(2) the availability, location, cost, and identity of providers of the requested retraining or education;

(3) the likely duration until completion of the requested retraining or education and the likely class schedules, class attendance requirements, and out-of-class time required for homework and study;

(4) the current or projected availability of employment upon completion; and

(5) the anticipated pay range for employment upon completion.

~~(a)~~(e) The ~~RP~~ rehabilitation professional shall obtain from the medical provider work restrictions ~~which~~ that ~~fairly~~ address the demands of any proposed employment. If ordered by a physician, the ~~RP~~ rehabilitation professional ~~should~~ shall ~~obtain~~ schedule an appointment with a third party provider to evaluate an injured worker's functional capacity ~~valuation (FCE) or~~ physical ~~apacity~~, or impairments to work ~~valuation. (PCE). Any FCE or PCE obtained should measure the worker's capacities and impairments.~~

~~(b)~~(f) The ~~RP~~ Rehabilitation Professional shall refer the worker only to opportunities for suitable employment, as defined ~~herein~~ by Item (5) of Rule .0103 of this Subchapter or by applicable statute.

~~(c)~~(g) If the ~~RP~~ rehabilitation professional intends to utilize written or videotaped job descriptions in the return-to-work process, the ~~RP~~ rehabilitation professional shall provide a copy of the description to all parties for review before the job description is provided to the doctor. The worker or the worker's attorney shall have seven business days from the mailing of the ~~description,~~ description to notify the ~~RP,~~ rehabilitation professional, all parties, and the physician of any objections or amendments ~~to the job description.~~ thereto. The job description and the objections or amendments, if any, shall be submitted to the physician simultaneously. This process ~~may~~ shall be expedited ~~on occasions~~ when job availability is critical. This waiting period does not apply if the worker or the worker's attorney has pre-approved the job description.

~~(d)~~(h) In preparing written job descriptions, the ~~RP~~ rehabilitation professional shall utilize ~~recognized standards which may include but not be limited to~~ the Dictionary of Occupational Titles ~~and/or~~ and the Handbook for Analyzing Jobs published by the ~~U.S.~~ United States Department of Labor. ~~Labor, which are recognized as national standard references for use in vocational rehabilitation.~~

~~(e)~~(i) In identifying proposed employment for the injured worker, the ~~RP~~ rehabilitation professional ~~should~~ shall consider the worker's transportation requirements.

~~(f)~~ (j) The rehabilitation professional may conduct follow-up after job placement ~~may be carried out~~ to verify the appropriateness of the job placement.

~~(g)~~(k) The ~~RP~~ rehabilitation professional shall not initiate or continue placement activities ~~which~~ that do not appear reasonably likely to result in placement of the injured worker in suitable employment. The ~~RP~~ rehabilitation professional shall report to the parties when efforts to place the worker in suitable employment do not appear reasonably likely to result in placement of the injured worker in suitable employment.

Authority G.S. 97-25.4; 97-25.5; 97-32.2; 97-2(22).

4 NCAC 10C .0110 CHANGE OF REHABILITATION PROFESSIONAL

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

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

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

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

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

Authority G.S. 97-25.4; 97-25.5; 97-32.2; 97-80; 97-83; 97-84.

SECTION .0200 - RULES OF THE COMMISSION

4 NCAC 10C .0201 SUSPENSION OF RULES

To prevent manifest injustice to a party, or to expedite a decision in the public interest, the Commission may, except as otherwise provided by the Rules in this Subchapter, suspend or vary the requirements or provisions of any of the Rules in this Subchapter in a case pending before the Commission upon application of a party or upon its own initiative, and may order proceedings in accordance with its directions.

Authority G.S. 97-25.4; 97-80.

4 NCAC 10C .0202 SANCTIONS

(a) For ineffective delivery of rehabilitation services, failure to comply with applicable laws, rules or regulations, or failure to respond to lawful orders of the Commission or other regulatory authorities, the Commission shall prohibit or restrict a rehabilitation professional, or group of rehabilitation professionals, further participation by particular workers, employers, or health care providers, groups or classes of them, or all of them.

(b) As provided in 4 NCAC 10A .0802, the Commission shall impose appropriate sanctions for violation of the Rules in this Subchapter.

Authority G.S. 97-25.4; 97-25.5; 97-32.2; 97-80; 97-84.

SUBCHAPTER 10D – WORKERS' COMPENSATION RULES FOR MANAGED CARE ORGANIZATIONS

SECTION .0100 – RULES

4 NCAC 10D .0101 PURPOSE

~~These~~ The Rules in this Subchapter are intended to facilitate the timely and cost-effective delivery of appropriate medical compensation services to fulfill the employer's duty to provide such services as are ~~reasonably~~ necessary to effect a cure, give relief, or shorten the period of disability resulting from compensable injuries through the use of Managed Care Organizations (MCOs). ~~These~~ The Rules in this Subchapter do not affect ~~existing,~~ informal lists or "employer networks" of providers assembled by employers or insurers for their own referrals.

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

4 NCAC 10D .0102 DEFINITIONS

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

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

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

~~(3)~~(1) ~~Employer. Any person, firm, corporation, or governmental entity~~ "Employer" means an employer as defined by G.S. 97-2(3) who is obligated by the Workers' Compensation Act to pay or provide indemnity or medical compensation, including

any insurance carrier, self-insurance fund, third party administrator or other person, firm or corporation undertaking to pay or adjust claims on behalf of the employer's employees.

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

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

~~(6)~~(3) ~~Employer Network. As used in Rule 1,~~ "Employer network" means any group of providers assembled by or for an entity liable for medical compensation that agrees to accept the referrals of that entity's workers' compensation patients, and from among whom an adjuster, officer, employee, or insured patient of the entity chooses the initial provider; provided, the entity has no right to sell the services of the providers to a third party.

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.

4 NCAC 10D .0103 QUALIFICATION BY DEPARTMENT OF INSURANCE

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

Authority G.S. 97-2(21); 97-25.

4 NCAC 10D .0104 QUALIFICATION AND REVOCATION

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

Authority G.S. 97-25.2.

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 ~~10%~~ 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.

Authority G.S. 97-25.2.

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.

Authority G.S. 97-25.2.

4 NCAC 10D .0107 INFORMATION FOR ~~EMPLOYEE/PATIENT~~ EMPLOYEE

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

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

(1) ~~The~~ the offices to contact concerning medical treatment for the injury, including atelephone number;

(2) ~~If~~ if known at that time, the employee's chosen treating physician, including a phone number for seeking medical assistance outside normal business hours if the injury might cause sucha need;

(3) ~~The~~ the applicable methods for choosing and changing treating physicians and resolving disputes concerning physicians or treatment pursuant to G.S. 97-25.2;

(4) ~~That~~ that the MCO can make available physicians in all the fields and specialties licensed by the State of North Carolina;

(5) ~~The~~ the employer's obligation to pay for treatment for which the ~~employee/patient~~ employee is referred to the MCO, whether or not the employer admits liability for the injury per G.S. 97-90(e);

(6) ~~The~~ the employee's duty to cooperate in treatment, and right to secure treatment at his or her own expense that does not interfere with the treating physician's treatment; and

(7) ~~The I.C.~~ the Commission's File Number, if known when filed. ~~Information for providers concerning billing may be included, labeled as such.~~

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

Authority G.S. 97-25.2.

4 NCAC 10D .0108 INCLUSIVE PROVIDER PANELS

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

Authority G.S. 97-2(19); 97-2(20); 97-25; 97-25.2.

4 NCAC 10D .0109 QUALITY ASSURANCE AND UTILIZATION REVIEW

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

Authority G.S. 97-25.2.

4 NCAC 10D .0110 SUSPENSION OF RULES

~~For good cause, and in its discretion, subject to statutory requirements, the Commission may waive adherence to any of theseRules.~~
To prevent manifest injustice to a party, or to expedite a decision in the public interest, the Commission may, except as otherwise provided by the Rules in this Subchapter, suspend or vary the requirements or provisions of any of the Rules in this Subchapter in a case pending before the Commission upon application of a party or upon its own initiative, and may order proceedings in accordance with its directions.

Authority G.S. 97-80(a); 97-25.2.

4 NCAC 10D .0111 SANCTIONS

(a) The Commission may, on its own initiative or motion of a party, impose a sanction against a party or attorney or both when the Commission determines that such party, or attorney, or both failed to comply with the Rules in this Subchapter. The Commission may impose sanctions of the type and in the manner prescribed by Rule 37 of the North Carolina Rules of Civil Procedure.
(b) Failure to timely file forms as required by either the Rules in this Subchapter or pursuant to the Act may result in fines or other sanctions.

Authority G.S. 97-18(i); 97-25; 97-25.2; 97-80(a); 97-88(1); 1A-1, Rule 37.

SUBCHAPTER 10E –ADMINISTRATIVE RULES OF THE INDUSTRIAL COMMISSION

SECTION .0100 – ADMINISTRATION

4 NCAC 10E .0101 INSTRUCTIONS FOR FILING A PETITION FOR RULE-MAKING

~~(a) All insurance companies and self-insured administrators providing benefits under the North Carolina Workers' Compensation Act shall, within 90 days of the effective date of these Rules, adopt, filewith the Chairman of the North Carolina Industrial Commission at 430 N. Salisbury Street, Raleigh, NC 27611 and implement a Utilization Review Plan for containing medical compensation services costs. If an entity has in effect a Utilization Review Plan that predates these Rules, it may file it with the Chairman of the Commission in lieu of adopting a new plan.~~
~~(b) The goal of such plans shall be to reduce costs without adversely affecting the quality of care to injured workers.~~
~~(c) Each plan shall provide for monitoring, evaluating, improving and promoting the quality of care and quality of services provided.~~
~~(d) Each plan shall address all areas and aspects of health care included in medical compensation within the meaning of the Workers' Compensation Act.~~
~~(e) Provider profiles shall be maintained and shall be filed with the Chairman of the Commission on a biennial basis, or on such other basis as may be ordered by the Commission from time to time, with the first filing to be made no later than 90 days after the effective date of these Rules.~~
(a) Any person may petition the Commission to adopt a new rule, or amend or repeal an existing rule by submitting a rule-making petition to the Chairperson of the Commission at 4336 Mail Service Center, Raleigh, NC 27699-4336. The petition must be titled "Petition for Rule-making" and must include the following information:

(1) the name and address of the person submitting the petition;
(2) a citation to any rule for which an amendment or repeal is requested;
(3) a draft of any proposed rule or amended rule;
(4) an explanation of why the new rule or amendment or repeal of an existing rule is requested and the effect of the new rule, amendment, or repeal on the procedures of the Commission; and
(5) any other information the person submitting the petition considers relevant.

(b) The Chairperson (Chair) must decide whether to grant or deny a petition for rule-making within 30 days of receiving the petition. In making the decision, the Chair shall consider the information submitted with the petition and any other relevant information.
(c) When the Chair denies a petition for rule-making, he or she must send written notice of the denial to the person who submitted the request. The notice must state the reason for the denial. When the Chair grants a rule-making petition, he or she must initiate rule-making proceedings and send written notice of the proceedings to the person who submitted the request.

Authority G.S. 150B-20.

4 NCAC 10E .0102 MAILING LIST

(a) Any person or agency desiring to be placed on the mailing list for the Commission's rule-making notices issued pursuant to G.S. 150B-21.2 may file a request in writing to the Chairperson of the Commission at 4336 Mail Service Center Raleigh, NC 276994336.
(b) The request shall:
(1) include the person's name and address;
(2) specify the subject areas within the authority of the Commission for which notice is requested; and
(3) state the calendar year(s) for which the notice is desired.

Authority G.S. 97-80(a); 150B-21.2(d).

SECTION .0200 – FEES

4 NCAC 10E .0201 DOCUMENT AND RECORD FEES

(a) The fees in this Rule apply to all subject areas within the authority of the Commission.
(b) Upon written request, to the extent permitted by Article 1 of Chapter 97, Article 31 of Chapter 143, and Chapter 132 of the North Carolina General Statutes, transcripts of Commission proceedings, copies of recordings of Commission proceedings, copies of exhibits from Commission proceedings, and copies of all other public documents are available at the "actual cost" as defined by G.S. 132.6.2(b). The Commission shall provide the "actual cost" on the Commission's website. the actual cost.
(f) Certified copies are available upon request at a cost of one dollar ($1.00) per certification in addition to any other applicable cost for the document. Electronic copy certification is not available.
(g) Documents shall be sent via certified mail upon requestat the actual cost established by the United States Postal Service.
(h) North Carolina sales tax shall be added if applicable.

Authority G.S. 7A-305; 97-79; 97-80; 132-6.2; 143-291.1; 143-291.2; 143-300.

4 NCAC 10E .0202 HEARING COSTS OR FEES

(a) The following hearing costs or fees apply to all subject areas within the authority of the Commission:
(1) one hundred twenty dollars ($120.00) for a hearing before a Deputy Commissioner;
(2) one hundred twenty dollars ($120.00) if a case is withdrawn after the case is calendared for a specific hearing date;
(3) two hundred twenty dollars ($220.00) for a hearing before the Full Commission;
(4) one hundred twenty dollars ($120.00) if an appeal or request for review to the Full Commission is withdrawn before the appeal or request for review is scheduled for specific hearing date;
(5) one hundred fifty-five dollars ($155.00) if an appeal or request for review to the Full Commission is withdrawn after the appeal or request for review is calendared for specific hearing date;
(6) one hundred twenty dollars ($120.00) for the dismissal of an appeal or request for review due to the failure to prosecute or perfect the appeal or request for review before the appeal or request for review is calendared for a specific hearing date; and
(7) one hundred and fifty-five dollars ($155.00) for the dismissal of an appeal or request for review due to the failure to prosecute or perfect the appeal or request for review after the appeal or request for review is calendared for a specific hearing date.
(b) Failure to pay fees or costs assessed by the Commission may result in further penalty, including a notice and order to show cause as to why a fee or cost assessed by the Commission has not been paid.

Authority G.S. 7A-305; 97-80; 143-291.1; 143-291.2; 143-300.

4 NCAC 10E .0203 FEES SET BY THE COMMISSION

(a) In workers' compensation cases, the Commission sets the following fees:
(1) three hundred seventy-five dollars ($375.00) for the processing of a compromise settlement agreement;
(2) two hundred fifty dollars ($250.00) for the processing a Form *21Agreement for Compensation for Disability*, Form 26 *Supplemental Agreement as to Payment of Compensation*, or Form 26A *Employer's Admission of Employee's Right to Permanent Partial Disability*;
(3) three hundred dollars ($300.00) for the processing of a request for a third party distribution order;
(4) one hundred seventy-five dollars ($175.00) for the processing of a Form 24 *Application to Stop or Suspend Payment of Compensation*; and
(5) a fee equal to the filing fee required to file of a civil action in the Superior Court division of the General Court of Justice for the processing of a Form 331 *Intervenor's Request that Claim be Assigned for Hearing.*
(b) In tort claims cases, the filing fee is an amount equal to the filing fee required to file a civil action in the Superior Court division of the General Court of Justice.

Authority G.S. 97-10.2; 97-17; 97-18.2; 97-26(i); 97-73; 97-80; 143-291.2; 143-300.

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

(a) The following fees shall be assessed for accident prevention and safety educational programs:
(1) one hundred twenty-five dollars ($125.00) per person for an Accident Prevention Awareness (APCAP) Workshop;

(2) seventy-five dollars ($75.00) per person for an Advanced APCAP Workshop;
(3) thirty dollars ($30.00) per person for a Safety and Health Workshop;
(4) twenty dollars ($20.00) per person for a First Aid, CPR, and AED Course, plus fifteen dollars ($15.00) per person for materials;
(5) fifteen dollars per person ($15.00) for a First Aid Course, plus twelve dollars ($12.00) per person for materials;
(6) fifteen dollars per person ($15.00) for a CPR and AED Course, plus twelve dollars ($12.00) per person for materials;
(7) twenty dollars ($20.00) per person for a Defensive Driving Course, plus four dollars ($4.00)per person for materials;
(8) fifty dollars ($50.00) per person for a HAZWOPER OPS Course or Refresher Course;
(9) thirty dollars ($30.00) per person for a HAZWOPER Awareness Course;
(10) twenty-five dollars ($25.00) per person for a Work Zone Flagger Course, plus five dollars ($5.00) for materials;
(11) thirty dollars ($30.00) per person for a Trenching Competent Person Course;
(12) thirty-five dollars ($35.00) per person for a Competent Person Scaffolding Course;
(13) forty-five dollars ($45.00) per person for an eight-hour NFPA E Arc Flash Course;
(14) thirty dollars ($30.00) per person for a four-hour NFPA E Arc Flash Course;
(15) fifty dollars ($50.00) per person for a Safety for Supervisors Course;
(16) one hundred fifty dollars ($150.00) per person for a Safety Leadership Course;
(17) a two hundred dollar ($200.00) flat fee for a (five to eight-hour) Workplace Training;
(18) a one hundred-fifty dollar ($150.00) flat fee for a (three to four-hour)Workplace Training (3-4 hours); and
(19) a one hundred dollar ($100.00) flat fee for a (one to two-hour) Workplace Training.

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

Authority G.S. 97-73(d); 97-80.

SECTION .0300 – RULES OF THE COMMISSION

4 NCAC 10E .0301 SUSPENSION OF RULES

To prevent manifest injustice to a party, or to expedite a decision in the public interest, the Commission may, except as otherwise provided by the Rules in this Subchapter, suspend or vary the requirements or provisions of any of the Rules in this Subchapter in a case pending before the Commission upon application of a party or upon its own initiative, and may order proceedings in accordance with its directions.

Authority G.S. 97-25.2; 97-25.4; 97-80; 130A-425(d); 143-166.4; 143-296; 143-300.

4 NCAC 10E .0302 SANCTIONS

(a) The Commission may, on its own initiative or motion of a party, impose a sanction against a party or attorney or both when the Commission determines that such party, or attorney, or both failed to comply with the Rules in this Subchapter. The Commission may impose sanctions of the type and in the manner prescribed by Rule 37 of the North Carolina Rules of Civil Procedure.
(b) Failure to timely file forms as required by either the Rules in this Subchapter or pursuant to the Act may result in fines or other sanctions.

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; 97-80; 97-84; 97-88(1); 130A-425(d); 143-166.4; 143-296;143-300.

SUBCHAPTER 10F – ELECTRONIC BILLING RULES

SECTION .0100 – ADMINISTRATION

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

Carriers and medical providers shall utilize electronic billing and payment in workers' compensation claims. Carriers and medical providers shall develop and implement electronic billing and payment processes consistent with 45 CFR 162. Carriers and medical providers shall comply with this Rule on or before January 1, 2014. 45 CFR 162 is hereby incorporated by reference and includes subsequent amendments and editions. A copy may be obtained at no charge from the National Archives and Records Administration's website, 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, 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.

Authority G.S. 97-26(g1); 97-80.

04 NCAC 10F .0102 DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

As used in this Subchapter:

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

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

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

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

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

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

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

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

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

Authority G.S. 97-26(g1); 97-80.

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

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

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

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

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

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

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

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

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

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

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

~~(h) The multiplier of 2.06 for Surgery will yield an 8% reduction. The Commission had originally proposed a multiplier of 2.02, which would have yielded a 10% reduction. The higher multiplier, and consequently the lower percentage reduction, gives recognition to the fact that the early intervention of good surgery is often what is needed for good results in difficult workers' compensation injury situations. The 1.96 multiplier for Radiology will yield a 20% reduction in that schedule rather than the 34% reduction using a multiplier of 1.60 that the Commission had originally proposed. The change from the 1.60 multiplier to the 1.96 multiplier was made by the Commission to give recognition to the fact that the Radiology schedule got "short changed" by the Medicare RBRVS system when it was first set up and has not be rectified by the Medicare RBRVS system in the intervening years.~~

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

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

(a) Beginning March 1, 2014, electronic medical billing transactions shall be conducted using the electronicformats adopted under the Code of Federal Regulations, Title 45, part 162, subparts K, N, and P. Whenever a standard format is replaced with a newer standard, the most recent standard shall be used. The requirement to use a new version shall commence on the effective date of the new version as published in the Code of Federal Regulations. The Code of Federal Regulations, Title 45, part 162, subparts K, N, and P is hereby incorporated by reference and includes subsequent amendments and editions. A copy may be obtained at no charge from the Internal Revenue Service's website, http://ecfr.gpoaccess.gov, or upon request, at the offices of the Commission, located in the Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, between the hours of 8:00 a.m. and 5:00 p.m.

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

Authority G.S. 97-26(g1); 97-80.

4 NCAC 10F .0104 BILLING CODE SETS

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

(1) "CDT-4 Codes" that refers to the codes and nomenclature prescribed by the American Dental Association.

(2) "CPT-4 Codes" that refers to the procedural terminology and codes contained in the "Current Procedural Terminology, Fourth Edition," as published by the American Medical Association.

(3) "Diagnosis Related Group (DRG)" that refers to the inpatient classification scheme used by CMS for hospital inpatient reimbursement.

(4) "Healthcare Common Procedure Coding System" (HCPCS) that refers to a coding system which describes products, supplies, procedures, and health professional services and which includes CPT-4 codes, alphanumeric codes, and related modifiers.
(5) "ICD-9-CM Codes" that refers to diagnosis and procedure codes in the International Classification of Diseases, Ninth Revision, Clinical Modification published by the United States Department of Health and Human Services.
(6) "ICD-10-CM/PCS that refers to diagnosis and procedure codes in the International Classification of Diseases, Tenth Edition, Clinical Modification/Procedure Coding System.
(7) National Drug Codes (NDC) of the United States Food and Drug Administration.
(8) "Revenue Codes" that refers to the 4-digit coding system developed and maintained by the National Uniform Billing Committee for billing inpatient and outpatient hospital services, home health services, and hospice services.
(9) "National Uniform Billing Committee Codes" that refers to the code structure and instructions established for use by the National Uniform Billing Committee (NUBC).

Authority G.S. 97-26(g1); 97-80.

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

(a) Applicability
(1) Payers and payer agents shall:
(A) accept electronic medical bills submitted in accordance with the adopted standards;
(B) transmit acknowledgments and remittance advice in compliance with the adopted standards in response to electronically submitted medical bills; and
(C) support methods to receive electronic documentation required for the adjudication of a bill.
(2) A health care provider shall:
(A) exchange medical bill data in accordance with the adopted standards;
(B) submit medical bills as defined by this Rule to any payers that has established connectivity with the health care provider system or clearinghouse;
(C) submit required documentation in accordance with Paragraph (d) of this Rule; and
(D) receive and process any acceptance or rejection acknowledgment from the payer.

(b) 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;
(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.

(c) Acknowledgment
(1) Interchange Acknowledgment (TA1) notifies the sender of the receipt of, and structural defects associated with, an incoming transaction.
(2) 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) 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 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) 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 days of receipt of the electronic submission.

(A) Notification of a rejected bill is transmitted in an ASC X12N 277 response or acknowledgment when an electronic medical bill does not meet the definition of a complete electronic medical bill 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.

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

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

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

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

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

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

(d) Electronic Documentation

(1) Electronic documentation, including but not limited to medical reports and records submitted electronically that support an electronic medical bill, may be required by the payer before payment may be remitted to the health care provider. Electronic documentation may be submitted simultaneously with the electronic medical bill.

(2) Electronic transmittal by electronic mail shall contain the following information:

(A) name of the injured employee;

(B) identification of the worker's employer, the employer's insurance carrier, or the third party administrator or its agent handling the workers' compensation claim;

(C) identification of the health care provider billing for services to the employee, and where applicable, its agent;

(D) date(s) of service; and

(E) workers' compensation claim number assigned by the payer, if known.

(e) Electronic remittance notification

(1) An electronic remittance notification is an explanation of benefits (EOB) or explanation of review (EOR), submitted electronically regarding payment or denial of a medical bill, recoupment request, or receipt of a refund.

(2) A payer shall provide an electronic remittance notification in accordance with G.S. 97-18.

(3) The electronic remittance notification shall contain the appropriate Group Claim Adjustment Reason Codes, Claim Adjustment Reason Codes (CARC) and associated Remittance Advice Remark Codes (RARC) as specified by ASC X12 835 implementation guide or, for pharmacy charges, the National Council for Prescription Drugs Program (NCPDP) Reject Codes, denoting the reason for payment, adjustment, or denial.

(4) The remittance notification shall be sent within two days of:

(A) the expected date of receipt by the medical provider of payment from the payer; or

(B) the date the bill was rejected by the payer. If a recoupment of funds is being requested, the notification shall contain the proper code described in Subparagraph (e)(3) of this Rule and a explanation for the amount and basis of the refund.

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

(g) A payer shall establish connectivity with any clearinghouse thatrequests the exchange of data in accordance with this Subchapter.

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

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

Authority G.S. 97-26(g1); 97-80.

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, a payer shall evaluate each bill's conformance with the criteria of a complete medical bill as follows:

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

(B) 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 provider to obtain the information necessary to make the bill complete as follows:

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

(A) 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) be specific to the bill or the bill's related episode of care;

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

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

(E) 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) 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.

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

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

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

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

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

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

(i) Payment of all uncontested portions of a complete medical bill shall be made within 30 days of receipt of the original bill, or receipt of additional information requested by the payer allowed under the law. Amounts paid after the 30 day review period shall accrue an interest penalty of 10 percent per month after the due date. The interest payment shall be made at the same time as the medical bill payment.

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

Authority G.S. 97-18(1); 97-26(g1); 97-80.

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

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

(b) When communicating with the healthcare provider, agent, or assignee, the payer may utilizen the ASC X12 Reason Codes, or as appropriate, the NCPDP Reject Codes, to communicate with the health care provider, agent, or assignee.

(c) Communication between the health care provider and payer related to medical bill processing shall 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.

Authority G.S. 97-26(g1); 97-80(a).

4 NCAC 10F .0108 SANCTIONS

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

Authority G.S. 1A-1, Rule 37; 97-26(g1); 97-80.

4 NCAC 10F .0109 EFFECTIVE DATE

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

Authority G.S. 97-26(g1); 97-80.

SUBCHAPTER 10G – NORTH CAROLINA INDUSTRIAL COMMISSION RULES FOR MEDIATED SETTLEMENT AND NEUTRAL EVALUATION CONFERENCES

SECTION .0100 – MEDIATION AND SETTLEMENT

04 NCAC 10G .0101 ORDER FOR MEDIATED SETTLEMENT CONFERENCE

(a) Mediation Upon Agreement of the Parties. If the parties to a workers' compensation claim or state tort claim agree to mediate ~~their~~ the claim, ~~they~~ the parties may schedule and proceed with mediation on their own, or ~~they~~ the parties may submit a request for a mediation order pursuant to ~~Rule 1(d).~~ Paragraph (d) of this Rule. No order from the Commission is necessary if the parties mutually agree to ~~mediate,~~ mediate the claim, but the mediator shall file a report of mediation with the Commission as required by ~~Rule 6(b)(4).~~ Paragraph (g) of Rule .0106 of this Subchapter. If the parties proceed with mediation in the absence of an order from the ~~Commission,~~ Commission and the Commission thereafter enters a mediation order, the parties shall ~~timely~~ notify the Commission that ~~they~~ the parties have agreed upon the selection of a mediator or, if the ~~mediation~~ mediated settlement conference has been completed, that ~~they~~ the parties request to be excused from any further mediation obligations pursuant to ~~Rule 1(g).~~ Paragraph (f) of this Rule.

(b) Referral Upon Receipt of a Form 33 ~~Request for Hearing.~~ *Request that Claim be Assigned for Hearing.* In any case in which the Commission receives a Form 33 ~~Request for Hearing~~*Request that Claim be Assigned for Hearing*, the Commission shall order ~~that disputed~~ the case to a mediated settlement ~~conference.~~ conference unless doing so would be contrary to the interest of justice.

(c) By Order of the Commission. Commissioners, Deputy Commissioners, the Commission's Dispute Resolution Coordinator, and such other employees as the Commission Chair ~~may~~ designate~~s from time to time~~ may, by written order, require the parties and their representatives to attend a mediated settlement conference concerning a dispute within the ~~tort and~~ workers' compensation and state tort claim jurisdiction of the Commission. Requests to dispense with or defer a ~~mediation~~ mediated settlement conference shall be addressed to the Dispute Resolution Coordinator. Unless the context otherwise requires, references to the "Commission" in ~~these~~ the Rules in this Subchapter shall mean the Dispute Resolution Coordinator.

(d) Mediation Upon Request of a Party. If a case is not otherwise ordered to a mediated settlement conference, a party may move the Commission to order ~~such~~ a conference. ~~Such~~ The motion shall be served on non-moving parties and shall state the reasons why the order should be entered. ~~allowed and, if the case is pending on the hearing docket, whether the party prefers for the case to be set for hearing on the next docket, for it to not be heard until further notice from the parties, or for it to not be set before a specified date. The motion shall be served on non-moving parties.~~ Responses may be filed in writing with the Commission within 10 days after the date of the service of the motion. ~~The Commission may require that any~~ Any motion for a mediation order shall be submitted on a form provided by the Commission.

(e) Timing of the Order. The order requiring mediation may be issued whenever it appears that the parties have a dispute arising under the Workers' Compensation Act or the Tort Claims Act.

~~(f) Content of Order. The Commission's order shall (1) require that the mediated settlement conference be held in the case, that pertinent documents be exchanged and that any specified discovery be completed prior to the conference; (2) establish a deadline for the pre-conference exchange of documents and other discovery, and for the completion of the conference; (3) provide a period within which the parties may select a mediator by mutual agreement (see Rule 2); (4) state the rate of compensation of the Commission-appointed mediator in the event that the parties do not exercise their right to select a mediator pursuant to Rule 2; (5) state that the parties shall be required to pay the mediator's fee at the conclusion of the settlement conference unless otherwise ordered by the Commission (see Rule 7); and, (6) may specify a date for an Industrial Commission hearing should the parties fail to reach a settlement.~~

~~(g)~~(f) Motion to Dispense with or Defer Mediated Settlement Conference. Mediation may be dispensed with ~~or canceled~~ by the ~~Commission, but~~ Commission in the interest of justice or judicial economy. As used in this Rule, the term "dispensed with" means setting aside or rescinding the mediation order(s) entered in the case, or excusing the parties from their obligations under the applicable order(s) or the Rules in this Subchapter. Mediation may not be dispensed with ~~or canceled~~ by the parties or the mediator unless the parties have agreed, subject to Commission approval, on a full and complete resolution of all disputed issues set forth in the request for hearing filed in the case, and the parties have given notice of the settlement to the Dispute Resolution Coordinator. ~~As used herein, the terms "dispensed with" and "canceled" shall mean and refer to setting aside or rescinding the mediation order(s) entered in the case, or excusing the parties from their obligations under the order(s) or these rules.~~ Within 55 days of the filing of a Form 33 ~~Request for Hearing,~~ *Request that Claim be Assigned for Hearing*, or otherwise within the deadline set forth in ~~21 days of the date of~~ the Commission's order entered pursuant to ~~Rules 1(c) and 1(d),~~ Paragraph (c) or Paragraph (d) of this Rule, a party may move to dispense with or defer the mediated settlement conference. ~~Such~~ The motion shall state the reasons the relief is ~~sought,~~ sought and must be received by the Dispute Resolution Coordinator within the applicable ~~21 or 55 day~~ deadline. For good cause shown, the Commission may grant the motion. ~~However, failure to file a motion to dispense with mediated settlement conference within the above stated 21 or 55 day deadline and after a mediator has been appointed may result in the moving party or parties, or other responsible person, being required to pay an administrative fee of up to $100.00 to the Commission.~~

~~(h)~~(g) Exemption from Mediated Settlement Conference. ~~In order to provide for the most efficacious use of mediation and neutral evaluation procedures, the Commission may specify, by type or kind, those cases to be ordered into or excluded from mediation and neutral evaluation procedures.~~ The State shall not be compelled to participate in a mediation or neutral evaluation procedure with a prison inmate.

~~(i)~~(h) Motion to Authorize the Use of Neutral Evaluation Procedures. The parties may move the Commission to authorize the use of a neutral evaluation procedure contained in Rule .0109 of this Subchapter in lieu of a mediated settlement conference. ~~The Commission may require that such~~ The motion shall be filed on a form provided by the ~~Commission, and such motion shall be filed~~ Commission within 55 days of the filing of a Form 33 ~~Request for Hearing,~~ *Request that Claim be Assigned for Hearing*, or otherwise within ~~21 days of the order requiring a mediated settlement conference~~ the deadline set forth in the Commission's order entered pursuant to ~~Rules 1(c) and 1(d),~~ Paragraph (c) or Paragraph (d) of this Rule, and shall state:

(1) ~~that~~ all parties consent to the ~~motion.~~ motion;

(2) ~~that~~ the neutral evaluator and the parties have agreed upon the selection and all terms of compensation of the neutral ~~selected.;~~ selected; and

(3) the name, address, and telephone number of the neutral evaluator selected by the ~~parties;~~ parties.

(4) ~~the names of all persons and entities the parties have agreed to excuse from attending the proceeding; and~~

(5) ~~such other information as may be required by the Commission~~.

(i) If the parties are unable to agree to the matters listed in Paragraph (h), ~~selection of a neutral or the persons excused from attending, then~~ the Commission shall deny the motion for authorization to use a neutral evaluation procedure, and the parties shall attend the mediated settlement conference as originally ordered by the Commission. If the parties are able to ~~timely~~ agree on the ~~above~~ matters listed in Paragraph (h), ~~then~~ the Commission ~~may~~ shall order the use of a neutral evaluation ~~proceeding. Provided,~~ proceeding; provided, however, that the Commission ~~will~~ shall not order the use of a neutral evaluation proceeding in any case in which the plaintiff is not represented by counsel.

(j) Cases Involving Plaintiffs Not Represented by Counsel. Unless an unrepresented plaintiff requests that the plaintiff's case be mediated, the Commission shall enter an order dispensing with mediation.

Authority G.S. 97-80(a), (c); 143-296; 143-300; Rule 1 of Rules Implementing Statewide Mediated Settlement Conference in Superior Court Civil Actions.

04 NCAC 10G .0102 SELECTION OF MEDIATOR

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

(b) Appointment by ~~Commission~~ Commission. If the parties fail to notify the Commission of ~~their~~ the parties' selection of a mediator within 55 days of the filing of a Form 33 ~~Request for Hearing,~~ *Request that Claim be Assigned for Hearing*, or otherwise within ~~21 days of a mediation~~ the deadline set forth in the Commission's order entered pursuant to ~~Rules 1(c) and 1(d),~~ Paragraph (c) or Paragraph (d) of Rule .0101 of this Subchapter, ~~as set forth above,~~ the Commission shall appoint a mediator to hold a mediated settlement conference in ~~that~~ the case. The Commission shall appoint a mediator ~~mediators from a list of mediators eligible for appointment maintained by the Commission which shall consist of those mediators~~ who ~~attain~~ meets the ~~qualifications in Rule 8 and request inclusion on such list.~~ requirements in Paragraph (b) of Rule .0108 of this Subchapter. In the absence of any suggestions by the parties with regard to the appointment of mediators, the Commission ~~mediators~~ shall ~~generally be selected~~ select the mediator for ~~specific the~~ cases case by random order, ~~or by a system which attempts to assign each mediator to an equal number of cases over a period of time,~~ unless the Commission determines ~~in its discretion~~ that, because of unusual circumstances, a particular mediator should be ~~chosen~~ appointed in a particular case. ~~If the parties request the approval of a selected mediator after the appointment of another mediator by the Commission, the Commission may require one or more of the parties, or other responsible person(s), to pay a substitution of mediator fee to the Commission of up to $10000.~~

~~(c) Mediator Lists. To assist parties in the selection of mediators by agreement, the Commission shall maintain a list of mediators eligible for appointment by the Commission in compensation and tort cases, and a list of mediators who are not eligible for appointment, but who may be selected by the parties and approved by the Commission. The Commission shall provide copies of these lists to parties on request, and may charge a reasonable fee for maintaining and distributing these lists.~~

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

Authority G.S. 97-80(a),(c); G.S. 143-296, 143-300; Rule 2 of Rules Implementing Statewide Mediated Settlement Conference in Superior Court Civil Actions.

04 NCAC 10G .0103 THE MEDIATED SETTLEMENT CONFERENCE

(a) Where Conference Is to Be ~~Held--~~Held. Unless all parties in a workers' compensation case or a state tort claims case and the mediator otherwise agree, the mediated settlement conference shall be held in the county where the case is pending. The mediator shall ~~be responsible for reserving~~ reserve a place and ~~making~~ make arrangements for the conference and ~~for giving~~ give~~timely~~ notice to all attorneys and unrepresented parties of the time and location of the conference.

(b) When Conference Is to Be ~~Held--~~Held. ~~Subject to the Commission's orders,~~ The conference shall be held at the time agreed to by the parties and the mediator, or if the parties do not agree, at the time specified by the mediator.

(c) Request to Extend Date of ~~Completion--~~Completion. ~~A party, or the mediator, may request that the Commission~~ In the interest of justice, the Commission may extend the deadline for completion of the ~~conference.~~conference upon the Commission's own motion, a motion or stipulation of the parties or the suggestion of the mediator. ~~The Commission may grant the request and extend the completion deadline by written order.~~

(d) ~~Recesses--~~Recesses. The mediator may recess the conference at any time and may set times for reconvening. ~~No further notification is required for persons present at the recessed conference.~~ If the time for reconvening is set before the conference is recessed, no further notification is required for persons present at the recessed conference.

(e) The Mediated Settlement Conference Is Not to Delay Other ~~Proceedings--~~Proceedings. A mediated settlement conference ~~shall~~ is not ~~be~~ cause for ~~the~~ delay of other proceedings in the case, including the completion of ~~discovery,~~ discovery and the filing or hearing of motions, ~~except by order of the Commission.~~unless ordered by the Commission in the interest of justice. ~~However,~~ No depositions shall be taken following a Commission order requiring mediation until mediation is concluded, except by agreement of the parties or order of the ~~Commission.~~ Commission in the interest of justice.

(f) Inadmissibility of Negotiations by Parties and Attorneys. Evidence of statements made and conduct occurring in a mediated settlement conference or other settlement proceeding conducted ~~under these rules,~~ pursuant to the Rules in this Subchapter,whether attributable to a party, the mediator, other neutral, or a neutral observer present at the settlement conference or proceeding, ~~shall~~ are not ~~be~~ subject to discovery and shall be inadmissible in any proceeding in the action or other actions on the sameclaim, except:

(1) ~~In~~ proceedings for sanctions for violations of the attendance or payment ofmediation fee provisions ~~of Rules 4 and 7;~~ contained in Rule .0104 and Rule .0107 of this Subchapter;

(2) ~~In~~ proceedings to enforce or rescind a settlement of the action;

(3) ~~In~~ disciplinary proceedings before the North Carolina State Bar or any agency enforcing standards of conduct for mediators or other neutrals, including the ~~Industrial~~ Commission; or

(4) ~~In~~ proceedings to enforce laws concerning juvenile or elder abuse.~~As used in these rules, the term "neutral observer" includes persons seeking mediator certification, persons studying dispute resolution processes, and persons acting as interpreters. No settlement agreement to resolve any or all issues reached at the proceeding conducted under this subsection or during its recesses shall be enforceable unless it has been reduced to writing and signed by the parties. No evidence otherwise discoverable shall be inadmissible merely because it is presented and discussed in a mediated settlement conference or other settlement proceeding.~~

(g) No settlement agreement to resolve any or all issues reached at the settlement conference or proceeding conducted under this Subchapter or reached during a recess in the conference or proceeding shall be enforceable unless the settlement agreement has been reduced to writing and signed by the parties. No evidence otherwise discoverable shall be inadmissible solely because the evidence is presented or discussed in a mediated settlement conference or other settlement proceeding.

~~(g)~~(h) Inadmissibility of Mediator Testimony. No mediator, other neutral, or neutral observer present at a settlement proceeding shall be compelled to testify or produce evidence concerning statements made and conduct occurring in anticipation of, during, or as a follow-up to a mediated settlement conference or other settlement proceeding conducted pursuant to ~~these rules~~ the Rules in this Subchapter in any ~~Industrial~~ Commission case or civil proceeding for any purpose, including proceedings to enforce or rescind a settlement of the action, except: ~~to attest to the signing of any agreements, and except proceedings for sanctions for violations of the attendance or payment of mediation fee provisions of Rules 4 and 7, disciplinary hearings before the State Bar or any agency enforcing standards of conduct for mediators or other neutrals, including the Industrial Commission, and proceedings to enforce laws concerning juvenile or elde abuse.~~

(1) to attest to the signing of any settlement agreements;

(2) proceedings for sanctions for violations of the attendance or payment of mediation fee provisions contained in Rule .0104 and Rule .0107 of this Subchapter;

(3) disciplinary proceedings before the North Carolina State Bar or any agency enforcing standards of conduct for mediators or other neutrals, including the Commission; and

(4) proceedings to enforce laws concerning juvenile or elder abuse.

(i) As used in this Subchapter, the term "neutral observer" includes persons seeking mediator certification, persons studying dispute resolution processes, and persons acting as interpreters.

Authority G.S. 97-80(a), (c); 143-296; 143-300; Rule 3 of Rules Implementing Statewide Mediated Settlement Conference in Superior Court Civil Actions.

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

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

~~(1) Parties.~~

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

~~(B)~~(2) ~~Employers.~~ in a workers' compensation case, a representative of the employer at the time of injury ~~is required to attend only if:~~ ~~(1) the employer, instead of or in addition to the insurance company or administrator, has decision-making~~

~~authority with respect to settlement; or (2) the employer is offering the claimant employment and the suitability of that employment is in issue; or (3) the employer and the claimant have agreed to simultaneously mediate non-compensation issues arising from the injury; or (4) the Commission orders the employer representative to attend the mediation conference.~~

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

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

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

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

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

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

(5) When the governing law prescribes that the terms of a proposed settlement ~~terms can~~ may be approved only by a Board, ~~the representative shall have~~ an employee or agent who is not such party's outside counsel or Attorney General's counsel responsible for the case and who has the authority to negotiate on behalf of ~~the party~~ and to make a recommendation to ~~that~~ the Board. Because G.S. 143-295 provides the Attorney General with settlement authority on behalf of governmental entities and agencies for state tort claims, an employee or agent of the named governmental entity or agency is not required to attend the mediated settlement conference; the Attorney General shall attempt to make every effort to make an employee or agent of the named governmental entity or agency in a state tort claim available via telecommunication, and mediation shall not be delayed due to the absence or unavailability of the employee or agent of the named governmental entity or agency.

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

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

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

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

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

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

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

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

~~(2)~~(d) ~~Appearance by Telephone:~~ In appropriate cases ~~The Dispute Resolution Coordinator~~ the Commission or the mediator, with the consent of the parties, may ~~in appropriate cases~~ allow a party or insurance carrier representative who is required to physically attend a mediated settlement conference under ~~these rules~~this Rule to attend the conference by telephone, conference call, ~~or~~ speaker ~~telephone,~~

telephone or videoconferencing;~~at the discretion of the mediator,~~ provided that, the party or~~person(s)~~ representative so attending shall bear all costs of such telephone ~~calls,~~ calls or videoconferencing,~~that~~ the mediator may communicate directly with the insurance representative with regard to ~~the~~ matters discussed in mediation, and ~~that~~ the mediator may set a subsequent mediated settlement conference at which all ~~persons~~ parties and representatives shall~~be required to~~ physically attend. The failure to properly appear by telephone or videoconferencing in accordance with this ~~rule~~ Paragraph~~may~~ shall subject the responsible party(ies) or representative(s) to sanctions pursuant to Rule ~~5.~~ .0105 of this Subchapter.

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

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

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

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

Authority G.S. 97-80(a),(c); 143-295; 143-296; 143-300; Rule 4 of Rules Implementing Statewide Mediated Settlement Conference in Superior Court Civil Actions.

4 NCAC 10G .0104A FOREIGN LANGUAGE INTERPRETERS

(a) ~~Services of Foreign Language Interpreters Required Unless Waived.~~ When a person who does not speak or understand the English language is required to attend a ~~mediation~~ mediated settlement conference, the person shall be assisted by a qualified foreign language interpreter unless the right to an interpreter is waived by ~~both~~ the parties.

(b) ~~Qualifications of Interpreters.~~ To qualify as a foreign language interpreter, a person ~~must~~ shall possess sufficient experience and education, or a combination of experience and education, ~~speaking,~~ speaking and understanding English and the foreign language to be interpreted, to qualify as an expert witness pursuant to G.S. 8C-1, Rule 702.

(c) ~~Notice to Industrial Commission and Opposing Party of Need for Interpreter.~~ Any party who is unable to speak or understand English shall so notify the ~~Industrial~~ Commission and the opposing ~~party,~~ party(ies) in writing, not less than 21 days prior to the date of the ~~mediation~~ mediated settlement conference. The notice shall state ~~with specificity~~ the language(s) that ~~must~~ shall be interpreted.

(d) ~~Designation of Interpreter.~~ Upon notice of the need for an interpreter, the employer or insurer shall retain a ~~qualified,~~ disinterested interpreter, who possesses the qualifications listed in Paragraph (b) of this Rule, ~~either agreed upon by the parties or approved by the Industrial Commission,~~ to assist at the ~~mediation~~ mediated settlement conference. The parties may select by agreement, or in the absence of an agreement, the Commission may appoint a disinterested interpreter possessing the qualifications listed in Paragraph (b) of this Rule.

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

(f) ~~Interpreter Ethics.~~ Foreign language interpreters shall abide by the ~~code of ethical conduct for court interpreters~~ Code of Conduct and Ethics of Foreign Language Interpreters and Translators, contained in Part 4 of *Policies and Best Practices for the Use of Foreign Language Interpreting and Translating Services in the North Carolina Court System* and promulgated by the North Carolina Administrative Office of the Courts, and ~~adopted by the Industrial Commission~~ shall interpret, as word for word as is practicable, without editing, commenting, or summarizing, testimony or other communications. The Code of Conduct and Ethics of Foreign Language Interpreters and Translators is hereby incorporated by reference and includes subsequent amendments and editions. A copy may be obtained at no charge from the North Carolina Administrative Office of the Court's website.

http://www.nccourts.org/Citizens/CPrograms/Foreign/Documents/guidelines.pdf, or upon request, at the offices of the Commission, located in the Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, between the hours of 8:00 a.m. and 5:00 p.m.

Authority G.S. 97-79(b); 97-80(a), (c); 143-296; 143-300.

04 NCAC 10G .0105 SANCTIONS

If a person or party whose attendance at a mediated settlement conference is required by Rule ~~4~~ .0104 of this Subchapter fails to ~~attend,~~ attend or cancels, without Commission approval in accordance with Paragraph (f) of Rule .0101 of this Subchapter, a duly ordered mediated settlement conference without good cause, or otherwise violates ~~these rules~~ the Rules in this Subchapter without good cause, the Commission may impose upon the party or his principal any lawful sanction, including ~~but not limited to~~ requiring the party or his principal ~~to the payment of~~ pay attorneys' fees, mediator fees and expenses incurred by persons attending theconference, holding the party or his principal in contempt, ~~or any~~ and other sanctions authorized by 04 NCAC 10A .0802. ~~by Rule 37(b) of the Rules of Civil Procedure.~~ Any sanctions that ~~may be~~ are assessed against a party under ~~these rules~~ the Rules in this Subchapter, ~~including, but not limited to, mediation~~ including mediated settlement conference postponement fees and sanctions for the unauthorized cancellation or failure to appear at a ~~mediation~~ the conference, may be assessed against the party or the party's principal or attorney depending on whose conduct necessitated the assessment of sanctions.

Authority G.S. 97-80(a),(c); 143-296; 143-300; Rule 5 of Rules Implementing Statewide Mediated Settlement Conference in Superior Court Civil Actions.

04 NCAC 10G .0106 AUTHORITY AND DUTIES OF MEDIATORS

~~(a) Authority of Mediator.~~

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

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

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

~~(b) Duties of Mediator.~~

~~(1)~~(d) Information to the Parties. The mediator shall define and describe the following to the parties at the beginning of the mediated settlement conference:

- ~~(A)~~(1) the process of mediation;
- ~~(B)~~(2) the differences between mediation and other forms of conflict resolution;
- ~~(C)~~(3) the costs of the ~~mediated settlement~~ conference;
- ~~(D)~~(4) the facts that the ~~mediated settlement~~ conference is not a trial or hearing, the mediator is not acting in the capacity of a Commissioner or Deputy ~~Commissioner,~~ Commissioner and ~~the mediator will~~ shall not act in ~~the~~ such capacity ~~of a Commissioner or Deputy Commissioner~~ in the subject case at any time in the future, and the parties retain their right to a hearing if ~~they~~ the parties do not reach a settlement;
- ~~(E)~~(5) the circumstances under which the mediator may meet alone with ~~either~~ any of the parties or with any other person;
- ~~(F)~~(6) whether and under what conditions, communications with the mediator ~~will~~ shall be held in confidence during the conference;
- ~~(G)~~(7) the inadmissibility of conduct and statements as provided by G.S. 8C-1, Rule 408 ~~of the Evidence Code~~ and ~~Subparagraph 3(f) of this Rule;~~ Paragraph (f) of Rule. 0103 of this Subchapter;
- ~~(H)~~(8) the duties and responsibilities of the mediator and the parties; ~~and,~~ and
- ~~(I)~~(9) the fact that any agreement reached ~~will~~ shall be reached by mutual consent of the parties.

~~(2)~~(e) Disclosure. The mediator ~~has a duty to~~ shall be impartial and ~~to~~ advise all parties of any circumstances bearing on possible bias, prejudice or partiality.

~~(3)~~(f) Declaring Impasse. ~~It is the duty of~~ The mediator ~~to timely~~ shall determine when mediation is not viable, that an impasse exists, or that mediation should end.

~~(4)~~(g) Reporting Results of Conference. In all cases within the Commission's jurisdiction, whether mediated voluntarily or pursuant to an order of the Commission, the mediator shall report the results of the mediated settlement conference on a form provided by the Commission. If an agreement was reached, the report shall state whether the issue or matter under mediation ~~will~~ shall be resolved by ~~Industrial~~ Commission form agreement, compromise settlement agreement, other settlement agreement, voluntary dismissal or removal from the hearing docket, and shall identify the persons designated to file or submit for approval ~~such~~ the agreement, or dismissal. The mediator shall not attach a copy of the parties' memorandum of agreement to the mediator's report transmitted to the Commission and, except as ~~set forth above~~ permitted under the Rules in this Subchapter, or ~~as may be ordered~~ unless deemed necessary in the interest of justice by the Commission, the mediator shall not disclose the terms of settlement in the mediator's report. The Commission ~~may~~ shall require the mediator to provide statistical data for evaluation of the mediated settlement conference program on forms provided by the Commission.

~~(5)~~(h) Scheduling and Holding the Conference. ~~It is the duty of~~ The mediator ~~to~~ shall schedule the mediated settlement ~~conference,~~ conference in consultation with the ~~parties,~~ parties and conduct ~~it~~ the conference prior to the ~~conference~~ completion deadline set out in the

Commission's ~~order, and prior to the date of any hearing before a Deputy Commissioner if the case is scheduled for hearing after the mediator is appointed.~~ order. Deadlines for completion of the conference shall be ~~strictly~~ observed by the mediator unless ~~said~~ the time limits are changed by the Commission.

~~(6)~~(i) Standards of Conduct. All mediators conducting ~~mediation~~ mediated settlement conferences pursuant to ~~these rules~~ the Rules in this Subchapter shall adhere to the ~~Standards of Conduct for Mediators~~ *Standards of Professional Conduct for Mediators* adopted by the Supreme Court of North Carolina and enforced by the ~~N.C.~~ North Carolina Dispute Resolution Commission. The *Standards of Professional Conduct for Mediators* is hereby incorporated by reference and includes subsequent amendments and editions. A copy may be obtained at no charge from the North Carolina Administrative Office of the Court's website, *http://www.nccourts.org/Courts/CRS/Councils/DRC/Documents/StandardsofConduct_1-1-12.pdf*, or upon request, at the offices of the Commission, located in the Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, between the hours of 8:00 a.m. and 5:00 p.m.

Authority G.S. 97-80(a), (c); 143-296; 143-300; Rule 6 of Rules Implementing Statewide Mediated Settlement Conference in Superior Court Civil Actions.

04 NCAC 10G .0107 COMPENSATION OF THE MEDIATOR

(a) By ~~Agreement.~~ Agreement. When the mediator is stipulated to by the parties, compensation shall be as agreed upon between the parties and the mediator.

(b) By Commission ~~Order.~~ Order. When the mediator is appointed by the Commission, the mediator's compensation shall be as ~~follows.~~ follows:

(1) Conference Fees. The mediator shall be paid by the parties at the rate of one hundred fifty dollars ($150.00) per hour for mediation services provided at the mediated settlement conference.

(2) Administrative Fees. The parties shall pay to the mediator a one time, per case administrative fee of one hundred fifty dollars ($150.00). ~~$150.00, unless otherwise ordered by the Commission.~~ The mediator's administrative fee shall be paid in full unless, within 10 days after ~~the date that~~ the mediator has been appointed, written notice is given to the mediator and to the Dispute Resolution Coordinator that the issues for which a request for hearing ~~had been~~ was filed have been fully resolved or that the hearing request has been withdrawn.

(3) Postponement Fees. As used ~~herein~~ in this Subchapter, the term "postpone" ~~shall~~ means to reschedule or otherwise not proceed with a scheduled ~~mediation~~ mediated settlement conference after ~~that~~ the conference has been scheduled to convene on a specific date. After a conference is scheduled to convene on a specific date, ~~it~~ the conference may not be postponed ~~without~~ unless the requesting party ~~first notifying~~ notifies all other parties ~~concerning~~ of the grounds for the requested ~~postponement, or without~~ postponement and obtains the consent and approval of the mediator or the Dispute Resolution ~~Coordinator.~~ Coordinator that the postponement is for the benefit of the parties. If ~~a mediation~~ the conference is postponed without good cause, the mediator shall be paid a postponement fee, ~~unless, upon application of the party or parties charged with the fee, the fee is waived by the Commission. Unless the Commission otherwise orders,~~ The postponement fee shall be ~~two hundred twenty-five dollars ($225.00)~~ three hundred dollars ($300.00) if the ~~mediation~~ conference is postponed within seven calendar days of the scheduled ~~conference,~~ date, and ~~one hundred twenty-five dollars ($125.00)~~ one hundred fifty dollars ($150.00) if the ~~mediation~~ conference is postponed more than seven calendar days prior to ~~a~~ the scheduled ~~conference~~ date. Unless otherwise ordered by the Commission in the interest of justice, postponement fees shall be allocated in equal shares to the party or parties requesting the postponement, ~~unless otherwise ordered by the Commission.~~

(4) The settlement of a case prior to the scheduled date ~~for~~ of the ~~mediation~~ mediated settlement conference shall be good cause for a postponement, provided that the mediator was notified of the settlement ~~immediately~~ after ~~it~~ the settlement was reached and that the mediator received notice of the settlement at least ~~fourteen (14)~~ 14 calendar days prior to the date scheduled for mediation.

(c) Payment by ~~Parties.~~ Parties. Payment ~~shall be~~ is due upon completion of the mediated settlement conference; provided, that the State shall be billed at the conference and shall pay within 30 days of receipt of the ~~billing,~~ bill, and insurance companies or carriers whose written procedures do not provide for payment of the mediator at the conference may pay within 15 days of the conference. Unless otherwise agreed to by the parties or ordered by the ~~Commission,~~ Commission due to a party or parties violating a Rule in this Subchapter, the costs of the ~~mediated settlement~~ conference shall be allocated to the parties, as follows:

(1) one share by plaintiff(s);

(2) one share by the workers' compensation defendant-employer or its insurer, or if more than one employer or carrier is involved, or if there is a dispute between employer(s) or carrier(s), one share by each separately represented entity;

(3) one share by participating third-party tort defendants or their carrier, or if there are conflicting interests among them, one share from each ~~such~~ defendant or group of defendants having shared interests; ~~and,~~ and

(4) one share by the defendant State agency in a ~~State~~ Tort Claims Act case. Parties obligated to pay a share of the costs ~~shall be~~ are responsible for equal shares; provided, however, that in workers' compensation claims the defendant shall pay the plaintiff's share of mediation, postponement, and substitution fees as well as ~~its own.~~ defendant's own share.

(d) Unless the Dispute Resolution Coordinator enters an order allocating such fees to a particular ~~party,~~ party due to the party violating a Rule in this Subchapter, the fees may be taxed as other costs by the Commission. After the case is concluded, the defendant shall be reimbursed for the plaintiff's share of such fees ~~when the case is concluded~~ from benefits that may be determined to be due to the plaintiff, and the defendant may withhold funds from any award for this purpose.

Authority G.S. 97-80(a), (c); 143-296; 143-300; Rule 7 of Rules Implementing Statewide Mediated Settlement Conference in Superior Court Civil Actions.

04 NCAC 10G .0108 MEDIATOR CERTIFICATION AND DECERTIFICATION

(a) Party ~~Selection.~~ Selection. The parties may, by mutual consent, select any North Carolina Dispute Resolution Commission-certified mediator, with or without the qualifications in Paragraph (b) of this Rule,as ~~their~~ the parties'mediator; ~~by mutual consent, with or without the qualifications in (b);~~ provided, that the Commission ~~may~~shall, for good cause, bar any persons from holding ~~themselves~~ himself or herself out as a mediator of cases within ~~its~~ the Commission's jurisdiction or from receiving a fee for mediation of such cases.

(b) Appointment of ~~Mediators.~~ Mediators. If the parties have agreed or been ordered to mediate, and cannot agree on the selection of a mediator, the Commission shall appoint a mediator, ~~from a list of persons~~ who holds current certification from the North Carolina Dispute Resolution Commission that ~~they~~ he or she~~are~~ is qualified to carry out mandatory mediations in the Superior Courts of the ~~State,~~ State of North Carolina and who ~~have~~ has filed a declaration with the Commission, on forms provided by ~~it~~the Commission, stating ~~that:~~ that the declarant agrees to accept and perform mediations of disputes before the Commission with reasonable frequency when called upon for the fees and at the rates of payment specified by the Commission. A mediator making this declaration shall notify the commission when any of the facts declared are no longer accurate.

~~(1) If an attorney, that declarant remains a member in good standing of the NorthCarolina State Bar;~~

~~(2) The declarant agrees to accept and perform mediations of disputes before the Commission with reasonable frequency when called upon for the fees and at the rates of payment specified by the Commission;~~

~~(3) If the declarant desires to be appointed by the Commission to mediate workers' compensation cases, that he or she has completed N.C. State Bar approved continuing legal education course(s) on workers' compensation law during the previous two years totaling not less than six hours.~~

~~A mediator making such declaration shall immediately notify the Commission when any of the facts declared are no longer accurate. The Commission may require a new declaration on a periodic or intermittent basis. The Commission shall delete from such lists any mediator whose certification from the Dispute Resolution Commission has expired or been revoked. The Commission may charge an administrative fee to defray the costs of maintaining lists and referring cases to mediators.~~

~~(c) Mediator Lists. The Commission may maintain and provide to parties separate lists of mediators who have successfully completed mediation training certified by the Dispute Resolution Commission, and who desire to hold mediations in disputes arising under the Workers' Compensation Act and the State Tort Claims Act.~~

~~(d)~~(c) Failure of Mediator to Appear at Conference.~~Conference. In the event that~~ If a mediator fails to appear at a scheduled ~~mediation~~ mediated settlement conference without good cause, the mediator ~~shall~~ is not ~~be~~ entitled to the administrative fee for the case. ~~and may be deleted from the Commission's list of mediators qualified for appointments for a period of six months~~.

Authority G.S. 97-80(a), (c); 143-296; 143-300; Rule 8 of Rules Implementing Statewide Mediated Settlement Conference in Superior Court Civil Actions.

04 NCAC 10G .0109 NEUTRAL EVALUATION

(a) Nature of Neutral ~~Evaluation.~~ Evaluation. As used in this Subchapter, neutral evaluation is an ~~informal,~~ abbreviated presentation of facts and issues by the parties to ~~an~~ a neutral evaluator at an early stage of the case. The neutral evaluator is responsible for evaluating the strengths and weaknesses of the case, and for providing a candid assessment of liability, settlement value, and a dollar value or range of potential awards if the case proceeds to a hearing. The neutral evaluator is also responsible for identifying areas of agreement and disagreement and suggesting necessary and appropriate discovery.

(b) When Conference Is to Be Held. ~~Held.~~ The provisions applicable to the scheduling of ~~mediation~~ mediated settlement conferences set forth in Rule ~~3(b)~~ .0103 of this Subchapter~~shall~~ also ~~be applicable~~ apply to neutral evaluation proceedings.

(c) Pre-conference Submissions.~~Submissions.~~ No later than ~~15~~ 20 days prior to the date established for the neutral evaluation conference to begin, each party may, but is not required to, furnish the evaluator with written information about the case, and shall at the same time certify to the evaluator that ~~they~~the party has served a copy of such summary on all other parties ~~to~~ in the case. The information provided to the neutral evaluator and the other parties ~~hereunder~~ under this Rule shall be a summary of the ~~significant~~ facts and issues in the ~~party's~~ case, shall not be more than 10 pages in length, and shall ~~have attached to it~~ include as attachments copies of any documents supporting the ~~parties'~~ party's summary. Information provided to the neutral evaluator and to the other parties pursuant to this Paragraph shall not be filed with the Commission.

(d) Replies to Pre-conference Submissions.~~Submissions.~~ No later than five days prior to the date established for the neutral evaluation conference to begin, any party may, but is not required to, send additional written information ~~not exceeding 5 pages in length~~ to the neutral~~evaluator,~~ evaluator responding to the submission of an opposing party. The party's response shall not exceed five pages in length,~~be served on all other parties~~ and the party sending ~~such~~ the response shall certify ~~such service~~ to the neutral~~evaluator,~~ evaluator that the party has served a copy of the response on all other parties in the case.~~but such~~ The response shall not be filed with the Commission.

(e) Conference Procedure.~~Procedure.~~ Prior to a neutral evaluation conference, the neutral evaluator may, if he or she deems it necessary, ~~may~~ request additional written information from any party. At the conference, the neutral evaluator may address questions to the parties and give ~~them~~ the parties an opportunity to complete their summaries with a brief oral statement.

(f) Modification of Procedure.~~Procedure.~~ Subject to the approval of the neutral evaluator, the parties may agree to modify the procedures for neutral evaluation required by ~~these rules~~ the Rules~~for neutral evaluation,~~ in this Subchapter,or ~~such~~ the procedures may be modified by order of the ~~Commission.~~Commission in the interest of justice. The modified procedures may include the presentation of submissions in

writing or by telephone in lieu of ~~the~~ physical appearance at a neutral evaluation conference, and may also include revisions to the time periods and page limitations concerning the parties' submissions.

~~(g) Evaluator's Duties.~~

~~(1)~~(g) Evaluator's Opening Statement. At the beginning of the neutral evaluation conference, the neutral evaluator shall define and describe the following points to the parties:

~~(A)~~(1) the facts that ~~the neutral evaluation:~~

(A) the conference is not a hearing,

(B) the neutral evaluator is not acting in the capacity of a Commissioner or Deputy~~Commissioner,~~ Commissioner and~~the neutral will~~ shall not act in ~~the~~ such capacity ~~of a Commissioner or Deputy Commissioner~~ in the subject case at any time in the future,

(C) the neutral evaluator's opinions are not binding on any party, and

(D) the parties retain their right to a hearing if ~~they~~ the parties do not reach a ~~settlement.~~ settlement;

~~(B)~~(2) the fact that any settlement reached will be only by mutual consent of the~~parties.~~ parties;

~~(C)~~(3) the process of the proceeding;

~~(D)~~(4) the differences between the proceeding and other forms of conflict resolution;

~~(E)~~(5) the costs of the proceeding;

~~(F)~~(6) the inadmissibility of conduct and statements as provided by G.S. 8C-1, Rule 408 ~~of the Evidence Code~~ and Paragraph (f) of Rule .0103 in this Subchapter;~~Rule 3(f) above of the Rules;~~ and

~~(G)~~(7) the duties and responsibilities of the neutral evaluator and the participants.

~~(2)~~(h) Oral Report to Parties by Evaluator. In addition to the written report to the Commission required under ~~these rules,~~ the Rules in this Subchapter, at the conclusion of the neutral evaluation conference, the neutral evaluator shall issue an oral report to the parties advising ~~them~~ the parties of ~~his or her~~ the neutral evaluator's ~~opinions~~ opinion of the case. ~~Such~~ The opinion shall include a candid assessment of liability, estimated settlement values and options, and the strengths and ~~'weaknesses~~ weaknesses of the parties' claims and defenses if the case proceeds to a hearing. The oral report shall also contain a suggested settlement or disposition of the case and the reasons therefor. The neutral evaluator shall not reduce his or her oral report to ~~writing,~~ writing and shall not inform the Commission thereof.

~~(3)~~(i) Report of Evaluator to Commission. Within 10 days after the completion of the neutral evaluation conference, the neutral evaluator:

(1) shall submit to the Dispute Resolution Coordinator a written report using a form prepared and distributed by the Commission, stating:

(A) when and where the conference was held,

(B) the names of those persons who attended the conference,

(C) whether or not an agreement was reached by the parties, and

(D) whether the issue or matter will be resolved by ~~Industrial~~ Commission form agreement, compromise settlement agreement, other settlement agreement, voluntary dismissal or removal from the hearing~~docket,~~ docket~~and~~

(2) shall identify the persons designated to file or submit for approval such agreement, or dismissal.

(3) ~~The Commission may require~~ the neutral evaluator~~to~~ shall provide statistical data for evaluation of the settlement conference programs on forms provided by the Commission.

~~(h)~~(j) Evaluator's Authority to Assist Negotiations.~~Negotiations~~ If all parties at the neutral evaluation conference request and agree, the neutral evaluator may assist the parties in settlement discussions. If the parties do not reach a settlement during ~~such~~ the discussions, ~~however,~~ the neutral evaluator shall complete the neutral evaluation conference and make his or her written report to the Commission as if ~~such~~ the settlement discussions had not occurred.

~~(i)~~(k) Finalizing Agreement.~~Agreement~~ If the parties are able to reach an agreement before the conclusion of the neutral evaluation conference and before the ~~evaluator's~~ evaluator provides his report to the Commission, ~~the parties are able to reach an agreement,~~ the parties shall reduce the agreement to writing, specifying all the terms of ~~their~~ the parties' agreement ~~that~~bearing bear on the resolution of the dispute before the Commission, and shall sign ~~it~~ the agreement along with ~~their~~ the parties' respective counsel. By stipulation of the parties and at their expense, the agreement may be electronically or stenographically recorded. All agreements for payment of compensation shall be submitted ~~in proper form~~ for Commission ~~approval,~~ approval and shall be filed with the Commission within 20 days of the conclusion of the ~~mediation~~ conference.

~~(j)~~(l) Applicability of Mediation Rules and Duties.~~Duties~~ All provisions and duties applicable to mediated settlement conferences set forth in ~~Rules 3 through 7~~ Rule .0103 through Rule .0107 of ~~these rules~~ this Subchapter, ~~which~~that are not in conflict with the provisions and duties of Rule 9 .0109 ~~herein~~ of this Subchapter, ~~shall be incorporated by reference and shall be applicable~~ apply to neutral evaluation conferences conducted under ~~these rules.~~ the Rules in this Subchapter.

~~(k)~~(m) Ex Parte Communications Prohibited.~~Prohibited~~ Unless all parties agree otherwise, there shall be no ex parte communication prior to the conclusion of the proceeding between the neutral evaluator and any counsel or party on any matter related to the proceeding except with regard to administrative matters.

~~(l)~~(n) Adherence to Standards of Conduct for Neutrals.~~Neutrals~~ All ~~neutrals~~ neutral evaluators conducting neutral evaluation conferences pursuant to ~~these rules~~ the Rules in the Subchapter shall adhere to any applicable standards of conduct which ~~may be~~ are adopted by the ~~N.C.~~ North Carolina Dispute Resolution Commission and are hereby incorporated by reference.

Authority G.S. 97-80(a), (c); 143-296; G.S. 143-300; Rule 11 of Rules Implementing Statewide Mediated Settlement Conference in Superior Court Civil Actions.

4 NCAC 10G .0110 SUSPENSION OF RULES

~~In the interest of justice, or to comply with the law from time to time as it may be amended or declared, the Commission may waive any requirement of these rules.~~
To prevent manifest injustice to a party, or to expedite a decision in the public interest, the Commission may, except as provided by the Rules in this Subchapter, suspend or vary the requirements or provisions of any of the Rules in this Subchapter in a case pending before the Commission upon application of a party or upon its own initiative, and may order proceedings in accordance with its directions.

Authority G.S. 97-80(a),(c); 143-296; 143-300.

04 NCAC 10G .0111 MOTIONS
Unless otherwise ~~indicated,~~ indicated by the Rules in this Subchapter or an applicable order by the Commission in the interest of justice or judicial economy,motions pursuant to ~~these rules~~ the Rules in this Subchapter shall be addressed to the Commission's Dispute Resolution Coordinator ~~(unless the applicable order provides otherwise)~~ and served on all parties to the claim and the settlement procedure. Responses may be filed with the Commission within 10 days after thedate of receipt of the motion. Notwithstanding the above, ~~for good cause~~ the Commission may, in the interest of justice, act upon oral motions, or act upon motions prior to the expiration of the 10-day response period. Motions ~~will~~ shall be decided without oral argument unless otherwise ~~ordered.~~ordered in the interest of justice. Any appeals from orders issued pursuant to a motion under ~~these rules~~ the Rules in this Subchapter shall be addressed to the attention of the Commission Chair or the ~~Chairman's~~ Chair's designee for appropriate action.

Authority G.S. 97-80(a),(c); G.S. 143-296; G.S. 143-300.

04 NCAC 10G .0112 MISCELLANEOUS
Throughout ~~these rules~~ the Rules in this Subchapter any reference to the number of days within which any act may be performed shall mean and refer to calendar days, and shall include Saturdays, Sundays and ~~legal holidays.~~holidays established by the State Personnel Commission. Provided, however, that if the last day (a) to file 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 requests mediation is a Saturday, Sunday or ~~legal holiday,~~ holiday established by the State Personnel Commission, the motion or notice may be filed or given on the next day that is not a Saturday, Sunday or ~~legal holiday.~~holiday established by the State Personnel Commission.

Authority G.S. 97-80(a),(c); G.S. 143-296; G.S. 143-300.

SUBCHAPTER 10H – RULES OF THE INDUSTRIAL COMMISSION RELATING TO THE LAW-ENFORCEMENT OFFICERS', FIREMEN'S, RESCUE SQUAD WORKERS' AND CIVIL AIR PATROL MEMBERS' DEATH BENEFITS ACT

SECTION .0100 - ADMINISTRATION

~~RULE I.~~ 04 NCAC 10H .0101 LOCATION OF OFFICES AND HOURS OF BUSINESS
For purposes of this Subsection, the ~~The~~ offices of the North Carolina Industrial Commission are located in the Dobbs Building, 430 North Salisbury Street, ~~in~~ Raleigh, North Carolina. ~~The same office hours as are or may be observed by other State offices in Raleigh will be observed by the Industrial Commission.~~ Documents that are not being filed electronically may be filed between the hours of 8:00 a.m. and 5:00 p.m. only. Documents permitted to be filed electronically may be filed until 11:59 p.m. on the required filing date.

Authority G.S. 143-166.4.

~~RULE II. TRANSACTION OF BUSINESS BY THE COMMISSION.~~
~~The Commission will remain in continuous session subject to the call of the Chairman to meet as a body for the purpose of transacting such business as may come before it.~~

SECTION .0200 - RULES OF COMMISSION

~~RULE III.~~ 04 NCAC 10H .0201 DETERMINATION OF CLAIMS BY THE COMMISSION
~~1.~~(a) Upon application ~~or request to the Industrial Commission~~ for an award under the provisions of the Law-Enforcement Officers', Firemen's, Rescue Squad Workers' and Civil Air Patrol Members' Death Benefits Act, the ~~Full~~ Commission ~~will~~ shall determine whether sufficient ~~information or~~ evidence is contained in the Commission's workers' compensation or other files upon which to base an ~~Order~~ order for the payment of benefits. If the ~~Full~~ Commission is satisfied that such an ~~Order~~ order should be issued, it ~~will,~~ shall, without conducting a ~~formal~~ hearing, file an ~~appropriate Award~~ award directing the payment of benefits.
~~The Full Commission, on joint request of the interested parties or for good cause shown, may in its discretion The Full Commission, order or approve a settlement for less than the maximum amount set forth in G.S. §143-166.3.~~
~~2.~~(b) If the ~~Full~~ Commission is of the opinion that ~~it~~ the Commission's workers' compensation or other files has insufficient ~~information or~~ evidence ~~before it~~ upon which to base~~basis~~ an award for the payment of benefits, ~~should be issued,~~ the ~~Full~~ Commission ~~will~~ shall place the case upon the Commission's hearing ~~docket~~docket. ~~in the county where the incident giving rise to the death is alleged to have occurred. The case will thereafter be set for hearing before a Hearing Commissioner or Hearing Deputy Commissioner in such county or in such other~~

~~county as the Full Commission may direct, due notice of the hearing being given to all parties and to the Attorney General of the State of North Carolina who may appear as amicus curiae.~~
~~3. The Hearing Commissioner or Hearing Deputy Commissioner before whom the case is set for hearing, in his discretion, may order the parties to appear at a reasonable time and place for a pre-trial hearing to determine such matters as he deems necessary. The Hearing Commissioner or Deputy Commissioner will, having received all evidence pertinent to the case, thereafter proceed to file a Decision and Award in the case in which benefits are awarded or denied. Such Decision will be sent to all parties.~~
~~4. The Commission may, of its own motion, order a rehearing of any case.~~
~~5. The Commission will give reasonable notice of hearing in every case. Postponement or continuance of a scheduled hearing will rest entirely in the discretion of the Commission.~~
~~6. In all cases where it is suitable that infants or incompetents sue by their guardian ad litem, the Commission will appoint such guardian ad litem upon the written application of a reputable disinterested person closely connected with such infant or incompetent. But, if such person will not apply, then, upon the like application of some reputable citizen; and the Commission will make such appointment only after due inquiry as to the fitness of the person to be appointed.~~
~~7. Any claimant who gives to the opposing party or an agent of that party a written or recorded statement of the facts and circumstances surrounding his claim shall be furnished by the opposing party a copy of such statement within ten days upon request. Further, any claimant who has given such a statement shall, without request, be furnished by the opposing party a copy thereof immediately following a denial of his claim or no less than ten days prior to a pending hearing.~~
~~Such copy shall be furnished at the expense of the party to whom the statement was given.~~
~~If any party fails to comply with this rule, then an Order may be entered by the hearing officer prohibiting that party from introducing designated matters into evidence.~~
~~8. In the absence of written notice of appeal from the Decision and Award filed in such a case by the Hearing Commissioner or Hearing Deputy Commissioner within fifteen days from receipt of such award, the award as filed will be binding on the parties.~~

Authority G.S. 143-166.4.

04 NCAC 10H .0202 HEARINGS BEFORE THE COMMISSION
(a) The Commissioner or Deputy Commissioner before whom the case regarding the Law-Enforcement Officers', Firemen's, Rescue Squad Workers' and Civil Air Patrol Members' Death Benefits Act is set for hearing, shall order the parties to participate in a pre-trial conference. This conference shall be conducted at such place and by such method as the Commissioner or Deputy Commissioner deems appropriate including conference telephone calls.
(b) The Commission may, on its own motion, order a hearing or rehearing of any case in dispute. The Commission shall set a contested case for hearing in a location deemed convenient to witnesses and the Commission.
(c) The Commission shall give notice of hearing in every case. Postponement or continuance of a scheduled hearing shall be granted to prevent manifest injustice or to promote judicial economy.
(d) Notice of the hearing shall be given to the Attorney General of the State of North Carolina, who may appear as *amicus curiae*.

Authority G.S. 143-166.4.

04 NCAC 10H .0203 APPOINTMENT OF GUARDIAN *AD LITEM*
(a) Infants or incompetents may bring an action under this Subchapter only through their guardian *ad litem*. The Commission shall appoint a person as guardian *ad litem* if the Commission determines it to be in the best interest of the infant or incompetent. The Commission shall appoint a guardian *ad litem* only after due inquiry as to the fitness of the person to be appointed.
(b) No compensation due or owed to the infant or incompetent shall be paid directly to the guardian *ad litem*.
(c) Consistent with G.S. 1A-1, Rule 17(b)(2), the Commission may assess a fee to be paid to an attorney who serves as a guardian *ad litem* for actual services rendered upon receipt of an affidavit of actual time spent in representation of the infant or incompetent.

Authority G.S. 1A-1 Rule 17(b)(2); 143-166.4.

04 NCAC 10H .0204 WRITTEN OR RECORDED STATEMENT
(a) Upon the request of the employer or his agent to take a written or a recorded statement, the employer or his agent shall advise any person eligible for payments that the statement may be used to determine whether the claim will be paid or denied. Any person eligible for payments who gives the employer, its carrier, or any agent either a written or recorded statement of the facts and circumstances surrounding the decedent's injury shall be furnished a copy of such statement within 45 days after request. Any person eligible for payments shall immediately be furnished with a copy of the written or recorded statement following a denial of the claim. A copy shall be furnished at the expense of the party to whom the statement was given.
(b) If any party fails to comply with this Rule, a Commissioner or Deputy Commissioner shall enter an order prohibiting that party from introducing the statement into evidence or using any part of the statement.

Authority G.S. 143-166.4.

~~IV. APPEAL TO THE FULL COMMISSION~~ 04 NCAC 10H .0205 REVIEW BY THE FULL COMMISSION
~~1.~~(a) ~~In any case in which Decision is filed by Hearing Commissioner or Hearing Deputy Commissioner, appeal may be made to the Full Commission by giving written notice of appeal to the Commission within fifteen days from receipt of the Decision, with written statement of~~

~~service of copy by mail or in person on opposing party or parties.~~ A party may request a review of an award filed by a Deputy Commissioner by filing a letter expressing a request for review to the Full Commission within 15 days of receipt of the award. The award is binding on the parties if not appealed.

~~2.~~(b) ~~Upon~~ After receipt of notice of ~~appeal~~ review, the Commission ~~will~~ shall supply to the appellant and to the appellee a transcript of the record upon which ~~is based~~ the ~~Decision and the Award~~ award is based and from which ~~appeal~~ a review is being taken to the Full Commission. The appellant shall, within ten days of receipt of transcript of the record, file with the Commission a written statement of the particular grounds for the appeal, with ~~written statement of~~ service ~~of copy by mail or in person~~ on all opposing ~~party or~~ parties.

(c) ~~Particular grounds~~ Grounds for ~~appeal~~ review not set forth ~~will be~~ are deemed to be abandoned and argument thereon ~~will~~ shall not be heard before the Full Commission.

~~A nonappealing party is not required to file conditional assignments of error in order to preserve his rights for possible furher appeals.~~

~~3.~~(d) When ~~an appeal~~ a review is made to the Full Commission, appellant's brief, if any, in support of his ground for appeal shall be filed ~~in triplicate~~ with the Commission, with ~~written statement of~~ service ~~of copy by mail or in person~~ on ~~appellee~~ all opposing parties no less than ~~fifteen~~ 15 days prior to the hearing on ~~appeal.~~ review. Appellee shall have five days in which to file a reply brief, if ~~any~~ deemed necessary, ~~in triplicate~~ with the Commission, with ~~written statement of~~ service ~~of copy by mail or in person~~ on all opposing ~~party or~~ parties.

(e) Any motions by either party shall be filed ~~in triplicate~~ with the Full Commission, with ~~written statement of~~ service ~~of copy by mail or in person~~ on all opposing ~~party or~~ parties.

~~4. No new evidence will be presented to or heard by the Full Commission.~~

~~5. Ruling on a motion for a new hearing to take additional evidence will be governed by the general law of the State for the granting of new trials on the grounds of newly discovered evidence. Such motion must be written, supported by affidavit, and maybe argued before the Full Commission at the time of the hearing on appeal.~~

~~6.~~(f) ~~The parties, or either of them, may waive oral argument before the Full Commission.~~ Upon the request of a party, or its own motion, the Commission may waive oral arguments to prevent manifest injustice, to promote judicial economy, or to expedite a decision in the public interest. In the event of such waiver, ~~a Decision~~ the Full Commission shall file an award based on the ~~record, exceptions,~~ record and briefs. ~~briefs, if any, will be given by the Full Commission.~~

Authority G.S. 143-166.4.

04 NCAC 10H .0206 SUSPENSION OF RULES

To prevent manifest injustice to a party, or to expedite a decision in the public interest, the Commission may, except as otherwise provided by the Rules in this Subchapter, suspend or vary the requirements or provisions of any of the Rules in this Subchapter in a case pending before the Commission upon application of a party or upon its own initiative, and may order proceedings in accordance with its directions.

Authority G.S. 143-166.4.

04 NCAC 10H .0207 SANCTIONS

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

(b) Failure to timely file forms as required by either the Rules in this Subchapter or pursuant to the Law-Enforcement Officers', Firemen's, Rescue Squad Workers' and Civil Air Patrol Members' Death Benefits Act may result in fines or other sanctions.

Authority G.S. 1A-1, Rule 37; 143-166.4.

~~**RULE V. AMENDMENT OF RULES.**~~

~~The Commission reserves the right, in its discretion, to amend its Rules at any time, with or without notice. Copies of the Rules are on file at the Office of the Secretary of State and at the Office of the Attorney General, and may be obtained therefrom in the usualmanner.~~

SUBCHAPTER 10I - CHILDHOOD VACCINE-RELATED INJURY RULES OF THE NORTH CAROLINA INDUSTRIAL COMMISSION

SECTION .0100 –ADMINISTRATION

~~**RULE 101. LOCATIONS OF OFFICES AND HOURS OF BUSINESS.**~~ **04 NCAC 10I .0101 LOCATIONS OF OFFICES AND HOURS OF BUSINESS**

For purposes of this Subsection, the offices of the North Carolina Industrial Commission are located in the Dobbs Building, 430 North Salisbury Street, ~~in~~ Raleigh, North Carolina, ~~27611~~. ~~The same office hours as are or may be observed by other State offices in Raleigh will be observed by the Industrial Commission.~~ Documents pertaining to the Childhood Vaccine-Related Injury claims that are not being filed electronically may be filed between the hours of 8:00 a.m. and 5:00 p.m. only. Documents permitted to be filed electronically may be filed until 11:59 p.m. on the required filing date.

Authority G.S. 130A-424; 130A-425(d).

~~**RULE 103. OFFICIAL FORMS.**~~ **04 NCAC 10I .0102 OFFICIAL FORMS**

The use of any printed forms related to Childhood Vaccine-Related Injury claims, other than those ~~approved and adopted~~ provided by ~~this~~ the Commission is prohibited, except that. ~~Approved forms may be obtained from the Commission. Insurance~~ insurance carriers, ~~and~~ self-insurers, attorneys and other parties may reproduce ~~prepare~~ forms for their own use, provided: ~~(1) that the color of the paper upon which the form is printed shall be substantially identical to that used on the approved Commission's form, (2) no statement, question, or information blank contained on the approved Commission's form is omitted from the substituted form, and (3) such substituted form is substantially identical in size and format with the approved Commission's form.~~

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

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

Authority G.S. 130A-424; 130A-425(d).

SECTION .0200 - RULES OF COMMISSION

~~RULE 201. RULE OF CIVIL PROCEDURE.~~ 04 NCAC 10I .0201 RULES OF CIVIL PROCEDURE

The Rules of Civil Procedure ~~apply in cases involving a purported~~ as provided in G.S. 130A-17 apply in Childhood Vaccine-Related Injury claims, to the extent that such Rules are not inconsistent ~~so long as such rules are consistent~~ with Article 17 of Chapter 130A of the North Carolina General Statutes. ~~Statutes, except as hereinafter specifically provided.~~ In the event of such inconsistency, the Childhood Vaccine-Related Injury Compensation Program Act and the Rules of this Subchapter control.

Authority G.S. 130A-425(d).

~~RULE 202. PROCEDURE.~~ 04 NCAC 10I .0202 PROCEDURE

~~Upon provision of a copy of the claim and supporting documentation, including all available medical records pertaining to the alleged injury, as provided in~~ When a claim is filed in accordance with ~~N.C.G.S. §~~ G.S. 130A-425(b), the respondent ~~further proceedings shall be suspended for a period of ninety (90) days during which~~ the ~~responsible government agencies~~ shall determine and report ~~their~~ its position to the claimant and the commission on the issues listed in ~~N.C.G.S. § 130A-426(a).~~ G.S. 130A-426(a) within 90 days. If the ~~said agencies agree~~ respondent agrees that the ~~claimant~~ claimant ~~is entitled~~ has established damages which entitle claimant to money compensation meeting or exceeding the maximum amount set forth in G.S. §130A-427(b), the Commission shall so notify the ~~claimant~~ claimant and ~~respondents~~ respondent, and further notify them of the services the Department of Human Resources proposes to provide pursuant to G.S. §130A-427(a)(5). The Commission shall allow the parties an opportunity to settle the matter before proceeding ~~thereafter allow the parties a reasonable period of time to settle the matter before proceeding to~~ hearing.

Authority G.S. 130A-423; 130A-424; 130A-425; 130A-427.

~~RULE 203. ATTORNEYS FEES.~~ 04 NCAC 10I .0203 ATTORNEYS' FEES

~~At the conclusion of the case, counsel for the plaintiff shall submit to the Commission an account of time and services rendered the plaintiff for consideration in setting a fee pursuant to.~~

An attorney seeking fees pursuant to G.S. 130A-427(a)(4) shall submit to the Commission a copy of the fee agreement, a request for payment of fee, and an affidavit or itemized statement in support of an award of attorney's fees.

Authority G.S. 130A-425(d); 130A-427(a)(4).

04 NCAC 10I .0204 SUSPENSION OF RULES

To prevent manifest injustice to a party, or to expedite a decision in the public interest, the Commission may, except as otherwise provided by the Rules in this Subchapter, suspend or vary the requirements or provisions of any of the Rules in this Subchapter in a case pending before the Commission upon application of a party or upon its own initiative, and may order proceedings in accordance with its directions.

Authority G.S. 130A-425(d).

04 NCAC 10I .0205 SANCTIONS

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

(b) Failure to timely file forms as required by either the Rules in this Subchapter or pursuant to the Childhood Vaccine-Related Injury Compensation Program may result in fines or other sanctions.

Authority G.S. 130A-425(d).

SUBCHAPTER 10J – FEES FOR MEDICAL COMPENSATION

SECTION 0100 – FEES FOR MEDICAL COMPENSATION

04 NCAC 10J .0101 FEES FOR MEDICAL COMPENSATION

(a) The Commission has adopted and published a Medical Fee Schedule, pursuant to theprovisions of G.S. 97-26(a), setting maximum amounts, except for hospital fees pursuant to G.S. 97-26(b), that may be paid for medical, surgical, nursing, dental, and rehabilitative services, and medicines, sick travel, and other treatment, including medical and surgical supplies, original artificial members as may reasonably be necessary at the end of the healing period and the replacement of such artificial members when reasonably necessitated by ordinary use or medical circumstances. The amounts prescribed in the applicable published Fee Schedule shall govern and apply according to G.S. 97-26(c). However, in other hardship cases where sufficient reason is demonstrated to the Commission, amounts in excess of those so published may be allowed.

(b) The Commission's Medical Fee Schedule contains maximum allowed amounts for medical services provided pursuant to Chapter 97 of the General Statutes. The Medical Fee Schedule utilizes 1995 through the present, Current Procedural Terminology (CPT) codes adopted by the American Medical Association, Healthcare Common Procedure Coding Systems (HCPCS) codes, and jurisdiction-specific codes. A listing of the maximum allowable amount for each code is available on the Commission's website at http://www.ic.nc.gov/ncic/pages/feesched.asp and in hardcopy at 430 N. Salisbury Street, Raleigh, North Carolina.

(c) The following methodology provides the basis for the Commission's Medical Fee Schedule:

(1) CPT codes for General Medicine are based on North Carolina Medicare values multiplied by 1.58.

(2) CPT codes for Physical Medicine are based on North Carolina Medicare values multiplied by 1.30.

(3) CPT codes for Radiology are based on North Carolina Medicare values multiplied by 1.96.

(4) CPT codes for Surgery are based on North Carolina Medicare values multiplied by 2.06.

(d) The Commission's Hospital Fee Schedule, adopted pursuant to G.S. 97-26(b), provides for payment as follows:

(1) Inpatient hospital fees: Inpatient services are reimbursed based on a Diagnostic Related Groupings (DRG) methodology. The Hospital Fee Schedule utilizes the 2001 Diagnostic Related Groupings adopted by the State Health Plan. Each DRG amount is based on the amount that the State Health Plan had in effect for the same DRG on June 30, 2001.
DRG amounts are further subject to the following payment band that establishes maximum and minimum payment amounts:

(A) The maximum payment is 100 percent of the hospital's itemized charges.

(B) For hospitals other than critical access hospitals, the minimum payment is 75 percent of the hospital's itemized charges.

(C) For critical access hospitals, the minimum payment is 77.07 percent of the hospital's itemized charges.

(2) Outpatient hospital fees: Outpatient services are reimbursed based on the hospital's actual charges as billed on the UB-04 claim form, subject to the following percentage discounts:

(A) For hospitals other than critical access hospitals, the payment shall be 79 percent of the hospital's billed charges.

(B) For critical access hospitals, the payment shall be 87 percent of the hospital's billed charges. For purposes of the hospital fee schedule, critical access hospitals are those hospitals designated as such pursuant to federal law (42 CFR 485.601 et seq.)

(3) Ambulatory surgery fees: Ambulatory surgerycenter services are reimbursed at 79 percent of billed charges.

(4) Other rates: If a provider has agreed under contract with the insurer or managed care organization to accept a different amount or reimbursement methodology, that amount or methodology establishes the applicable fee.

(e) A provider of medical compensation shall submit its statement for services within 75 days of the rendition of the service, or if treatment is longer, within 30 days after the end of the month during which multiple treatments were provided. However, in cases where liability is initially denied but subsequently admitted or determined by the Commission, the time for submission of medical bills shall run from the time the health care provider received notice of the admission or determination of liability. Within 30 days of receipt of the statement, the employer, carrier, or managed care organization, or administrator on its behalf, shall pay or submit the statement to the Commission for approval or send the provider written objections to the statement. If an employer, carrier, administrator, or managed care organization disputes a portion of the provider's bill, the employer, carrier, administrator, or managed care organization, shall pay the uncontested portion of the bill and shall resolve disputes regarding the balance of the charges through its contractual arrangement or through the Commission.

(f) Pursuant to G.S. 97-18(i), when the 10 percent addition to the bill is uncontested, payment shall be made to the provider without notifying or seeking approval from the Commission. When the 10 percent addition to the bill is contested, any party may request a hearing by the Commission pursuant to G.S. 97-83 and G.S. 97-84.

(g) When the responsible party seeks an audit of hospital charges, and has paid the hospital charges in full, the payee hospital, upon request, shall provide reasonable access and copies of appropriate records, without charge or fee, to the person(s) chosen by the payor to review and audit the records.

(h) The responsible employer, carrier, managed care organization, or administrator shall pay the statements of medical compensation providers to whom the employee has been referred by the treating physician authorized by the insurance carrier for the compensable injury or body part, unless the physician has been requested to obtain authorization for referrals or tests; provided that compliance with the request shall not unreasonably delay the treatment or service to be rendered to the employee.

(i) Employees are entitled to reimbursement for sick travel when the travel is medically necessary and the mileage is 20 or more miles, round trip, at the business standard mileage rate set by the Internal Revenue Service per mile of travel and the actual cost of tolls paid. Employees are entitled to lodging and meal expenses, at a rate to be established for state employees by the North Carolina Director of Budget, when it is medically necessary that the employee stay overnight at a location away from the employee's usual place of residence Employees are entitled to reimbursement for the costs of parking or a vehicle for hire, when the costs are medically necessary, at the actual costs of the expenses.

(j) Any employer, carrier or administrator denying a claim in which medical care has previously been authorized is responsible for all costs incurred prior to the date notice of denial is provided to each health care provider to whom authorization has been previously given.

Authority G.S. 97-18(i); 97-25.6; 97-26; 97-80(a); 138-6.

FISCAL IMPACT ANALYSIS

Agency Proposing Rule(s): North Carolina Industrial Commission

Agency Contacts:

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Fiscal Note Category: Tier I – De Minimis

Proposed Rule Actions and Fiscal Impact

Proposed Action: Readopt as amended

Impact Summary:		
	State Government:	No
	Local Government:	No
	Substantial Economic:	No
	Federal Certification:	No

- **Subchapter A** – Workers' Compensation Rules
  - Section .0100 – Administration
  - Section .0200 – Notice of Act
  - Section .0300 – Insurance
  - Section .0400 – Disability, Compensation, Fees
  - Section .0500 - Agreements
  - Section .0600 – ~~Contested Cases~~ Claims Administration and Procedures
  - Section .0700 – Appeals
  - Section .0800 – Rules of the Commission
  - Section .0900 – Report of Earnings
  - Section .1000 – Preauthorization for Medical Treatment

Fiscal Notes

Baseline for Costs and Benefits of Proposed Rules:

The rules outlined above have been in existence and establish a baseline for the fiscal analysis. The rules have been reviewed to ensure that the content is clearly written, relevant, an up-to-date with existing policy and procedures of the Commission. Any changes have been reviewed and determined to be *de minimis* by the Commission. This fiscal note includes summaries of the proposed rule changes in the table set forth below.

Public Interest:

Pursuant to Sess. Law 2011-287, the Industrial Commission will conduct all rule making in accordance with the North Carolina Administrative Procedure Act found in G.S. 150B. This process should result in public comment and involvement in the rule making process, along with ensuring that citizens of the State of North Carolina are aware of timely and accurate rules information for the Industrial Commission.

Rule Number	Title of Rule Change	Statutory Citation	Summary of the Rule Change	Impact on State/Local/Federal Government and/or Private Sector or Substantial Economic Impact
4 NCAC 10A .0101	LOCATION OF OFFICES AND HOURS OF BUSINESS	G.S. 97-80	This Rule establishes the physical location of the Industrial Commission, and the hours during which paper and electronic versions of documents may be filed. This Rule is being readopted with minor technical amendments.	None
4 NCAC 10A .0102	~~TRANSACTION OF BUSINESS BY THE COMMISSION~~ OFFICIAL FORMS	G.S. 97-80(a); 97-81(a)	This Rule establishes that the Industrial Commission may supply requisite Forms, Rules and Minutes upon request. Existing Rule 4 NCAC 10A .0102 Transaction of Business by the Commission is being repealed and replaced by Official Forms. This Rule has been in existence and is being set out from the prior placement in 04 NCAC 10A .0103 Official Forms. This Rule is being readopted with minor technical amendments.	None
4 NCAC 10A .0103	~~OFFICIAL FORMS~~ NOTICE OF ACCIDENT AND CLAIM OF INJURY OR OCCUPATIONAL DISEASE	G.S. 97-22; 97-24; 97-58; 97-80(a); 97-81	This Rule provides parties with notice of the requirements for how an employee may provide notice of their claim. This Rule has been in existence and is being set out from the prior placement in 04 NCAC 10A .0104 Employer's Report of Injury. Existing Rule 4 NCAC 10A .0103 Official Forms is being moved to 4 NCAC 10A .0102 Official Forms. This Rule is being readopted with minor technical changes.	None
4 NCAC 10A .0104	EMPLOYER'S ~~REPORT OF INJURY~~ REQUIREMENT TO	G.S. 97-80(a); G.S. 97-92	This Rule establishes the manner and time in which employers are to report injuries to their carrier or administrator, and the Industrial Commission. This	None

	FILE A FORM 19		Rule further establishes an employer's duty to provide a Form 18 to employees who have reported an injury. Parts of existing Rule 4 NCAC 10A .0104 are being moved to 4 NCAC 10A .0103. This Rule is being readopted with minor technical amendments and clarifies existing policies.	
4 NCAC 10A .0105	FILING OF ANNUAL REPORT REQUIREMENT	G.S. 97-80(a); G.S. 97-92; G.S. 97-93	This Rule requires carriers and employers to annually file a Form 51 regarding "medical only" and "lost time" cases. This Rule has been in existence and is being set out from the prior placement in 04 NCAC 10A. 0407(e) Fees for Medical Compensation. This Rule is being readopted with minor technical amendments and does not create new or eliminate any existing requirements.	None
4 NCAC 10A .0106	COMPUTATION OF TIME	G.S. 97-80	This Rule establishes how due dates for required documents are calculated. This Rule has been in existence and is being set out from the prior placement in 04 NCAC 10A. 0609(h) Motions Practice in Contested Cases. This Rule is being readopted with minor technical amendments	None
4 NCAC 10A .0201	~~NOTICE OF EMPLOYMENT SUBJECT TO THE ACT~~ POSTING REQUIREMENTS FOR EMPLOYERS	G.S. 97-80; G.S. 97-93	This Rule establishes that employers must display notice to their employees in a conspicuous location that it is subject to the Workers' Compensation Act and that insurance coverage has been obtained. Subsection (b) of this Rule changes the requirement from removing the Form 17 within 5 days after a lapse in coverage to amending the Form 17 to reflect any changes in coverage. This Rule is being readopted with minor substantive and technical amendments.	The Industrial Commission will implement any future changes to the Form 17 that can be easily reflected by employers, resulting in a minimal cost to the employer if an amendment to the Form 17 is required.
4 NCAC	PROOF OF	G.S. 97-19; G.S. 97-	This Rule establishes that employers provide the	There are not

10A .0301	INSURANCE COVERAGE	80(a); G.S. 97-93	Industrial Commission with proof that they have obtained workers' compensation insurance or self-insurance coverage. The filing requirements will provide updated detailed information to the Industrial Commission regarding employer insurance coverage. The current Rule requires Employers to submit this information to the Rate Bureau; the proposed Rule requires employers to report this information directly to the Industrial Commission. The submission of this information to the Industrial Commission may be provided electronically; therefore, there will be minimal cost. In addition, the proposed Rule requires employers to provide notice to their employees regarding their workers' compensation insurance coverage.	expected to be any changes regarding costs to employers as they are currently required to provide insurance information to the Rate Bureau under the existing Rule. Additionally, the employers may incur minimal costs as they are now required to post their worker's compensation insurance information to provide their employees notice.
4 NCAC 10A .0302	REQUIRED CONTACT INFORMATION FROM CARRIERS	G.S. 97-93	This Rule requires employers, carriers, third party administrators and self-insured employers to designate a primary contact person and provide the Industrial Commission with current contact information for that person. The language regarding sanctions has been deleted, as the authority exists in 4 NCAC 10A .802 Sanctions. This Rule is being readopted with minor technical amendments.	None
4 NCAC 10A .0401	~~WHEN DISABILITY BEGINS FOR THE PURPOSE OF COMPUTING~~	G.S. 97-28; G.S. 97-80(a)	This Rule establishes how the seven-day waiting period is calculated. The word "partial" was added to subsection (d) to clarify when the seven day waiting period becomes subject to compensation.	None

	~~DISABILITY~~ CALCULATING THE SEVEN-DAY WAITING PERIOD		This Rule is being readopted with minor technical amendments.	
4 NCAC 10A .0402	~~COMPUTATION OF DAILY WAGE~~ SUBMISSION OF EARNINGS STATEMENT REQUIRED	G.S. 97-2(5); G.S. 97-18(b); G.S. 97-80(a); G.S. 97-81	This Rule establishes that an employee or the Industrial Commission may request the employer to submit a verified statement of the days worked and wages earned by of the employee during the 52-week period preceding the injury, similar to the statement and information presently set forth on the Form 22. This Rule merely outlines the requirements of an existing form, allowing the parties to submit the information in a feasible, calculated manner. This Rule is being readopted with minor technical amendments.	None
4 NCAC 10A .0403	MANNER OF PAYMENT OF COMPENSATION	G.S. 97-18; G.S. 97-18(e); G.S. 97-80(a)	This Rule establishes the applicable standard for payments of compensation and allows the parties to come to a separate agreement regarding the manner of payment of compensation. This Rule is being readopted with minor technical amendments.	None
4 NCAC 10A .0404	TERMINATION AND SUSPENSION OF COMPENSATION	G.S. 97-18(c)(d); G.S. 18.1; G.S. 97-32.2(g); G.S. 97-80(a)	This Rule establishes the manner and procedures by which an employer, carrier, or administrator may seek to terminate or suspend compensation being paid to an employee, and addresses specifically the codification of G.S. 97-18(k), G.S. 97-29, and G.S. 97-32 in N.C. Sess. Law 2011-287. The title of this Rule has been amended to reflect the true procedural application. Finally, this Rule has been amended to reflect the information presently set forth on the Form 24. This Rule is being readopted with minor technical amendments.	Effective January 1, 2013, the Application to Terminate or Suspend Payment of Compensation must be electronically submitted. It is not expected that this will create any significant impact. If any, it may result in a minor savings.
4 NCAC	TRIAL RETURN TO	G.S. 97-18(h); G.S.	This Rule establishes that when total disability	None

10A .0404(A)	WORK	97-29; G.S. 97-32.1; G.S. 97-80	compensation is terminated after an employee returns to work, said termination is subject to G.S. 97-32.1. This Rule further establishes the manner in which an employee may seek certification of a failed trial return to work. Finally, this Rule spells out the existing cap for "medical only" cases at $2,000 which was added in order to clarify this Rule. This Rule is being readopted with minor technical amendments.	
4 NCAC 10A .0405	~~COMPUTATION OF COMPENSATION FOR AMPUTATIONS~~ REINSTATEMENT OF COMPENSATION	G.S. 97-18(k); G.S. 97-80(a)	This Rule addresses specifically the codification of G.S. 97-18(k) in N.C. Sess. Law 2011-287. The goal of this Rule and of G.S. 97-18(k) is to provide guidance to parties in pending workers' compensation claims as to the standard that will be applied by the Industrial Commission in decisions to reinstate compensation benefit payments to employees. This Rule establishes the manner in which, and procedures by which, compensation that has been suspended or terminated may be reinstated in accordance with G.S. 97-18(k) in N.C. Sess. Law 2011-287. The portion of this Rule dealing with compensation for amputations has been deleted as this information is set forth in G.S. 97-31. This Rule is being adopted in accordance with G.S. 97-18(k) in N.C. Sess. Law 2011-287.	Prior to G.S. 97-18(k) in N.C. Sess. Law 2011-287, requests for reinstatement would have been handled by the Industrial Commission's motion process. This Rule provides a uniform process via a Form 23, that would not increase costs and will likely generate some administrative cost savings for litigating parties.
4 NCAC 10A .0406	DISCOUNT ~~TABLE~~ RATE TO BE USED IN DETERMINING COMMUTED VALUES	G.S. 97-40; 97-44	This Rule addresses the manner in which compensation is commuted through the use of a standardized discount rate. The Industrial Commission currently has the discretion to set the rate and this Rule outlines the procedure for determining the proper standardized discount rate chosen by the Industrial Commission. The	None

			Industrial Commission will continue to provide the calculation chart, and the parties still bear the responsibility of calculating the values based upon the standardized discount rate. This Rule is being readopted with minor substantive and technical amendments.	
4 NCAC 10A .0407	FEES FOR MEDICAL COMPENSATION	G.S. 97-18(i); G.S. 97-25.6; G.S. 97-26; G.S. 97-80(a); G.S. 138-6	This Rule is being moved to 10J .0101.	
4 NCAC 10A .0408	~~ADDITIONAL MEDICAL COMPENSATION~~ APPLICATION FOR OR STIPULATION TO ADDITIONAL MEDICAL COMPENSATION	G.S. 97-25.1; 97-80(a)	This Rule establishes the manner in which an employee may apply for additional medical compensation through the filing of a Form 18M *Employee's Application for Additional Medical Compensation* or a Form 33 *Request that Claim be Assigned for Hearing*. This Rule further provides that the parties may stipulate or agree to the additional medical compensation, and is set forth in greater detail by the deletion of paragraph (a) and replacing it with paragraph (c). Paragraph (d) has been deleted as the standard for appeal is set forth in 4 NCAC 10A .702 Review of Administrative Decisions. This Rule is being readopted with minor substantive and technical amendments.	This proposed amendments to the Rule provide a uniform process that would provide a benefit to litigating parties by allowing stipulations thereby reducing litigation costs.
4 NCAC 10A .0409	CLAIMS FOR DEATH BENEFITS	G.S. 97-38; 97-39	This Rule requires employers, carriers, or administrators to report an employee's death in a timely manner when related to a workplace injury or occupational disease and to make a good faith effort to identify beneficiaries. This Rule further establishes the manner in which minor and incompetent beneficiaries may receive compensation. The elimination of Subsection (a)(1) will not result in any policy changes but is an	None

			elimination of redundant language. This Rule is being readopted with minor technical amendments.	
4 NCAC 10A .0410	COMMUNICATION FOR MEDICAL INFORMATION	G.S. 97-25.6; G.S. 97-80(a)	This Rule addresses specifically the codification of G.S. 97-25.6 in N.C. Sess. Law 2011-287. The goal of this Rule and of G.S. 97-25.6 is to provide guidance to the parties in pending workers' compensation claims with regard to the manner in which an employer may communicate with an employee's medical provider to request information. This Rule further establishes the manner in which an employee may seek a protective order regarding the employer's proposed communication. This Rule is being adopted in accordance with G.S. 97-25.6 in N.C. Sess. Law 2011-287.	Prior to G.S. 97-25.6 in N.C. Sess. Law 2011-287, requests for production of documents or materials to treating physicians would have been handled by the Industrial Commission's motion process. This Rule provides a uniform process that would not increase costs and will likely generate some administrative cost savings for litigating parties.
4 NCAC 10A .0501	AGREEMENTS FOR PROMPT PAYMENT OF COMPENSATION	G.S. 97-18; 97-80(a); 97-82	This Rule sets forth the requirements of form agreements submitted to the Industrial Commission. The portion of the Rule requiring an employer, carrier, or administrator to file a Form 28 after the last payment of compensation for either temporary or permanent disability has been moved to 4 NCAC 10A .0503 Notice of Last Payment Filing Requirement. This Rule is being readopted with minor technical amendments.	None.
4 NCAC 10A .0502	COMPROMISE SETTLEMENT AGREEMENTS	G.S. 97-17; G.S. 97-80(a); G.S. 97-82	This Rule explains the requirements for approval of Compromise Settlement Agreements and the satisfaction of unpaid medical bills in claims	None

			settled with Compromise Settlement Agreements. Paragraphs (b)(7) and (b)(8) will not have any impact on Compromise Settlement Agreements, as the proposed amendments to this Rule merely clarify existing policies. This Rule is being readopted with minor substantive and technical amendments.	
4 NCAC 10A .0503	~~APPROVAL OF AGREEMENT CONSTITUTES AWARD~~ NOTICE OF LAST PAYMENT FILING REQUIREMENT	G.S. 97-18(h); G.S. 97-80(a)	This Rule enumerates the forms required by G.S. 97-18(h) that articulate the date of the final payment of compensation. The existing 4 NCAC 10A .0503 Approval of Agreement Constitutes Award is being repealed and replaced with the new Rule 4 NCAC 10A .0503 Notice of Last Payment Filing Requirement, which was previously codified as 4 NCAC 10A. .0501 Agreements for Prompt Payment of Compensation, the content of which is being readopted with minor substantive and technical amendments.	None
4 NCAC 10A .0601	~~EMPLOYER~~ EMPLOYER'S OBLIGATIONS UPON NOTICE~~,~~; DENIAL OF LIABILITY SANCTIONS~~,~~; AND ~~DENIAL OF LIABILITY~~ SANCTIONS	G.S. 97-18; 97-80(a); 97-81(a)	This Rule informs the parties of the proper forms to be filed by an employer, carrier, or administrator in response to the initiation of a claim by an employee. This Rule is being readopted with minor technical amendments and clarifies existing policy.	None

4 NCAC 10A .0602	REQUEST FOR HEARING	G.S. 97-80(a); G.S. 97-83	This Rule lists the requirements of a request for hearing made to the Industrial Commission. This Rule is being readopted with minor technical amendments.	None
4 NCAC 10A .0603	~~RESPONSE TO~~ RESPONDING TO A PARTY'S REQUEST FOR HEARING	G.S. 97-80(a); 97-83	This Rule lists the requirements of a response to a request for hearing made to the Industrial Commission. This Rule is being readopted with minor technical amendments.	None
4 NCAC 10A .0604	APPOINTMENT OF GUARDIAN *AD LITEM*	1A-1, Rule 17; 97-50; 97-79(e); 97-80(a); 97-91	This Rule requires the appointment of a guardian *ad litem* in cases where minors or incompetents bring workers' compensation actions. This Rule is being readopted with minor technical amendments.	None
4 NCAC 10A .0605	DISCOVERY	G.S. 97-80(a); 97-80(f)	This Rule administrates the pre-hearing discovery process in workers' compensation actions. This Rule is being readopted with minor technical amendments.	None
4 NCAC 10A .0606	DISCOVERY – POST HEARING	G.S. 97-80(a); 97-80(f)	This Rule limits the post-hearing discovery process in workers' compensation actions. This is Rule is being readopted with minor technical amendments and clarifies existing policies. This Rule is being readopted with minor technical amendments and clarifies existing policies.	None
4 NCAC 10A .0607	DISCOVERY OF RECORDS AND REPORTS	G.S. 97-80(a); 97-80(b); 97-80(f) G.S. 97-80(a); 97-80(b); 97-80(f)	This Rule explains the ongoing obligation of parties to workers' compensation claims, upon written request of the opposing party, to produce any and all medical records, vocational reports, rehabilitation reports, employment records, Commission forms, and written communications	None

			with medical providers in their possession. This Rule is being readopted with minor technical amendments.	
4 NCAC 10A .0608	STATEMENT ~~ABOUT~~ OF INCIDENT LEADING TO CLAIM	G.S. 97-80(a)	This Rule explains the obligation of the employer or employer's agent, prior to the taking of a written or recorded statement regarding the facts and circumstances surrounding the claim, to advise the employee that such statement may be used to determine whether the claim is paid or denied, as well as the obligation that the transcript of such statement be furnished to the employee upon request or upon a request for hearing. This Rule is being readopted with minor technical amendments.	None
4 NCAC 10A .0609	MOTIONS PRACTICE IN CONTESTED CASES	G.S. 97-79(b); G.S. 97-80(a); G.S. 97-84; G.S. 97-91	This Rule administrates motions practice in workers' compensation actions. This Rule is being readopted with minor technical amendments.	None
4 NCAC 10A .0609A	EXPEDITED MEDICAL MOTIONS AND EMERGENCY MEDICAL MOTIONS	G.S. 97-25; 97-78(f)(2); 97-78(g)(2); 97-80(a)	This Rule administrates expedited medical motions and emergency medical motions practice in workers' compensation actions. This Rule is being readopted with minor technical amendments and clarifies existing policy.	None
4 NCAC 10A .0610	PRE-TRIAL ~~CONFERENCE~~ AGREEMENT	G.S. 97-80(a); 97-80(b); 97-83	This Rule requires the submission of a pre-trial agreement and sets forth the pre-trial agreement's form and content requirements. The portion of this Rule dealing with expert witnesses has been moved to 4 NCAC 10A .0613 Expert Witnesses and Fees. This Rule is being readopted with minor technical amendments and clarifies existing policy.	None
4 NCAC 10A .0611	HEARINGS BEFORE THE ~~INDUSTRIAL~~ COMMISSION	G.S. 97-79; G.S. 97-80; G.S. 97-84; G.S. 97-91	This Rule administrates logistical details surrounding Commission hearings. This Rule is being readopted with minor technical changes.	None
4 NCAC 10A .0612	DEPOSITIONS AND ADDITIONAL	G.S. 97-80; G.S. 97-88; 97-88.1	This Rule administrates logistical details surrounding lay witness depositions pertaining to	None

	HEARINGS		Commission hearings. This Rule is being readopted with minor technical changes and offers clarification regarding the Rule.	
4 NCAC 10A .0613	~~DISMISSAL AND REMOVALS~~ EXPERT WITNESSES AND FEES	G.S. 97-18(i); 97-80(a)	This Rule administrates logistical details surrounding expert witness depositions connected to Industrial Commission hearings and provides standards to ensure prompt payment. This Rule has been in existence and is being set out from the prior placement in 04 NCAC 10A .0610 Pre-trial Agreement. Existing Rule 4 NCAC 10A .0613 Dismissals and Removals is being moved to 4 NCAC 10A .0616 Dismissals. This Rule is being readopted with minor technical changes.	None
4 NCAC 10A .0614	~~ATTORNEYS RETAINED FOR PROCEEDINGS~~ MEDICAL PROVIDER FEE DISPUTE PROCEDURE	G.S. 97-26(i); 97-80(a)	This Rule formalizes, pursuant to G.S. 97-26(i), the existing policy regarding the dispute process used when there are contested unpaid medical charges. Existing Rule 4 NCAC 10A .0614 Attorneys Retrained for Proceedings is being moved to 4 NCAC 10A .0617. This Rule is being adopted for G.S. 97-26(i).	Prior to this Rule, requests for payment by medical providers would have been handled by the Industrial Commission's motion process. This Rule provides a uniform process that would not increase costs and will likely generate some administrative cost savings for litigating parties.
4 NCAC 10A .0615	~~DISQUALIFICATION OF DEPUTY COMMISSIONER OR COMMISSIONER~~	G.S. 97-80(a); 97-84; 97-91	This Rule sets forth the conditions under which a case may be removed from and reset on a hearing docket. This Rule has been in existence and is being set out from the prior placement in 04 NCAC	None

	CASES REMOVED FROM A HEARING CALENDAR		10A .0613 Dismissals and Removals. Existing Rule 4 NCAC 10A .0615 Disqualification of Deputy Commissioner or Commissioner is being moved to 4 NCAC 10A .0618. This Rule is being readopted with minor technical changes.	
4 NCAC 10A .0616	~~FOREIGN LANGUAGE INTERPRETERS~~ DISMISSALS	G.S. 97-80(a); 97-84; 97-91	This Rule sets forth the conditions under which a case may be dismissed. This Rule has been in existence and is being set out from the prior placement in 04 NCAC 10A .0613 Dismissals and Removals. Existing Rule 4 NCAC 10A .0616 Foreign Language Interpreters is being moved to 4 NCAC 10A .0619. This Rule is being readopted with minor technical changes.	None
4 NCAC 10A .0617	~~ELECTRONIC SERVICE AND VERIFICATION OF SERVICE~~ ATTORNEYS RETAINED FOR PROCEEDINGS	G.S. 97-80(a); 97-90; 97-91	This Rule sets forth the conditions under which attorneys can be retained for and may withdraw from Industrial Commission cases. This Rule has been in existence and is being set out from the prior placement in 04 NCAC 10A .0614 Attorneys Retained for Proceedings, and replaces the existing Rule 4 NCAC .0617. This Rule is being readopted with minor technical amendments and clarifies existing policies.	None
4 NCAC 10A .0618	DISQUALIFICATION OF A COMMISSIONER OR DEPUTY COMMISSIONER	G.S. 97-79(b); 97-80(a)	This Rule provides the procedure applicable when it becomes necessary that Commissioners and Deputy Commissioners recuse themselves from the hearing of a case and also that a majority of the Full Commission may remove a Commissioner or Deputy Commissioner from the hearing of a case. This Rule has been in existence and is being set out from the prior placement in 04 NCAC 10A .0615 Disqualification of a Commissioner or Deputy Commissioner. This Rule has been readopted with minor technical changes.	None

4 NCAC 10A .0619	FOREIGN LANGUAGE INTERPRETERS	G.S. 97-79(b); 97-80(a)	This Rule administrates the logistics surrounding the use of interpreters in workers' compensation hearings. This Rule has been in existence and is being set out from the prior placement in 04 NCAC 10A .0616 Foreign Language Interpreters. This Rule is being readopted with minor technical amendments.	None
4 NCAC 10A .0701	~~APPEAL TO THE~~ REVIEW BY THE FULL COMMISSION	G.S. 97-80; G.S. 97-85	This Rule administrates the logistical processes surrounding Full Commission review of Deputy Commissioner decisions. This Rule is being readopted with minor technical changes and clarifies existing policy. Existing Subsection (f) has been eliminated and readdressed by the proposed Subsection (f) requiring that a Motion be filed in order for the Full Commission to review new evidence. This Rule is being readopted with minor substantive and technical amendments.	None
4 NCAC 10A .0702	~~APPEAL TO THE COURT OF APPEALS~~ REVIEW OF ADMINISTRATIVE DECISIONS	G.S. 97-80; G.S. 97-85	This Rule administrates the logistical processes surrounding Full Commission or Deputy Commissioner review of administrative decisions. This Rule has been in existence and is being set out from the prior placement in 04 NCAC 10A .0703 Review of Appeals from Administrative Decisions. This Rule is being readopted with minor technical amendments.	None
4 NCAC 10A .0703	~~REVIEW OF APPEALS FROM ADMINISTRATIVE DECISIONS~~ APPEAL TO THE COURT OF APPEALS	G.S. 97-80(a); 97-86	This Rule administrates the procedural requirements associated with appeals of Full Commission decisions to the North Carolina Court of Appeals. This Rule has been in existence and is being set out from the prior placement in 04 NCAC 10A .0702 Appeal to the Court of Appeals. This Rule has been revised to minimize duplication of the applicable statutes and appellate rules. Existing	None

			Rule 4 NCAC 10A .0703 Review of Appeals from Administrative Decisions is being moved to 4 NCAC 10A .0702. This Rule is being readopted with minor technical amendments.	
4 NCAC 10A .0704	REMAND FROM THE APPELLATE COURTS	G.S. 97-80(a); 97-86	This Rule administrates the logistical processes surrounding the filings of parties when a case is remanded to the Full Commission from the North Carolina Court of Appeals. This Rule has been in existence and is being set out from the prior placement in 04 NCAC 10A .0702A Remand from the Appellate Courts. This Rule is being readopted with minor technical amendments	None
4 NCAC 10A.0801	~~WAIVER OF THE RULES~~ SUSPENSION OF RULES	G.S. 97-80(a)	This Rule establishes the applicable standard for waiver of Rules. This Rule is being readopted with minor technical amendments and clarifies existing policy.	None
4 NCAC 10A.0802	SANCTIONS	G.S. 1A-1, Rule 37; 97-18; 97-80(a); 97-88(1)	This Rule provides uniformity with Industrial Commission rules and establishes the applicable standard for sanctions in claims brought under the Workers' Compensation Act. This Rule is being readopted with minor technical amendments.	None
4 NCAC 10A.0803	~~PROCEDURE FOR WORKERS' COMPENSATION RULE MAKING BY THE INDUSTRIAL COMMISSION~~		This Rule is being repealed in accordance with N.C. Sess. Law 2011-287, which required the Commission to undertake rulemaking in accordance with the Administrative Procedure Act (G.S. 150B).	None
4 NCAC 10A.0901	CHECK ENDORSEMENT	G.S. 97-80(a); 97-88.2	This Rule establishes a standardized language to be used on payments by employers, carriers, or third party administrators to employees. This Rule is being readopted with minor technical amendments.	None
4 NCAC 1OA.0902	NOTICE	G.S. 97-80(a); 97-88.2	This Rule establishes the standardized notice language that must be provided to employees prior	None

			to use of check endorsement language. This Rule is being readopted with minor technical amendments and clarifies existing policy.	
4 NCAC 10A.0903	EMPLOYEE'S OBLIGATION TO REPORT EARNINGS	G.S. 97-80(a); 97-88.2	This Rule establishes the process for requesting and completion of a Form 90 *Report of Earnings*. This Rule is being readopted with minor technical amendments.	None
4 NCAC 10A .1001	PREAUTHORIZATION FOR SURGERY AND INPATIENT TREATMENT	G.S. 97-25.3; 97-80(a)	This Rule sets forth the policy and procedure that has been applied in workers' compensation claim and previously set forth in 4 NCAC 10E .0101 Utilization Review Plan. This Rule outlines the procedure that has been applied in relation to G.S. 97-25.3. The procedure was developed by the Commission, with extensive involvement of external stakeholders and implements industry standards regarding preauthorization for surgery and inpatient treatment. The language in this proposed rule is different than that of 4 NCAC 10E .0101; however, the foundation for the proposed Rule is outlined by the Utilization Review Plan and is being readopted with substantive and technical amendments. The proposed Rule provides additional details regarding the policy and procedure.	None

FISCAL IMPACT ANALYSIS

Agency Proposing Rule(s): North Carolina Industrial Commission

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Fiscal Note Category: Tier I – De Minimis

Proposed Rule Actions and Fiscal Impact

Proposed Action: Readopt as amended

Impact Summary:		
	State Government:	No
	Local Government:	No
	Substantial Economic:	No
	Federal Certification:	No

- **Subchapter B** – Tort Claims Rules
  - Section .0100 – Administration
  - Section .0200 – Claims Procedures
  - Section .0300 – Appeals to the Full Commission
  - Section .0400 – Appeals to the Court of Appeals
  - Section .0500 – Rules of the Commission

Baseline for Costs and Benefits of Proposed Rules:

The rules outlined above have been in existence and establish a baseline for the fiscal analysis. The rules have been reviewed to ensure that the content is clearly written, relevant, an up-to-date with existing policy and procedures of the Commission. Any changes have been reviewed and determined to be *de minimis* by the Commission. This fiscal note includes summaries of the proposed rule changes in the table set forth below.

Public Interest:

Pursuant to Sess. Law 2011-287, the Industrial Commission will conduct all rule making in accordance with the North Carolina Administrative Procedure Act found in G.S. 150B. This

process should result in public comment and involvement in the rule making process, along with ensuring that citizens of the State of North Carolina are aware of timely and accurate rules information for the Industrial Commission.

Rule Number	Title of Rule Change	Statutory Citation	Summary of the Rule Change	Impact on State/Local/Federal Government and/or Private Sector or Substantial Economic Impact
4 NCAC 10B .0101	LOCATION OF OFFICES AND HOURS OF BUSINESS	G.S. 143-291; 143-300	This Rule establishes the physical location of the Industrial Commission, and the hours during which paper and electronic versions of documents may be filed.	None.
4 NCAC 10B .0102	~~TRANSACTION OF BUSINESS BY THE COMMISSION~~ OFFICIAL FORMS	G.S. 143-300	This Rule explains how copies of the Commission's rules, forms, and minutes can be obtained and what forms are allowed and prohibited. The prior statement pertaining to the Transaction of Business by the Commission has been removed from this Rule to eliminate unnecessary rules.	None.
4 NCAC 10B .0103	~~OFFICIAL FORMS~~ FILING FEES	G.S. 143-291.2; 143-300	This rule sets the requirement of and method for filing fees when filing a claim under the State Tort Claims Act. The rule sets forth the requirements to request to sue as an indigent and how the Commission may rule on such request.	None.
4 NCAC 10B .0104	FILING BY ~~TELEFACSIMILE~~ FACSIMILE TRANSMISSION	G.S. 143-300; 143-291; 143-291.2; 143-297	This Rule allows filings with the Commission to be made by facsimile and provides that the filing fee must be received by the Commission contemporaneously with the facsimile by electronic transfer of funds.	None.
4 NCAC 10B .0201	RULES OF CIVIL PROCEDURE	G.S. 143-300	This rule provides that the North Carolina Rules of Civil Procedure as provided in G.S.1A-1 shall apply to tort claims before the Commission to the extent that the Rules of Civil Procedure are not inconsistent	None.

			with the Tort Claims Act. If there is an inconsistency, this Rule provides that the Tort Claims Act and the Commission's tort rules shall control.	
4 NCAC 10B .0202	~~FILING FEES~~ MEDICAL MALPRACTICE CLAIMS BY PRISON INMATES	G.S. 143-300	This Rule sets forth the requirements and procedures for an inmate to file a medical practice claim against the State of North Carolina. This Rule has been in existence and is being set out from the prior placement in 04 NCAC 10B .0201 Rules of Civil Procedure.	None.
4 NCAC 10B .0203	~~ENLARGEMENT OF TIME~~ INFANTS AND INCOMPETENTS	G.S. 143-300; 143-291; 143-295	This Rule requires the appointment of a guardian *ad litem* in cases where infants or incompetents bring tort actions. This Rule has been in existence and is being set out from the prior placement in 04 NCAC 10B .0204 Infants and Incompetents.	None.
4 NCAC 10B .0204	~~INFANTS AND INCOMPETENTS~~ MOTIONS	G.S. 143-300; 143-296	This rule sets forth the motions procedure for tort claims pending before the Commission. This Rule has been in existence and is being set out from the prior placement in either 04 NCAC 10B .0203 Enlargement of Time or 04 NCAC 10B .0205 Motions.	None.
4 NCAC 10B .0205	~~MOTIONS~~ MEDIATION	G.S. 143-300; 143-295; 143-296; 4 NCAC 10G .0101(g)	This Rule outlines the applicable process of mediation in claims filed under the Tort Claims Act. This	None.
4 NCAC 10B .0206	Hearings	G.S. 143-300; 143-296	This Rule provides the process and procedures for hearings before the Commission.	None.

4 NCAC 10B .0207	~~COSTS~~ HEARINGS OF CLAIMS BY PRISON INMATES	G.S. 143-300; 143-296; 97-101.1	This Rule provides the process and procedures for hearings before the Commission in which the claims are made by prison inmates.	None.
4 NCAC 10B T.0208	HEARING COSTS	G.S. 143-291.1; 143-291.2; 143-300; 7A-305	This rule sets forth that hearing costs payable to the Commission are due upon receipt of a bill or statement of the Commission. This Rule has been in existence and is being set out from the prior placement in either 04 NCAC 10B .0207 Costs.	None.
4 NCAC 10B T.0301	~~NOTICE OF APPEAL TO THE FULL COMMISION~~ SCOPE	G.S. 143-300; 143-292	This Rule provides that the subsequent rules in Section .0300 are applicable to the appeals to the Full Commission.	None.
4 NCAC 10B T.0302	~~TRANSCRIPTS~~ NOTICE OF APPEAL TO THE FULL COMMISSION	G.S. 143-300; 143-292	This Rule provides that a letter expressing an intent to appeal to the Full Commission will be considered as a notice of appeal to the Full Commission. This Rule has been in existence and is being set out from the prior placement in 04 NCAC 10B .0301 Notice of Appeal to the Full Commission.	None.
4 NCAC 10B .0303	~~ASSIGNMENTS OF ERROR~~ PROPOSED ISSUES ON APPEAL	G.S. 143-300; 143-292; *Dogwood Development and Management Co., LLC v. White Oak Transport Co., Inc.*, 362 N.C. 191, 657 S.E.2d 361 (2008)	This Rule provides a timeframe for the appealing party to prepare and serve the proposed issues on appeal and puts the appealing party on notice that failure to file the proposed issues on appeal may result in dismissal. This Rule has been in existence and is being set out from the prior placement in 04 NCAC 10B .0303 Assignment of Error.	None.
4 NCAC 10B .0304	~~DISMISSALS OF APPEALS~~		The Rule is being repealed. The content of this Rule remains in existence and is being taken from the prior placement combined in the proposed amended in 04 NCAC 10B .0303 ~~Assignments of Error~~ Proposed	None.

			Issues on Appeal.	
4 NCAC 10B .0305	BRIEFS TO THE FULL COMMISSION	G.S. 143-300; 143-296	This Rule clarifies the process and filing requirements for the Form T-44 and briefs by all parties to the Full Commission.	None.
4 NCAC 10B .0306	~~MOTION FOR NEW HEARING~~		This Rule is being repealed. The content of this Rule remains in existence and is being taken from the prior placement combined in the proposed amended in 04 NCAC 10B .0307 Motions Before the Full Commission.	None.
4 NCAC 10B T.0308	STAYS	G.S. 143-300; 143-292; 143-296	This Rule provides that order, opinion and awards, or decision and orders appealed to the Full Commission are stayed pending appeal	None.
4 NCAC 10B .0309	NEW EVIDENCE		This Rule is being repealed. The content of this Rule remains in existence and is being taken from the prior placement combined in the proposed amended in 04 NCAC 10B .0307 Motions Before the Full Commission.	None.
4 NCAC 10B T.0310	WAIVER OF ORAL ARGUMENT	G.S. 143-300; 143-292; 143-296	This Rule provides that the Full Commission may on its own motion or motion by either party waive oral arguments before the Full Commission to prevent manifest injustice, promoted judicial economy, or expeditious decision.	None.
4 NCAC 10B .0401	~~RULES OF APPELLATE PROCEDURE~~ SCOPE	G.S. 143-293; G.S. 143-300	This Rule establishes the applicable rules for appeals to the Court of Appeals.	None.
4 NCAC 10B .0402	~~APPEAL BOND~~ STAYS	G.S. 143-300; 143-292; 143-294; 143-296	This Rule, as amended, stays all orders, opinions and awards, or decisions and orders of the Full Commission upon an appeal to the Court of Appeal. It was enacted to make the Tort Claims Rules uniform with the Workers' Compensation Rules and implements a policy currently in place.	None.

4 NCAC 10B .0403	MOTIONS FOR COURT OF APPEALS CASES)	G.S. 143-300; 143-293	This Rule provides instructions on filing motions concerning appeals with the North Carolina Court of Appeals and motions to reconsider or amend an award of the Full Commission.	None.
4 NCAC 10B .0404	~~SETTLING RECORD ON APPEAL~~ REMAND FROM APPELLATE COURTS	G.S. 143-300; 143-292; 143-296	This Rule, as amended, provides information on what a party may do after a remand from the North Carolina Court of Appeals. This Rule was enacted to make the Tort Claims Rules uniform with the Workers' Compensation Rules and implements a policy currently in place.	None.
4 NCAC 10B .0501	~~WAIVER OF RULES~~ SUSPENSION OF RULES	G.S. 143-300; 143-291	This Rule establishes the applicable standard for waiver of Rules.	None.
4 NCAC 10B .0502	~~RULEMAKING~~		This Rule is being repealed in accordance with: (1) N.C. Sess. Law 2011-287, and (2) Executive Order 70.	None.
4 NCAC 10B .0503	SANCTIONS	G.S. 143-292; G.S. 143-296; G.S. 143-300	This Rule provides uniformity with Industrial Commission rules and establishes the applicable standard for sanctions in claims brought under the Workers' Compensation Act.	None.

FISCAL IMPACT ANALYSIS

Agency Proposing Rule(s): North Carolina Industrial Commission

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Fiscal Note Category: Tier I – De Minimis

Proposed Rule Actions and Fiscal Impact

Proposed Action:	Readopt as amended	
Impact Summary:	State Government:	No
	Local Government:	No
	Substantial Economic:	No
	Federal Certification:	No

- **Subchapter C** – Commission Rules for Utilization of Rehabilitation Professionals in Workers' Compensation Claims
  - Section .0100 – ~~Rules~~ Administration
  - Section .0200 – Rules of the Commission

Baseline for Costs and Benefits of Proposed Rules:

The rules outlined above have been in existence and establish a baseline for the fiscal analysis. The rules have been reviewed to ensure that the content is clearly written, relevant, an up-to-date with existing policy and procedures of the Commission. Any changes have been reviewed and determined to be *de minimis* by the Commission. This fiscal note includes summaries of the proposed rule changes in the table set forth below.

Public Interest:

Pursuant to Sess. Law 2011-287, the Industrial Commission will conduct all rule making in accordance with the North Carolina Administrative Procedure Act found in G.S. 150B. This process should result in public comment and involvement in the rule making process, along with ensuring that citizens of the State of North Carolina are aware of timely and accurate rules

information for the Industrial Commission.

Rule Number	Title of Rule Change	Statutory Citation	Summary of the Rule Change	Impact on State/Local/Federal Government and/or Private Sector or Substantial Economic Impact
4 NCAC 10C .0101	~~APPLICATION~~ APPLICABILTY OF THE RULES	G.S. 97-25.4; 97-25.5; 97-32.2; 97-80; 97-18(d)	This Rule establishes when vocational rehabilitation is applicable for pending workers' compensation claims. This Rule is being readopted with minor technical amendments.	None.
4 NCAC 10C .0102	~~PURPOSE OF THE RULES~~		This Rule is being repealed in accordance with: (1) N.C. Sess. Law 2011-287, and (2) Executive Order 70.	None.
4 NCAC 10C .0103	~~APPLICATION OF THE RULES~~ DEFINITIONS	G.S. 97-25.4; 97-32.2; 97-25.5; 97-2(22); 97-80	This Rule defines the terms most commonly used by rehabilitation professionals in workers' compensation claims. This Rule is being readopted with minor technical amendments and has been revised to offer clarification. The revisions also eliminate unnecessary and redundant language.	None.
4 NCAC 10C .0105	QUALIFICATIONS REQUIRED	G.S. 97-25.4; 97-32.2; 97-25.5; 97-80	This Rule establishes the qualification standards for a rehabilitation professional in workers' compensation claims. One substantive change has been made to this Rule which requires that a rehabilitation professional complete a course in order to be considered "qualified". On March 17, 2011, the Industrial Commission recognized a need to establish a consistency in the provision of rehabilitation services for workers' compensation claims in the State of North Carolina. In response to this need, the Industrial Commission adopted a policy to mandate rehabilitation professionals providing rehabilitation services to complete a comprehensive course entitled "*Workers' Compensation Case Management in NC: A Basic*	The Rule change does not anticipate any fiscal impact on the expenditure or distribution of state funds, such as the State Budget Act, and does not anticipate any fiscal impact on local governments. The benefits received from the proposed, amended Rule text will be to establish consistency in

			Primer for Medical and Vocational Case Managers." The commission would not spend any significant time overseeing the course and training as it would only occur every six months and is currently being prepared through the International Association of Rehabilitation Professionals. The remainder of this Rule has been readopted with minor technical amendments.	the provision of rehabilitation services for workers' compensation claims. It is possible that this course will have a minimal impact on current state employed rehabilitation professionals in the amount of $50.00 as there is no waiver for state employees.
4 NCAC 10C .0106	PROFESSIONAL RESPONSIBILITY OF THE REHABILITATION PROFESSIONAL IN WORKERS' COMPENSATION	G.S. 97-25.4; 97-32.2; 97-25.5; 97-80	This Rule establishes the role of a rehabilitation professional in workers' compensation claims. This Rule is being readopted with minor technical amendments and clarifications.	None.
04 NCAC 10C .0107	COMMUNICATION	G.S. 97-25.4; 97-25.5, 97-32.2, 97-2(19), 97-80	This Rule establishes the communication standards for a rehabilitation professional in workers' compensation claims. This Rule is being readopted with minor technical amendments.	None.
04 NCAC 10C .0108	INTERACTION WITH PHYSICIANS	G.S. 97-25.4; 97-25.5; 97-32.2; 97-80	This Rule establishes the communication standards for a rehabilitation professional with physicians in workers' compensation claims. This Rule has been re-organized to provide guidance to the parties as to the appropriate communications. This Rule is being readopted with minor technical amendments.	None.
04 NCAC 10C .0109	VOCATIONAL REHABILITATION SERVICES AND	G.S. 97-25.4; 97-25.5; 97-32.2; 97-2(22)	This Rule addresses and incorporates the codification of G.S. 97-32.2 in N.C. Sess. Law 2011-287. The goal of this rule and of G.S. 97-32.2 is to provide guidance	None.

	RETURN TO WORK		to rehabilitation professionals as job placement services are provided in workers' compensation claims. This Rule is being readopted with minor technical amendments and additional clarifying language regarding G.S. 97-32.2 in N.C. Sess. Law 2011-287.	
04 NCAC 10C .0110	~~MOTION FOR~~ CHANGE OF ~~RP:~~ REHABILITATION PROFESSIONAL ~~SANCTIONS~~	G.S. 97-25.4; 97-25.5; 97-32.2; 97-80; 97-83 97-84	This Rule establishes the procedure for removal of a rehabilitation professional from a workers' compensation claim. The paragraph of the existing Rule regarding Sanctions has been moved to 4 NCAC 10C .0202. Rule .0110 is being readopted with minor technical changes.	None.
4 NCAC 10C .0201	SUSPENSION OF RULES	G.S. 97-25.4; 97-80	This Rule provides uniformity with Industrial Commission Rules in other Subchapters of the NCAC and establishes the applicable standard for the Commission regarding the waiver of any Rule in this Subchapter. The adoption of this Rule is an implementation of current policy and will result in no changes.	None.
4 NCAC 10C .0202	SANCTIONS	G.S. 97-25.4; 97-25.5; 97-32.2; 97-80; 97-84	This Rule establishes the procedure for sanctioning a rehabilitation professional. The procedures in this Rule have been in existence and are being relocated from 4 NCAC 10C .0110 with minor technical amendments.	None.

FISCAL IMPACT ANALYSIS

Agency Proposing Rule(s): North Carolina Industrial Commission

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Fiscal Note Category: Tier I – De Minimis

Proposed Rule Actions and Fiscal Impact

Proposed Action:	Readopt as amended	
Impact Summary:	State Government:	No
	Local Government:	No
	Substantial Economic:	No
	Federal Certification:	No

- **Subchapter D** – Workers' Compensation Rules for Managed Care Organizations
  - Section .0100 – Rules

Baseline for Costs and Benefits of Proposed Rules:

The rules outlined above have been in existence and establish a baseline for the fiscal analysis. The rules have been reviewed to ensure that the content is clearly written, relevant, an up-to-date with existing policy and procedures of the Commission. Any changes have been reviewed and determined to be *de minimis* by the Commission. This fiscal note includes summaries of the proposed rule changes in the table set forth below.

Public Interest:

Pursuant to Sess. Law 2011-287, the Industrial Commission will conduct all rule making in accordance with the North Carolina Administrative Procedure Act found in G.S. 150B. This process should result in public comment and involvement in the rule making process, along with ensuring that citizens of the State of North Carolina are aware of timely and accurate rules information for the Industrial Commission.

Rule Number	Title of Rule Change	Statutory Citation	Summary of the Rule Change	Impact on State/Local/Federal Government and/or Private Sector or Substantial Economic Impact
4 NCAC 10D. 0101	PURPOSE	G.S. G.S. 97-2(19); 97-2(20); 97-2(21); 97-25; 97-25.2; 97-25.3(e); 97-25.4(a); 97-26(b); 97-26(c)	This Rule sets forth an explanation of the role of Managed Care Organizations (MCO) in pending workers' compensation claims. This Rule is being readopted with minor technical amendments.	None.
4 NCAC 10D .0102	DEFINITIONS	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	This Rule establishes a uniform meaning for terms used in the context of managed care organizations. This Rule has been reviewed in conjunction with the statutory authority and the deleted terms are set forth in the statutes. This Rule is being readopted with minor technical amendments. .	None.
4 NCAC 10D .0103	~~QUALIFICATION BY DEPARTMENT OF INSURANCE~~		This Rule is being repealed in accordance with: (1) N.C. Sess. Law 2011-287, and (2) Executive Order 70 as Managed Care Organizations are controlled by the Department of Insurance. As such, the qualifications standards are not set forth in the statutes governing workers' compensation claims and this Rule is unnecessary. The Commission only governs Managed Care Organizations as they relate to Worker's Compensation Claims as set out by the remaining Rules in this Subsection.	
4 NCAC 10D .0104	QUALIFICATION AND REVOCATION	G.S. 97-25.2	Rule establishes the applicable standard for the Commission to reach a determination to revoke an MCO's ability to be involved in pending workers' compensation claims. The first portion of this rule has been deleted upon review of the rule. This	None.

			remaining portion of this Rule is readopted with minor technical amendments. It should be noted that the change in language from "may" to "shall" is not expected to create any impact as the Commission currently has the option of suspending or revoking an MCO's permission to deal with workers' compensation matter.	
4 NCAC 10D .0105	NOTICE TO COMMISSION	G.S. 97-25.2	This Rule establishes the filing requirements and notification standards for MCOs involved in pending workers' compensation claims. This Rule is being readopted with minor technical amendments.	None.
4 NCAC 10D .0106	CONTRACT PROVISIONS	G.S. 97-25.2	This Rule establishes the accepted contents for contracts of MCOs in pending workers' compensation claims. This Rule is being readopted with minor technical amendments.	None.
4 NCAC 10D. 0107	INFORMATION FOR ~~EMPLOYEE/PATIENT~~ EMPLOYEE	G.S. 97-25.2	This Rule establishes the standard information to be provided to claimants by employers or MCOs in pending workers' compensation claims. This Rule is being readopted with minor technical amendments.	None.
4 NCAC 10D .0108	INCLUSIVE PROVIDER PANELS	G.S. 97-2(19); 97-2(20); 97-25; 97-25.2	This Rule establishes how claimants may obtain access to additional or different medical providers. This Rule is being readopted with minor technical amendments.	None.
4 NCAC 10D .0109	QUALITY ASSURANCE AND UTILIZATION REVIEW	G.S. 97-25.2	This Rule establishes the Industrial Commission's ability to inquire or request additional information about MCOs participating in pending workers' compensation claims. This Rule is being readopted with minor technical amendments.	None.
4 NCAC 10D. 0110	~~WAIVER~~ SUSPENSION OF RULES	G.S. 97-80(a); 97-25.2;	This Rule establishes the applicable standard for waiver of Rules. This Rule is being readopted with minor technical amendments.	None.

4 NCAC 10D .0111	SANCTIONS	G.S. 97-18(i); 97-25; 97-25.2; § 97-80(a); § 97-88(1); 1A-1, Rule 37;	This Rule provides uniformity with Industrial Commission Rules in other Subchapters of the NCAC and establishes the applicable standard for sanctions. This Rule is substantially similar to the Rules in other Sections regarding Sanctions.	None.

FISCAL IMPACT ANALYSIS

Agency Proposing Rule(s): North Carolina Industrial Commission

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Fiscal Note Category: Tier I – De Minimis

Proposed Rule Actions and Fiscal Impact

Proposed Action: Adopt as amended in accordance with G.S. 150B

Impact Summary:		
	State Government:	Yes
	Local Government:	No
	Substantial Economic:	No
	Federal Certification:	No

- **Subchapter E** – ~~Workers' Compensation Rules for Utilization Review~~ Administrative Rules of the Industrial Commission
  - Section .0100 – ~~Rules~~ Administration
  - Section .0200 – Fees
  - Section .0300 – Rules of the Commission

Baseline for Costs and Benefits of Proposed Rules:

Section .0100 has been implemented to facilitate the rule making procedure set forth in the Administrative Procedure Act found in G.S. 150B. The remaining sections of the rules outlined above have been in existence and establish a baseline for the fiscal analysis. The rules have been reviewed to ensure that the content is clearly written, relevant, an up-to-date with existing policy and procedures of the Commission. Any changes have been reviewed and determined to be *de minimis* by the Commission. This fiscal note includes summaries of the proposed rule changes in the table set forth below.

Included with this fiscal note is the 2010-2011 Commerce Fee Report which provides financial information for the Industrial Commission. The proposed Rules are not expected to

cause any significant increase or decrease in revenues. The fees reflected on this report are authorized by G.S. 97-80(b).

Public Interest:

Pursuant to Sess. Law 2011-287, the Industrial Commission will conduct all rule-making in accordance with the North Carolina Administrative Procedure Act found in G.S. 150B. This process should result in public comment and involvement in the rule making process, along with ensuring that citizens of the State of North Carolina are aware of timely and accurate rules information for the Industrial Commission.

Rule Number	Title of Rule Change	Statutory Citation	Summary of the Rule Change	Impact on State/Local/Federal Government and/or Private Sector or Substantial Economic Impact
4 NCAC 10E .0101	~~UTILIZATION REVIEW PLAN~~ INSTRUCTIONS FOR FILING A PETITION FOR RULE-MAKING	G.S. 150B-20	This Rule sets out a rule making procedure for the Industrial Commission, in compliance with the Administrative Procedure Act (APA). This Rule has been adopted from the existing rule applied by the Office of Administrative Hearings. The deleted portion of this Rule's text has been re-organized to 4 NCAC 10A .1001 Preauthorization for Surgery and Inpatient Treatment.	The adoption of this Rule benefits the public in providing an opportunity to present proposed Rules to the Commission. Costs associated with this rule would be minimal but would include the opportunity cost of time for staff and members of the Commission to review and consider petitions.
4 NCAC 10E .0102	MAILING LIST	G.S. 150B-21.2(d)	This Rule establishes the procedure for placement on the Industrial Commission's rule making mailing list, in compliance with the Administrative Procedure Act (APA). This Rule has been adopted from the existing rule applied by the Office of Administrative Hearings.	The costs of this process would be borne by the Commission and the parties requesting information, but the associated opportunity costs are expected to be minimal.
4 NCAC 10E .0201	DOCUMENT AND RECORD FEES	G.S. 7A-305; 97-79; 97-80; 132-6.2; 143-291.1; 143-291.2; 143-300	This Rule formally adopts the fees associated with obtaining records from the Industrial Commission. This Rule adopts costs as are being applied in accordance with other courts of general jurisdiction.	The Commission currently charges costs for obtaining records, and this Rule ensures the Commission's costs are

				similar to other courts of general jurisdiction. Please see attached fee report.
4 NCAC 10E .0202	HEARING COSTS OR FEES	G.S. 7A-305; 97-80; 143-291.1; 143-291.2; 143-300	This Rule formally adopts the fees and costs associated with hearings before the Industrial Commission. The contents of this Rule have been applied by the Industrial Commission and are being formally incorporated into a rule pursuant to N.C. Sess. Law 2011-287, Section 21(c). These costs and fees have been applied in a uniform manner to all pending claims before the Industrial Commission.	There are no likely costs or benefits related to the proposed Rule text, as the fees have been in existence prior to the rule making requirements set forth in N.C. Sess. Law 2011-287, Section 21(c). Please see attached fee report.
4 NCAC 10E .0203	FEES SET BY THE COMMISSION	G.S. 97-10.2; 97-17; 97-18.2; 97-26(i); 97-73; 97-80; 143-291.2; 143-300	This Rule formally adopts the fees associated with filing of specifically identified documents with the Industrial Commission. The contents of this Rule have been applied by the Industrial Commission and are being formally incorporated into a rule pursuant to N.C. Sess. Law 2011-287, Section 21(c). These costs and fees have been applied uniformly to all pending claims before the Industrial Commission.	There are no likely costs or benefits related to the proposed Rule text, as the fees have been in existence prior to the rule making requirements set forth in N.C. Sess. Law 2011-287, Section 21(c). Please see attached fee report.
4 NCAC 10E .0204	ACCIDENT PREVENTION AND SAFETY EDUCATIONAL PROGRAM FEES	G.S. 97-73(d); 97-80	This Rule formally adopts the fees associated with accident prevention and safety education conducted by the Industrial Commission. The contents of this Rule have been applied by the Industrial Commission and are being formally incorporated into a rule pursuant to N.C. Sess. Law 2011-287, Section 21(c). The fees for the workshops have been applied uniformly by the Commission.	There are no likely costs or benefits related to the proposed Rule text, as the fees have been in existence prior to the rule making requirements set forth in N.C. Sess. Law 2011-287, Section 21(c). Please see attached fee

				report.
4 NCAC 10E .0301	SUSPENSION OF RULES	G.S. 97-25.2; 97-25.4; 97-80; 130A-425(d); 143-166.4; 143-296; 143-300	This Rule is being adopted for this Subchapter and provides uniformity with Industrial Commission Rules in other Subchapters of the NCAC. This Rule establishes the applicable standard for the Commission regarding the waiver of any Rule in this Subchapter.	None.
4 NCAC 10E .0302	SANCTIONS	G.S. 1A-1, Rule 37; G.S. 97-18; 97-25; 97-25.2; 97-25.4; 97-25.5; 97-32.2; 97-80; 97-84; 97-88(1); 130A-425(d); 143-166.4; 143-296; 143-30	This Rule is being adopted for this Subchapter and provides uniformity with Industrial Commission Rules in other Subchapters of the NCAC. This Rule establishes the applicable standard for sanctions in claims pending before the Industrial Commission.	None.

FISCAL IMPACT ANALYSIS

Agency Proposing Rule(s): North Carolina Industrial Commission

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Fiscal Note Category: Tier III – Substantial Economic Impact

Proposed Rule Actions and Fiscal Impact

Proposed Action:	Adopt rules in accordance with G.S. 97-26(g1) in N.C. Sess. Law 2011-287 and G.S. 150B	
Impact Summary:	State Government:	No
	Local Government:	No
	Substantial Economic:	Yes
	Federal Certification:	No

- **Subchapter F** – ~~Revised Workers' Compensation Medical Fee Schedule~~ Electronic Billing Rules
  - Section .0100 – ~~Rules~~ Administration

Introduction

Pursuant to SL 2011-287, the Industrial Commission "shall adopt rules to require electronic medical billing and payment processes, to standardize the necessary medical documentation for billing adjudication, to provide for effective dates and compliance, and for further implementation of the subsection." SL 2011-287 also states that "the applicable administrative standards for code sets, identifiers, formats, and electronic transactions to be used in processing electronic medical bills… shall comply with 45 C.F.R. 162." As such, the Industrial Commission has proposed rules requiring electronic billing and setting forth the applicable standards.

The proposed rules require that carriers and medical providers use electronic billing and payment in workers' compensation claims. These rules also set forth the applicable standards for electronic medical billing transactions. In order to comply with these rules, those affected must develop and implement electronic billing and payment processes consistent with 45 C.F.R 162on or before January 1, 2014. Further, electronic medical billing transactions must be conducted using the electronic formats under 45 C.F.R. 162. While some carriers and providers currently have systems in place that would allow compliance, many do not and will have to implement a system in order to comply with these rules.

Stakeholder Input in Economic Analysis:

The Commission's analysis of the proposed electronic billing rules indicates that the economic impact will exceed the threshold of a substantial economic impact (greater than $500,000 in gross costs and benefits in a 12-month period). In reaching this conclusion, the following persons have provided information in support of this fiscal note: Conor Brockett of the North Carolina Medical Society, Tammy Banks and Alice Bynum-Gardner of the American Medical Association, Don St. Jaques and Sheri Wilson of Jopari Solutions, Inc., and Faith Howe of the International Association of Industrial Accidents Board and Commission. Lisa Wichterman, Medical Policy Specialist of Minnesota, Lisa Carney, Director of System Monitoring and Oversight of Texas and Jackie Schauer of the State of California have also been contacted in order to obtain state-specific information.

In addition, we have spoken to a number of North Carolina stakeholder companies that this rule is likely to impact in order to gain knowledge of their current practices regarding e-billing. Those companies included Liberty-Mutual, Galagher-Bassett, Chartis, Key Risk, Esis, Zurich, and Wal-mart. Many had plans to implement e-billing and were in varying stages of implementation, notwithstanding the proposed rule that will require e-billing effective March 14, 2014; only Liberty-Mutual currently has e-billing in place. It should be noted that many of the carriers are currently engaged in business in other states that will also require them to implement an e-billing system, such that any cost data cannot be isolated.

Cost Measures and Industry Data:

Medical Providers

With regard to the costs associated with e-billing for providers, Don St. Jacques, of Jopari Solutions, offered some industry-standard costs relating to e-billing offered by Jopari. The costs offered for provider services were as follows:

- Transaction charges from $0.00 to $1.00 per bill set and set-up fees from $0-$1,000 for a small practice of 1-5 providers who currently have a Practice Management System or other automation access that would upload bill and attachment files to a website
- Transaction charges from $0.00 to $1.00 per bill set and set-up fees from $0 to several thousand dollars for a medium-sized practice of 5-10 providers who currently have a Practice Management/Revenue Cycle Management Solution that can export and receive EDI files to payers
- Transaction charges from $0.00 to $1.00 per bill set and set-up fees from $0 to multiple thousands of dollars for a large practice or medical facility, providers who currently have a Practice Management/Revenue Cycle Management Solutions, Electronic Health/Medical Records system, and have a clearinghouse access. Jopari Solutions noted that large-practice or medical-facility providers "would have a sophisticated set of automation tools" which would include the above.

According to "Electronic Transaction Savings Opportunities for Physician Practices," a white paper prepared by Milliman, Inc., "a physician who currently relies on paper and telephone calls for insurance administration may be able to save more than $42,000 a year through simple steps to increase electronic transactions for operations like claims submission, referral and preauthorization requests, and

eligibility verification."[1] The paper went onto state that "although these savings may vary widely depending on practice specialty, employee productivity, existing use of technology, and other variables, these savings are significant enough to justify greater use of electronic transactions for many practices." In reaching this conclusion, Milliman analyzed information regarding claims submission, eligibility verification, referral certification, preauthorization for care, claim status, and payment posting.

In addition, Milliman found that "fully automated practices may be able to achieve significantly greater savings." In reaching this conclusion, Milliman:

- Identified the labor time and costs required to perform the tasks for both manual and electronic transactions.
- Calculated the fully loaded time cost of labor including employee salary, benefits and payroll taxes, and general and administrative overhead.
- Calculated the fully loaded cost per transaction, based on the estimated labor requirements. Electronic transaction costs included the cost of transaction fees and a 12-month amortization of set-up costs.
- Adjusted cost based on inflation factors to account for any differences in time between source data and the present.

In analyzing the results, Milliman estimated a savings range from 50% to 90% depending on the difficulty of the transaction. They determined that the average annual cost for transactions being performed manually was approximately $70,000 while the cost for performing transactions electronically was approximately $28,000 resulting in an approximate $42,000 savings. Milliman also identified other benefits such as a reduction in claim rejections and the subsequent need to resubmit claims multiple times, improvement in cash flow, a quicker payment of claims resulting in a reduction of accounts receivable days, and a reduction of staff telephone time. Milliman further found that electronic billing increased the ability of physicians to easily validate patients' insurance eligibility which resulted in a decrease in "bad debt." According to estimates by Milliman, the following chart reflects the savings to a typical one-provider practice:

[1] Milliman, Inc., "Electronic Transaction Savings Opportunities for Physician Practices." *Technology and Operations Solutions*. Revised: Jan. 2006. http://www.emdeon.com/resourcepdfs/MillimanEDIBenefits.pdf

Table 1: Summary of Typical Transaction Costs for a One-Provider Practice

	Manual Cost	Electronic Cost	Savings/ Transaction	Transactions Per Year	Estimated Annual Savings
Claims	$6.63	$2.90	$3.73	6,200	$23,124
Eligibility Verification	$3.70	$0.74	$2.95	1,250	$3,693
Referrals	$8.30	$2.07	$6.22	1,000	$6,223
Preauthorization	$10.78	$2.07	$8.71	100	$871
Payment Posting	$2.98	$1.48	$1.49	4,340	$6,457
Claim Status	$3.70	$0.37	$3.33	620	$2,066
Total					$42,433

Source: Milliman, 2006.

The following table reflects a summary of the costs and benefits for North Carolina healthcare providers, in millions, associated with implementing electronic billing. (See Statewide Costs and Benefits section and/or Appendix 2 for calculation details.)

Table 2: Summary of Costs and Benefits for Providers

	2014	2015	2016	2017	2018	2019
Costs	$3.10	$2.63	$2.74	$2.85	$2.96	$3.08
Net Present Value (Costs)	$13.8					
Benefits	$8.11	$8.09	$8.42	$8.75	$9.10	$9.47
Net Present Value (Benefits)	$41.0					
Net	$5.01	$5.46	$5.68	$5.91	$6.14	$6.39
Gross	$11.21	$10.72	$11.15	$11.60	$12.06	$12.55
NPV (Net)	$27.2					

* All dollar amounts in millions; net present value calculations use a discount rate of 7 percent.

Medical Payers:

Although we were unable to obtain costs relating to payers from the companies that we spoke to, as the information is proprietary, Jopari Solutions offered some additional costs relating to e-billing. The costs offered for payer services were as follows:

- Transaction charges would be $0.50-$2.50 per bill set, and set-up fees could be $500-$1,000 at the low end and $25,000 to $50,000 at the high end, depending upon the level of sophistication and number of points of integration needed. A typical payer would utilize a Bill Review System that is enabled to receive e-bill transactions.
- Another option for payers would be to take the approach of receiving e-bills at a portal, printing them out, re-keying, or scanning them in, and then entering the information on a portal. If a payer elected this option, the transaction fees would be in the $0.50 to $2.50 range and set up would be $500-$1,000.

With regard to healthcare payers, Milliman's "Electronic Transactions Between Payers and Providers: Pathways to Administrative Cost Reductions in Health Insurance," estimated that

> for an average healthcare plan with 500,000 commercial members, using standard electronic transactions to communicate with providers, as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), could result in annual administrative savings of over $23 million. When extrapolated to the entire U.S. healthcare payor market, this represents up to $19 billion in possible administrative savings annually over manual transactions if all transactions were conducted electronically.[2]

The following chart, as prepared by Milliman, reflects the estimated savings to a large health-care payer:

Table 3: Summary of Typical Transaction Costs for a Large Health Plan

	Manual Cost	Electronic Cost	Savings/ Transaction	Transactions Per Year	Estimated Annual Savings
Claims	$2.20	$1.14	$1.06	7,000,000	$7,420,000
Eligibility Verification	$3.19	$0.75	$2.44	3,000,000	$7,220,000
Referrals/ Preauthorization	$2.54	$1.04	$1.50	1,300,000	$1,950,000
Remittance Advice / EOP	$0.81	$0.38	$0.43	2,800,000	$1,204,000
Claim Status	$3.19	$0.38	$2.81	1,900,000	$5,339,000
Total				16,000,000	$23,233,000

Source: Milliman, 2010.

In addition to the above estimations, this report cited the Federal Register, 65 Fed. Reg. 50351, as stating "the Department of Health and Human Services (DHHS) estimated that as a result of greater adoption of electronic transactions '[t]he total net savings for the period 2002-2011 will be… $13.1 billion for health plans, and… $16.7 billion for healthcare providers.'"

The following table reflects a summary of the costs and benefits for payers, in millions, associated with implementing electronic billing. (See Statewide Costs and Benefits section and/or Appendix 2 for calculation details.)

[2] John Phelan and Andrew Naugle. "Electronic Transactions Between Payors and Providers: Pathways to Administrative Cost Reductions in Health Insurance" (Seattle: Milliman, Inc., 2010): 1–17 http://www.navinet.net/files/navinet/Milliman_report.pdf

Table 4: Summary of Costs and Benefits for Payers

	2014	2015	2016	2017	2018	2019
Costs	$2.89	$1.89	$1.96	$2.04	$2.12	$2.21
Net Present Value (Costs)	$10.5					
Benefits	$7.12	$6.75	$7.02	$7.30	$7.59	$7.90
Net Present Value (Benefits)	$34.5					
Net	$4.23	$4.86	$5.05	$5.26	$5.47	$5.69
Gross	$10.01	$8.64	$8.98	$9.34	$9.72	$10.10
NPV (Net)	$24.0					

* All dollar amounts in millions; net present value calculations use a discount rate of 7 percent.

When compared to health-care providers, health-care payers and health insurers may expect a greater impact on their operations from e-billing, as conducting transactions is a core function in that they are responsible for receiving funds from individuals and organizations and dispersing them to medical providers. This would represent a much smaller amount of claims for workers' compensation purposes. The data provided above is based on total group health numbers.

Statewide Costs and Benefits:

To generate an estimate of the costs and benefits of the proposed rules for affected parties in North Carolina, the Commission attempted to use the best-available information to extrapolate the per transaction costs calculated by Milliman to an estimate of the number of workers' compensation medical transactions in North Carolina. (For additional details on calculations and key assumptions, see Appendix 2.)

A supplement to the regulatory impact analysis for Version 5010 of 45 CFR Part 162 Health Insurance Reform published by Gartner, Inc.,[3] included national projections for the number of hospital and physician claims through 2019. To estimate the number of hospital and physician claims in North Carolina for years 2014 through 2019, the Commission assumed that the number of transactions in North Carolina would be proportional to the state's share of national health expenditures on hospital and physician services (approximately 2.7 percent in 2009).[4] To then estimate the share of physician and hospital claims in North Carolina related to workers' compensation claims, the Commission used the proportion of Oregon's total healthcare expenditures associated with workers' compensation claims

[3] 45 CFR Part 162 Health Insurance Reform: Modifications to the Health Insurance Portability and Accountability Act (HIPAA) Electronic Transaction Standards," Version 5010 Regulatory Impact Analysis – Supplement. September, 2008, Gartner, Inc. https://www.cms.gov/Regulations-and-Guidance/HIPAA-Administrative-Simplification/TransactionCodeSetsStands/downloads/5010RegulatoryImpactAnalysisSupplement.pdf

[4] Kaiser Family Foundation; Statehealthfacts.org, "North Carolina: Distribution of Health Care Expenditures by Service by State of Residence (in millions), 2009."

(approximately 1.3 percent in 2009).[5] (Oregon is one of the only states with sufficient publicly available data to perform this calculation.)

Table 5: Projected Hospital & Physician Claims, with North Carolina Workers' Compensation Estimates

Total Hospital & Physician Claims - US (millions)						
	2014	2015	2016	2017	2018	2019
Low	4,659	4,845	5,039	5,240	5,450	5,668
High	6,057	6,299	6,552	6,813	7,086	7,370
Total Hospital & Physician Claims – North Carolina (millions)						
	2014	2015	2016	2017	2018	2019
Low	124	129	134	139	145	151
High	161	167	174	181	188	196
Total Hospital & Physician Claims – North Carolina - Workers' Compensation Only (millions)						
	2014	2015	2016	2017	2018	2019
Low	1.6	1.7	1.8	1.8	1.9	2.0
High	2.1	2.2	2.3	2.4	2.5	2.6

Sources: See footnotes 3, 4, and 5.

In the cost and benefit calculations, quantified costs to providers and payers are inclusive of all transaction costs, including set-up costs and recurring costs, related to future electronic billing transactions that would likely have been undertaken as manual transactions in the absence of the proposed rules. Quantified benefits include the transaction costs associated with manual transactions that likely would have taken place in future years but for the adoption of the proposed rules. In short, the costs quantified in this analysis are new costs associated with electronic transactions, and the benefits quantified in this analysis are cost savings associated with eliminating costs associated with manual transactions.

Furthermore, although the requirement to use electronic billing for workers' compensation transactions will almost certainly affect regulated parties' other billing transactions, the costs and benefits included here focus only on medical bills related to workers' compensation claims.

To estimate the statewide costs and benefits of the proposed requirement to use electronic billing transactions and payments in accordance with 45 CFR Part 162, the Commission employed the steps outlined below:

Costs

1. Multiply the average of the annual projections for total physician and hospital claims by the per transaction costs for electronic claims in the 2006 Milliman report (*Electronic Transaction Savings Opportunities for Physician Practices).*

[5] Oregon Department of Consumer and Business Services, "Workers' compensation medical system costs and trends," September 2010.
http://www.cbs.state.or.us/external/wcd/rdrs/mac/MLAC_Presentation_Outline_9_20_10.pdf

2. Repeat this calculation for the other types of transactions, multiplying by the ratio of claims transactions to each other transaction type (e.g. eligibility verifications, payments) in the 2006 Milliman report.
3. For years after 2014, include an adjustment for the proportion of healthcare providers newly impacted by the workers' compensation rules and an adjustment for the proportion of costs expected to be recurring costs (for healthcare providers not newly impacted by the rules), as the Milliman-estimated transaction costs include a 12-month amortization of the set-up costs for electronic transactions.
4. Multiply the result by the proportion of each type of transaction completed manually, as reported by the US Healthcare Efficiency Index or (in the case of electronic payments) by the regulatory impact analysis for 45 CFR Parts 160 and 162 Administrative Simplification: Adoption of Standards for Health Care Electronic Funds Transfers (EFTs) and Remittance Advice; Interim Final Rule.[6]

Benefits

1. Multiply the average of the annual projections for total physician and hospital claims by the per transaction costs for manual claims in the 2006 Milliman report (*Electronic Transaction Savings Opportunities for Physician Practices)*.
2. Repeat this calculation for the other types of transactions, multiplying by the ratio of claims transactions to each other transaction type (e.g. eligibility verifications, payments) in the 2006 Milliman report.
3. For years after 2014, include an adjustment for the proportion of healthcare providers newly impacted by the workers' compensation rules and an adjustment for the proportion of costs expected to be recurring costs (for healthcare providers not newly impacted by the rules), as the Milliman-estimated transaction costs include a 12-month amortization of the set-up costs for electronic transactions.
4. Multiply the result by the proportion of each type of transaction completed manually, as reported by the US Healthcare Efficiency Index or (in the case of electronic payments) by the regulatory impact analysis for 45 CFR Parts 160 and 162 Administrative Simplification: Adoption of Standards for Health Care Electronic Funds Transfers (EFTs) and Remittance Advice; Interim Final Rule.

For payers, the cost and benefit calculations are very similar to those for providers outlined above. The key differences are 1) the estimates for the manual and electronic transaction costs are taken from the 2010 Milliman report, "Electronic Transactions Between Payors and Providers: Pathways to Administrative Cost Reductions in Health Insurance," and 2) the calculation assumes all payers affected by the proposed rules will implement electronic billing in 2014. Thus, unlike for providers, step 3 of the cost calculation does not include an adjustment for newly affected entities in years after 2014.

Appendix 2 includes more information about the specific assumptions underlying the cost and benefit calculations for providers and payers.

[6] 45 CFR Parts 160 and 162 Administrative Simplification: Adoption of Standards for Health Care Electronic Funds Transfers (EFTs) and Remittance Advice; Interim Final Rule. Federal Register / Vol. 77, No. 6 / Tuesday, January 10, 2012. http://www.gpo.gov/fdsys/pkg/FR-2012-01-10/pdf/2012-132.pdf

Summary Table of Costs and Benefits:

The following table outlines the estimated costs and benefits for years 2014 – 2019:

Table 6: Summary of Costs and Benefits for Payers and Providers, Primary Scenario

	2014	2015	2016	2017	2018	2019
Costs	$ 6.0	$ 4.5	$ 4.7	$ 4.9	$ 5.1	$ 5.3
Net Present Value (Costs)	$24.3					
Benefits	$ 15.2	$ 14.8	$ 15.4	$ 16.1	$ 16.7	$ 17.4
Net Present Value (Benefits)	$75.5					
Net	$ 9.2	$ 10.3	$ 10.7	$ 11.2	$ 11.6	$ 12.1
Gross	$ 21.2	$ 19.4	$ 20.1	$ 20.9	$ 21.8	$ 22.6
NPV (Net)	$51.3					

* All dollar amounts in millions; net present value calculations use a discount rate of 7 percent.

E-billing Requirements of Other States:

According to Tammy Banks of the American Medical Association (AMA) and Sherry Wilson of Jopari, California, Minnesota, and Texas currently have legislation in place that requires e-billing. Georgia, Louisiana, and New Jersey have pending legislation regarding e-billing requirements in workers' compensation cases. Colorado, Connecticut, Delaware, Florida, Illinois, Kentucky, Nebraska, New Hampshire, New Jersey, Oregon, South Carolina, and Tennessee are all in the process of discussing and exploring implementation requirements of e-billing. It is very likely that the majority of insurers being affected by the Commission's current proposed rule change will also be affected by e-billing requirements of other states, as the majority of them do business in multiple states. We have been unable to obtain fiscal information from other states that would be applicable to the proposed rule change.

In sum, while it is likely that there will be substantial up-front costs for many of those affected by this rule, there will also be significant benefits resulting from reduced transaction costs and improved ability to receive payment. It is also likely to result in an increase of productivity, accuracy, and efficiency.

Risk Analysis:

Computing the costs and benefits of the proposed rules entailed making a significant number of assumptions, many of which are detailed in Appendix 2. One major assumption included in the primary scenario is that the proportion of transactions occurring electronically, independent of the proposed rules, would be the same in all years. The following table reflects an alternative assumption where the share of electronic transactions gradually increases over time, independent of the proposed rule change.

Table 7: Alternative Assumptions for Risk Scenario #1

Risk Scenario #1: Proportion of Medical Transactions Conducted Electronically						
	2014	2015	2016	2017	2018	2019
Claims	0.85	0.87	0.89	0.91	0.93	0.95
Eligibility Verifications	0.40	0.43	0.46	0.49	0.52	0.55
Referrals	0.43	0.46	0.49	0.52	0.55	0.58
Preauthorization	0.43	0.46	0.49	0.52	0.55	0.58
Payment	0.15	0.20	0.25	0.30	0.35	0.40
Claim Status	0.40	0.43	0.46	0.49	0.52	0.55
Remittance Advice/EOP	0.46	0.49	0.52	0.55	0.58	0.61

* Proportions in 2014 reflect assumptions for all years in primary cost/benefit scenario

Under Risk Scenario #1, future costs and benefits are each significantly lower than under the primary scenario, and the net present value is nearly one-fifth lower. The following table reflects the cost/benefit outcome for Risk Scenario #1.

Table 8: Summary of Costs and Benefits for Payers and Providers, Risk Scenario #1

Risk Scenario #1: Electronic transactions increase over time independent of the proposed rules						
	2014	2015	2016	2017	2018	2019
Costs	$ 6.0	$ 4.2	$ 4.0	$ 3.8	$ 3.6	$ 3.3
NPV (Costs)	$20.2					
Benefits	$ 15.2	$ 13.8	$ 13.3	$ 12.7	$ 12.1	$ 11.3
NPV (Benefits)	$63.0					
Net	$ 9.2	$ 9.6	$ 9.3	$ 8.9	$ 8.5	$ 8.0
Gross	$ 21.2	$ 18.0	$ 17.3	$ 16.5	$ 15.6	$ 14.7
NPV (Net)	$42.8					

* All dollar amounts in millions; net present value calculations use a discount rate of 7 percent.

Another assumption underlying the primary scenario cost/benefit calculation is that per transaction costs for manual and electronic billing are similar to those in the Milliman reports. The following table reflects the cost/benefit outcome if, in addition to the alternative assumption in Risk Scenario #1, the calculations include an assumption that the actual manual costs are only 85 percent of those costs reported by Milliman. The practical effect of this change in assumptions is to reduce the gross benefits by 15 percent.

Table 9: Summary of Costs and Benefits for Payers and Providers, Risk Scenario #2

Risk Scenario #2: Scenario #1 AND actual average costs of manual transactions for providers and payers are only 85% of the Milliman estimates.						
	2014	2015	2016	2017	2018	2019
Costs	$ 6.0	$ 4.2	$ 4.0	$ 3.8	$ 3.6	$ 3.3
NPV (Costs)	$20.2					
Benefits	$ 13.2	$ 12.0	$ 11.5	$ 11.0	$ 10.5	$ 9.8
NPV (Benefits)	$54.7					
Net	$ 7.2	$ 7.8	$ 7.5	$ 7.2	$ 6.9	$ 6.5
Gross	$ 19.2	$ 16.2	$ 15.5	$ 14.8	$ 14.0	$ 13.2
NPV (Net)	$34.5					

* All dollar amounts in millions; net present value calculations use a discount rate of 7 percent.

Even when applying alternative assumptions where the share of electronic transactions gradually increases over time independent of the proposed rules and the manual costs (i.e. gross benefits) are not as high as previously analyzed, the benefits still significantly outweigh the costs.

Alternatives:

Pursuant to SL 2011-287, the Industrial Commission "shall adopt rules to require electronic medical billing and payment processes" that comply with 45 C.F.R 162. As such, alternatives available to the Industrial Commission regarding these rules are limited. Two alternatives identified by the Industrial Commission are 1) requiring compliance with these rules prior to March 14, 2014 and 2) requiring compliance with these rules after March 14, 2014.

Adjusting the effective date to require implementation of electronic billing prior to January 1, 2014 would shorten the amount of time that payers and providers have to comply with these rules. It is possible that this could cause significant financial impact to those affected without providing them sufficient time to plan for the additional up-front costs. The current effective date allows the parties sufficient time to plan and implement any necessary changes in order to comply with these rules.

Adjusting the effective date to require implementation of electronic billing after January 1, 2014 would lengthen the amount of time that payers and providers have to comply with these rules. A later effective date could cause providers, payers, and the Industrial Commission to spend additional time, resources, and money on manual processes. As discussed above, while there will be some up-front costs for the majority of those affected by these rules, the long-term savings for providers, payers, and the Industrial Commission will substantially outweigh those costs.

After careful consideration of the impact upon the parties affected, the Industrial Commission has proposed an effective date of January 1, 2014. This date provides providers and payers sufficient time to enact the requirements in their operations without unduly delaying compliance with the requirements set forth by SL 2011-287.

Appendix 1: Summary of Proposed Rule Changes

Rule Number	Title of Rule Change	Statutory Citation	Summary of the Rule Change
4 NCAC 10F .0101	ELECTRONIC MEDICAL BILLING AND PAYMENT REQUIREMENT	G.S. 97-26(g)(1); G.S. 97-80	This rule addresses specifically the codification of G.S. 97-26(g1) in N.C. Sess. Law 2011-287. The goal of this rule and of G.S. 97-26(g1) is to provide efficient communication standards between medical providers and carriers or third party administrators in workers' compensation claims. This rule requires medical providers and carriers or third party administrators to develop and implement electronic medical and billing processes consistent with 45 C.F.R. 162. This rule is being adopted in accordance with G.S. 97-26(g1) in N.C. Sess. Law 2011-287.
4 NCAC 10F .0102	~~MEDICAL FEE SCHEDULE~~ DEFINITIONS	G.S. 97-26(g1); 97-80	This rule defines the terms most commonly used for electronic transactions in workers' compensation claims.
4 NCAC 10F .0103	~~BACKGROUND~~ FORMATS FOR ELECTRONIC MEDICAL BILL PROCESSING	G.S. 97-26(g1); 97-80	This rule provides notification of when administrative simplification standards will apply under 45 C.F.R. § 162. This rule is being adopted in accordance with IAIABC industry standards. The electronic formats being adopted are in accordance with 45 C.F.R. § 162 and must be implemented on or before March 1, 2014.
4 NCAC 10F .0104	BILLING CODE SETS	G.S. 97-26(g1); 97-80	This rule defines the code sets used for electronic transactions in workers' compensation claims.
4 NCAC 10F .0105	ELECTRONIC MEDICAL BILLING, REIMBURSEMENT, AND DOCUMENTATION	G.S. 97-26(g1); 97-80	This rule defines the standards for medical billing and the necessary documentation for electronic billing in pending workers' compensation.
4 NCAC 10F .0106	EMPLOYER, INSURANCE CARRIER, MANAGED CARE ORGANIZATION, OR AGENTS' RECEIPT OF MEDICAL BILLS FROM HEALTH-CARE PROVIDERS	G.S. 97-26(g1); 97-80	This rule provides detailed information concerning a payer's receipt of medical bills, communication between the payer and the medical provider regarding medical bills, and payment of medical bills in accordance with G.S. 97-26(g1) which requires the Commission to adopt "administrative standards for code sets, identifiers, formats, and electronic transactions to be used in processing electronic medical bills" that complies with 45 C.F.R. § 162.
4 NCAC 10F .0107	COMMUNICATION BETWEEN HEALTH-CARE PROVIDERS AND PAYERS	G.S. 97-26(g1); 97-80	This rule provides standards for communication regarding electronic transactions in pending workers' compensation claims.

4 NCAC 10F .0108	SANCTIONS	G.S. 1A-1; Rule 37; 97-26(g1); 97-80	This rule provides uniformity with Industrial Commission rules and establishes the Commission's ability to impose sanctions for noncompliance with the rules of this Subchapter.
4 NCAC 10F .0109	EFFECTIVE DATE	G.S. 97-26(g1); 97-80	This rule provides the effective date for electronic transactions in pending workers' compensation claims.

Appendix 2: Details of Cost and Benefit Calculations and Underlying Assumptions

Detailed Cost and Benefit Tables for Healthcare Providers

Costs (millions) - Hospitals	2014	2015	2016	2017	2018	2019
Claims	$ 0.17	$ 0.16	$ 0.17	$ 0.18	$ 0.18	$ 0.19
Eligibility Verifications	$ 0.04	$ 0.03	$ 0.03	$ 0.04	$ 0.04	$ 0.04
Referrals	$ 0.05	$ 0.07	$ 0.07	$ 0.08	$ 0.08	$ 0.08
Preauthorization	$ 0.01	$ 0.01	$ 0.01	$ 0.01	$ 0.01	$ 0.01
Payment	$ 0.35	$ 0.27	$ 0.29	$ 0.30	$ 0.31	$ 0.32
Claim Status	$ 0.04	$ 0.01	$ 0.01	$ 0.01	$ 0.01	$ 0.01
Total	$ 0.66	$ 0.56	$ 0.58	$ 0.60	$ 0.63	$ 0.65

Costs (millions) - Physicians	2014	2015	2016	2017	2018	2019
Claims	$ 0.65	$ 0.61	$ 0.63	$ 0.66	$ 0.68	$ 0.71
Eligibility Verifications	$ 0.13	$ 0.12	$ 0.13	$ 0.13	$ 0.14	$ 0.15
Referrals	$ 0.20	$ 0.26	$ 0.28	$ 0.29	$ 0.30	$ 0.31
Preauthorization	$ 0.02	$ 0.03	$ 0.03	$ 0.03	$ 0.03	$ 0.03
Payment	$ 1.31	$ 1.02	$ 1.06	$ 1.10	$ 1.15	$ 1.20
Claim Status	$ 0.13	$ 0.03	$ 0.03	$ 0.03	$ 0.03	$ 0.04
Total	$ 2.44	$ 2.07	$ 2.16	$ 2.24	$ 2.33	$ 2.43

Benefits (millions) - Hospitals	2014	2015	2016	2017	2018	2019
Claims	$ 0.40	$ 0.41	$ 0.43	$ 0.45	$ 0.46	$ 0.48
Eligibility Verifications	$ 0.18	$ 0.19	$ 0.19	$ 0.20	$ 0.21	$ 0.22
Referrals	$ 0.30	$ 0.32	$ 0.33	$ 0.34	$ 0.36	$ 0.37
Preauthorization	$ 0.04	$ 0.04	$ 0.04	$ 0.04	$ 0.05	$ 0.05
Payment	$ 0.71	$ 0.74	$ 0.77	$ 0.80	$ 0.83	$ 0.86
Claim Status	$ 0.09	$ 0.09	$ 0.10	$ 0.10	$ 0.10	$ 0.11
Total	$ 1.72	$ 1.78	$ 1.86	$ 1.93	$ 2.01	$ 2.09

Benefits (millions) - Physicians	2014	2015	2016	2017	2018	2019
Claims	$ 1.48	$ 1.54	$ 1.60	$ 1.66	$ 1.73	$ 1.80
Eligibility Verifications	$ 0.67	$ 0.69	$ 0.72	$ 0.75	$ 0.78	$ 0.81
Referrals	$ 1.13	$ 1.18	$ 1.23	$ 1.28	$ 1.33	$ 1.38
Preauthorization	$ 0.15	$ 0.15	$ 0.16	$ 0.17	$ 0.17	$ 0.18
Payment	$ 2.64	$ 2.74	$ 2.85	$ 2.97	$ 3.09	$ 3.21
Claim Status	$ 0.33	$ 0.34	$ 0.36	$ 0.37	$ 0.39	$ 0.40
Total	$ 6.39	$ 6.31	$ 6.56	$ 6.82	$ 7.09	$ 7.38

Claims & Healthcare Provider Calculation Ratios

Hospital Services: NC/US	2.8%
Source: Kaiser Family Foundation; Statehealthfacts.org	
Physician Services: NC/US	2.6%
Source: Kaiser Family Foundation; Statehealthfacts.org	
Workers' Compensation Healthcare Services: WC/Total	1.3%
Source: Department of Consumer and Business Services, OR Workers' compensation medical system costs and trends, September 2010	
Share of providers in calculation newly affected by proposed rules after 2014	0.5
Eligibility Verifications/Claim	0.20
Referrals/Claim	0.16
Preauthorizations/Claim	0.02
Payments/Claim	0.70
Claim Status Inquiries/Claim	0.10
Source: "Electronic Transaction Savings Opportunities for Physician Practices," Milliman, January 2006	
Share of initial-year costs that recurring (Payments)	0.5
Share of initial-year costs that recurring (Other)	0.8

Detailed Cost and Benefit Tables for Payers

Costs (millions) - Payers	2014	2015	2016	2017	2018	2019
Claims	$ 0.17	$ 0.16	$ 0.17	$ 0.18	$ 0.18	$ 0.19
Eligibility Verifications	$ 0.04	$ 0.03	$ 0.03	$ 0.04	$ 0.04	$ 0.04
Referrals/Preauthorization	$ 0.05	$ 0.07	$ 0.07	$ 0.08	$ 0.08	$ 0.08
Remittance Advice/EOP	$ 0.01	$ 0.01	$ 0.01	$ 0.01	$ 0.01	$ 0.01
Claim Status	$ 0.35	$ 0.27	$ 0.29	$ 0.30	$ 0.31	$ 0.32
Payment	$ 0.04	$ 0.01	$ 0.01	$ 0.01	$ 0.01	$ 0.01
Total	$ 0.66	$ 0.56	$ 0.58	$ 0.60	$ 0.63	$ 0.65
Benefits (millions) - Payers	**2014**	**2015**	**2016**	**2017**	**2018**	**2019**
Claims	$ 0.65	$ 0.61	$ 0.63	$ 0.66	$ 0.68	$ 0.71
Eligibility Verifications	$ 0.13	$ 0.12	$ 0.13	$ 0.13	$ 0.14	$ 0.15
Referrals/Preauthorization	$ 0.20	$ 0.26	$ 0.28	$ 0.29	$ 0.30	$ 0.31
Remittance Advice/EOP	$ 0.02	$ 0.03	$ 0.03	$ 0.03	$ 0.03	$ 0.03
Claim Status	$ 1.31	$ 1.02	$ 1.06	$ 1.10	$ 1.15	$ 1.20
Payment	$ 0.13	$ 0.03	$ 0.03	$ 0.03	$ 0.03	$ 0.04
Total	$ 2.44	$ 2.07	$ 2.16	$ 2.24	$ 2.33	$ 2.43

Provider Calculation Ratios

Eligibility Verifications/Claim	0.19
Referrals & Pre-authorizations/Claim	0.43
Remittance Advice Inquiries & EOPs/Claim	0.40
Claim Status Inquiries/Claim	0.27
Payments/Claim	0.70

Source: Electronic Transactions Between Payors and Providers: Pathways to Administrative Cost Reductions in Health Insurance, Milliman, May 2010

Share of initial-year costs that recurring (Payments)	0.5
Share of initial-year costs that recurring (Other)	0.8

Key Assumptions Underlying Calculations

Assumption #1	Supporting Source
Per transaction costs for manual and electronic billing transactions cited in Milliman reports are similar to expected average costs for affected entities (providers & payers).	Electronic Transaction Savings Opportunities for Physician Practices, Milliman, January 2006; Electronic Transactions Between Payors and Providers: Pathways to Administrative Cost Reductions in Health Insurance, Milliman, May 2010
Assumption #2	
The proportion of US billing transactions occurring in North Carolina is roughly equal to the state's proportion of national health care expenditures for hospital and physician services.	Version 5010 Regulatory Impact Analysis – Supplement September, 2008, Gartner, Inc.; Kaiser Family Foundation; Statehealthfacts.org
Assumption #3	
The proportion of North Carolina billing transactions that are related to workers' compensation claims is roughly equal to the proportion of workers' compensation medical expenditures relative to total expenditures in Oregon (one state with sufficient data).	Department of Consumer and Business Services, OR Workers' compensation medical system costs and trends, September 2010
Assumption #4	
Billing transaction ratios (relative to claims) in the Milliman reports are representative of the averages for payers and providers.	Electronic Transaction Savings Opportunities for Physician Practices, Milliman, January 2006; Electronic Transactions Between Payors and Providers: Pathways to Administrative Cost Reductions in Health Insurance, Milliman, May 2010
Assumption #5	
With the exception of payments, recurring costs are assumed to be 80% of the first-year costs reported by Milliman (first-year costs include 12-month amortization of set-up costs).	Electronic Transaction Savings Opportunities for Physician Practices, Milliman, January 2006; Electronic Transactions Between Payors and Providers: Pathways to Administrative Cost Reductions in Health Insurance, Milliman, May 2010
Assumption #6	
For payments, recurring costs are assumed to be 50% of the first-year costs reported by Milliman (first-year costs include 12-month amortization of set-up costs).	Federal Register / Vol. 77, No. 6 / Tuesday, January 10, 2012.
Assumption #7	
Per transaction costs for payment posting is assumed to be the same for payers as for providers (Milliman report on payers did not include payment posting).	Electronic Transaction Savings Opportunities for Physician Practices, Milliman, January 2006; Electronic Transactions Between Payors and Providers: Pathways to Administrative Cost Reductions in Health Insurance, Milliman, May 2010

Assumption #8	
After the first year of implementation, half of affected providers are assumed to have already implemented electronic transactions due to workers' compensation transactions in prior years.	
Assumption #9	
The proportion of all transactions that are already conducted electronically, now and in future years, is presumed to be the same as measured by the US Heathcare Efficiency Index and (for payments) Federal Register Volume 77, No. 6.	US Healthcare Efficiency Index, http://www.ushealthcareindex.org/; Federal Register / Vol. 77, No. 6 / Tuesday, January 10, 2012.
Assumption #10	
In cases where there is no measure for the proportion of all transactions that are already conducted electronically, the proportion is presumed to be the same as the overall US Heathcare Efficiency Index.	US Healthcare Efficiency Index, http://www.ushealthcareindex.org/
Assumption #11	
Given the uncertainty regarding future relative cost changes for manual versus electronic transactions, inflation for each is assumed to be zero.	
Assumption #12	
Although the requirement to use electronic billing for workers' compensation transactions will almost certainly affect regulated parties' other billing transactions, the costs and benefits included here focus only on bills related to workers' compensation claims.	
Assumption #13	
Although the Milliman reports focused only on the per transaction costs for a solo-practice physician and for a large health plan, those per transaction costs are presumed to be representative of the average costs for all providers and payers, respectively.	

Appendix 3: Text of Proposed Rules

4 NCAC 10F .0101 is proposed for amendment as follows:

SUBCHAPTER 10F – ~~REVISED WORKERS' COMPENSATION MEDICAL FEE SCHEDULE~~ ELECTRONIC BILLING RULES

SECTION .0100 – ~~RULES~~ ADMINISTRATION

4 NCAC 10F .0101 ELECTRONIC MEDICAL BILLING AND PAYMENT REQUIREMENT

Carriers and medical providers shall utilize electronic billing and payment in workers' compensation claims. Carriers and medical providers shall develop and implement electronic billing and payment processes consistent with 45 CFR 162. Carriers and medical providers shall comply with this Rule on or before January 1, 2014. 45 CFR 162 is hereby incorporated by reference and includes subsequent amendments and editions. A copy may be obtained at no charge from the National Archives and Records Administration's website, 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, located in the Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, between the hours of 8:00 a.m. and 5:00 p.m.

History Note: *Authority* G.S. 97-26(g1); 97-80;
Eff. January 1, 2013.

4 NCAC 10F .0102 is proposed for amendment as follows:

4 NCAC 10F .0102 ~~MEDICAL FEE SCHEDULE~~ DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

As used in this Subchapter:

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

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

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

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

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

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

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

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

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

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

4 NCAC 10F .0103 is proposed for amendment as follows:

4 NCAC 10F .0103 ~~BACKGROUND~~ FORMATS FOR ELECTRONIC MEDICAL BILL PROCESSING

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

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

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

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

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

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

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

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

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

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

~~(h) The multiplier of 2.06 for Surgery will yield an 8% reduction. The Commission had originally proposed a multiplier of 2.02, which would have yielded a 10% reduction. The higher multiplier, and consequently the lower percentage reduction, gives recognition to the fact that the early intervention of good surgery is often what is needed for good results in difficult workers' compensation injury situations.~~

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

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

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

(a) Beginning March 1, 2014, electronic medical billing transactions shall be conducted using the electronic formats adopted under the Code of Federal Regulations, Title 45, part 162, subparts K, N, and P. Whenever a standard format is replaced with a newer standard, the most recent standard shall be used. The requirement to use a new version shall commence on the effective date of the new version as published in the Code of Federal Regulations. The Code of Federal Regulations, Title 45, part 162, subparts K, N, and P is hereby incorporated by reference and includes subsequent amendments and editions. A copy may be obtained at no charge from the Internal Revenue Service's website, http://ecfr.gpoaccess.gov, or upon request, at the offices of the Commission, located in the Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, between the hours of 8:00 a.m. and 5:00 p.m.

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

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

4 NCAC 10F .0104 is proposed for amendment as follows:

4 NCAC 10F .0104 BILLING CODE SETS

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

(1) "CDT-4 Codes" that refers to the codes and nomenclature prescribed by the American Dental Association.

(2) "CPT-4 Codes" that refers to the procedural terminology and codes contained in the "Current Procedural Terminology, Fourth Edition," as published by the American Medical Association.

(3) "Diagnosis Related Group (DRG)" that refers to the inpatient classification scheme used by CMS for hospital inpatient reimbursement.

(4) "Healthcare Common Procedure Coding System" (HCPCS) that refers to a coding system which describes products, supplies, procedures, and health professional services and which includes CPT-4 codes, alphanumeric codes, and related modifiers.

(5) "ICD-9-CM Codes" that refers to diagnosis and procedure codes in the International Classification of Diseases, Ninth Revision, Clinical Modification published by the United States Department of Health and Human Services.

(6) "ICD-10-CM/PCS that refers to diagnosis and procedure codes in the International Classification of Diseases, Tenth Edition, Clinical Modification/Procedure Coding System.

(7) National Drug Codes (NDC) of the United States Food and Drug Administration.

(8) "Revenue Codes" that refers to the 4-digit coding system developed and maintained by the National Uniform Billing Committee for billing inpatient and outpatient hospital services, home health services, and hospice services.

(9) "National Uniform Billing Committee Codes" that refers to the code structure and instructions established for use by the National Uniform Billing Committee (NUBC).

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

4 NCAC 10F .0105 is proposed for amendment as follows:

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

(a) Applicability

(1) Payers and payer agents shall:

(A) accept electronic medical bills submitted in accordance with the adopted standards;

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

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

(2) A health-care provider shall:

(A) exchange medical bill data in accordance with the adopted standards;

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

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

(D) receive and process any acceptance or rejection acknowledgment from the payer.

(b) 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;

(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.

(c) Acknowledgment

(1) Interchange Acknowledgment (TA1) notifies the sender of the receipt of, and structural defects associated with, an incoming transaction.

(2) 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) 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 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) 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 days of receipt of the electronic submission.

(A) Notification of a rejected bill is transmitted in an ASC X12N 277 response or acknowledgment when an electronic medical bill does not meet the definition of a complete electronic medical bill 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.

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

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

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

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

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

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

(d) Electronic Documentation

(1) Electronic documentation, including but not limited to medical reports and records submitted electronically that support an electronic medical bill, may be required by the payer before payment may be remitted to the health-care provider. Electronic documentation may be submitted simultaneously with the electronic medical bill.

(2) Electronic transmittal by electronic mail shall contain the following information:

(A) name of the injured employee;

(B) identification of the worker's employer, the employer's insurance carrier, or the third party administrator or its agent handling the workers' compensation claim;

(C) identification of the health-care provider billing for services to the employee, and where applicable, its agent;

(D) date(s) of service; and

(E) workers' compensation claim number assigned by the payer, if known.

(e) Electronic remittance notification

(1) An electronic remittance notification is an explanation of benefits (EOB) or explanation of review (EOR), submitted electronically regarding payment or denial of a medical bill, recoupment request, or receipt of a refund.

(2) A payer shall provide an electronic remittance notification in accordance with G.S. 97-18.

(3) The electronic remittance notification shall contain the appropriate Group Claim Adjustment Reason Codes, Claim Adjustment Reason Codes (CARC) and associated Remittance Advice Remark Codes (RARC) as specified by ASC X12 835 implementation guide or, for pharmacy charges, the National Council for Prescription Drugs Program (NCPDP) Reject Codes, denoting the reason for payment, adjustment, or denial.

(4) The remittance notification shall be sent within two days of:

(A) the expected date of receipt by the medical provider of payment from the payer; or

(B) the date the bill was rejected by the payer. If a recoupment of funds is being requested, the notification shall contain the proper code described in Subparagraph (e)(3) of this Rule and an explanation for the amount and basis of the refund.

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

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

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

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

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

4 NCAC 10F .0106 is proposed for amendment 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, a payer shall evaluate each bill's conformance with the criteria of a complete medical bill as follows:

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

(B) 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 provider to obtain the information necessary to make the bill complete as follows:

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

(A) 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) be specific to the bill or the bill's related episode of care;

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

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

(E) 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) 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.

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

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

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

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

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

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

(i) Payment of all uncontested portions of a complete medical bill shall be made within 30 days of receipt of the original bill, or receipt of additional information requested by the payer allowed under the law. Amounts paid after the 30 day review period shall accrue an interest penalty of 10 percent per month after the due date. The interest payment shall be made at the same time as the medical bill payment.

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

History Note: *Authority* G.S. 97-18(1); 97-26(g1); 97-80;
Eff. March 1, 2014.

4 NCAC 10F .0107 is proposed for amendment as follows:

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

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

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

(c) Communication between the health care provider and payer related to medical bill processing shall 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.

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

4 NCAC 10F .0108 is proposed for amendment as follows:

4 NCAC 10F .0108 SANCTIONS

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

History Note: *Authority* G.S. 1A-1, Rule 37; 97-26(g1); 97-80;
Eff. March 1, 2014.

4 NCAC 10F .0109 is proposed for amendment as follows:

4 NCAC 10F .0109 EFFECTIVE DATE

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

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

Eff. March 1, 2014.

FISCAL IMPACT ANALYSIS

Agency Proposing Rule(s): North Carolina Industrial Commission

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Fiscal Note Category: Tier I – De Minimis

Proposed Rule Actions and Fiscal Impact

Proposed Action:	Readopt as amended	
Impact Summary:	State Government:	No
	Local Government:	No
	Substantial Economic:	No
	Federal Certification:	No

- **Subchapter G** – Commission Rules for Mediated Settlement and Neutral Evaluation Conferences
  - Section .0100 – Mediation and Settlement

Baseline for Costs and Benefits of Proposed Rules:

The rules outlined above have been in existence and establish a baseline for the fiscal analysis. These Rules track the Rules Implementing Statewide Mediated Settlement Conference in Superior Court Civil Actions per the statutory mandate contained in G.S. 97-80(c) and G.S. 143-296 that directs the Industrial Commission to adopt mediation rules that are "substantially similar to those approved by the Supreme Court for use in the Superior Court division, except the Commission shall determine the manner in which the payment of the costs of the mediation settlement conference is assessed."

The rules have been reviewed to ensure that the content is clearly written, relevant, an up-to-date with existing policy and procedures of the Commission. Any changes have been reviewed and determined to be *de minimis* by the Commission. This fiscal note includes summaries of the proposed rule changes in the table set forth below.

Public Interest:

Pursuant to Sess. Law 2011-287, the Industrial Commission will conduct all rule making in accordance with the North Carolina Administrative Procedure Act found in G.S. 150B. This process should result in public comment and involvement in the rule making process, along with ensuring that citizens of the State of North Carolina are aware of timely and accurate rules information for the Industrial Commission.

Rule Number	Title of Rule Change	Statutory Citation	Summary of the Rule Change	Impact on State/Local/Federal Government and/or Private Sector or Substantial Economic Impact
4 NCAC 10G .0101	ORDER FOR MEDIATED SETTLEMENT CONFERENCE	G.S. 97-80; 143-293; 143-300	This rule sets out the guidelines regarding Mediated Settlement Conferences. It tracks Rule 1 of the Rules Implementing Statewide Mediated Settlement Conference in Superior Court Civil Actions and is being readopted with minor technical changes.	There is no expectation that any changes will have any fiscal impact. Specifically, the elimination of the reference to the administrative fee of up to $100.00 will not have any impact as reference to any fees is being moved to Subchapter E.
4 NCAC 10G .0102	SELECTION OF MEDIATOR	G.S. 97-80; 143-293; 143-300	This Rule establishes the guidelines for selecting a mediator. It tracks Rule 2 of the Rules Implementing Statewide Mediated Settlement Conference in Superior Court Civil Actions and is being readopted with minor technical changes.	None
4 NCAC 10G .0103	THE MEDIATED SETTLEMENT CONFERENCE	G.S. 97-80; 143-293; 143-300	This Rule establishes the procedures for a scheduling and conducting a Mediated Settlement Conference. It tracks Rule 3 of the Rules Implementing Statewide Mediated Settlement Conference in Superior Court Civil Actions and is being readopted with minor technical changes.	None
4 NCAC 10G .0104	DUTIES OF PARTIES, REPRESENTATIVES, AND ATTORNEYS	G.S. 97-80; 143-293; 143-300	This Rule establishes the duties of parties, representatives, and attorneys in mediated settlement conferences. The only relatively significant substantive change is that, in state tort claims, an employee or agent of the governmental entity or agency being sued is no longer required to attend the mediated settlement	The clarification of the Attorney General's role in mediation provides clarification in the existing Rule and will reduce litigation costs and expenses for the parties, thereby providing a

			conference because G.S. 143-295 provides the Attorney General with settlement authority on behalf of governmental entities and agencies in state tort claims. This Rule tracks Rule 4 of the Rules Implementing Statewide Mediated Settlement Conference in Superior Court Civil Actions. .	benefit. The proposed Rule would eliminate the requirement that a state employee also attend the mediation, in addition to the attorney general. As such, this may result in a savings of time and travel costs; however, insufficient information exists to quantify the potential benefits.
4 NCAC 10G .0104A	FOREIGN LANGUAGE INTERPRETERS	G.S. 97-79(b); 97-80; 143-293; 143-300	This Rule establishes the guidelines regarding the use of foreign language interpreters. This Rule is being readopted with minor technical changes.	None
4 NCAC 10G .0105	SANCTIONS	G.S. 97-80; 143-293; 143-300	This Rule provides the Commission with the ability to impose sanctions against parties that fail to attend a Mediated Settlement Conference without good cause or otherwise fail to comply with the Rules. It tracks Rule 5 of the Rules Implementing Statewide Mediated Settlement Conference in Superior Court Civil Actions. This Rule is being readopted with minor technical changes.	None
4 NCAC 10G .0106	AUTHORITIES AND DUTIES OF MEDIATORS	G.S. 97-80; 143-293; 143-300	This Rule establishes the mediator's authority and duties. It tracks Rule 6 of the Rules Implementing Statewide Mediated Settlement Conference in Superior Court Civil Actions. This Rule is being adopted with minor technical changes.	None
4 NCAC 10G .0107	COMPENSATION OF THE MEDIATOR	G.S. 97-80; 143-	This Rule contains the provisions governing compensation of the mediator. It tracks Rule 7 of	While Subparagraph (b)(3) of this Rule appears to increase

		293; 143-300	the Rules Implementing Statewide Mediated Settlement Conference in Superior Court Civil Actions. This Rule is being adopted with minor technical changes.	certain "postponement" fees, the baseline amount of the fees in this Subparagraph, as it appears in the North Carolina Administrative Code (NCAC), is a misprint. The fees have been $300.00 and $150.00, effective January 1, 2011 as set forth in current Rule 7, Compensation of the Mediator, of the North Carolina Industrial Commission Rules for Mediated Settlement and Neutral Evaluation Conferences. As such, no significant substantive changes are being made to this Rule.
4 NCAC 10G .0108	MEDIATOR CERTIFICATION AND DECERTIFICATION	G.S. 97-80; 143-296; 143-300	This Rule establishes includes provisions for the selection of a mediator and the consequences of his or her failure to appear at a scheduled conference. It tracks Rule 8 of the Rules Implementing Statewide Mediated Settlement Conference in Superior Court Civil Actions. This proposed Rule modifies the requirements for mediators serving in Industrial Commission cases so that said requirements more closely track the Rules Implementing Statewide Mediated Settlement Conference in Superior Court Civil Actions in accordance with the statutory mandates contained in G.S. 97-80(c) and G.S. 143-296, and any portions of the rule that exceed the standardized mediation rules has been deleted. This Rule is being adopted with minor	None

			technical changes.	
4 NCAC 10G .0109	~~RULES FOR~~ NEUTRAL EVALUATION	G.S. 97-80; 143-293; 143-300	This Rule establishes the applicable rules in obtaining a Neutral Evaluation. It tracks Rule 11 of the Rules Implementing Statewide Mediated Settlement Conference in Superior Court Civil Actions. This Rule is being readopted with minor technical changes.	None
4 NCAC 10G .0110	~~WAIVER~~ SUSPENSION OF ~~RULES.~~ RULES	G.S. 97-80; 143-293; 143-300	This Rule provides uniformity with Industrial Commission Rules in other Subchapters of the NCAC and establishes the applicable standard for the Commission regarding the waiver of any Rule in this Subchapter. In conjunction with this, the title and wording of the Rule is being changed; however, this Rule is being readopted with minor technical amendments.	None
4 NCAC 10G .0111	MOTIONS	G.S. 97-80; 143-293; 143-300	This Rule provides instructions on filing motions pursuant to the Rules in this Subchapter. This Rule is being readopted with minor technical amendments.	None
4 NCAC 10G .0112	MISCELLANEOUS	G.S. 97-80; 143-293; 143-300	This Rule establishes the meaning of "days" in uniformity with Industrial Commission Rules in other Subchapters of the North Carolina Administrative Code (NCAC) and provides information regarding deadlines. This Rule is being readopted with minor technical amendments.	None

FISCAL IMPACT ANALYSIS

Agency Proposing Rule(s): North Carolina Industrial Commission

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Fiscal Note Category: Tier I – De Minimis

Proposed Rule Actions and Fiscal Impact

Proposed Action:	Readopt as amended for placement in the North Carolina Administrative Code	
Impact Summary:	State Government:	No
	Local Government:	No
	Substantial Economic:	No
	Federal Certification:	No

- **Subchapter H** – Rules for the Industrial Commission Relating to the Law-Enforcement Officers', Fireman's, Rescue Squad Workers' and Civil Air Patrol Members' Death Benefits Act
  - Section .0100 – Administration
  - Section .0200 – Rules of the Commission

Baseline for Costs and Benefits of Proposed Rules:

The rules outlined above have been in existence and establish a baseline for the fiscal analysis. The rules were not in the North Carolina Administrative Code, but have been published, maintained, and administered through the Commission's annotated code book and the Commission's website. The rules have been reviewed to ensure that the content is clearly written, relevant, an up-to-date with existing policy and procedures of the Commission. Any changes have been reviewed and determined to be *de minimis* by the Commission. This fiscal note includes summaries of the proposed rule changes in the table set forth below.

Public Interest:

Pursuant to Sess. Law 2011-287, the Industrial Commission will conduct all rule-making in accordance with the North Carolina Administrative Procedure Act found in G.S. 150B. This process should result in public comment and involvement in the rule making process, along with ensuring that citizens of the State of North Carolina are aware of timely and accurate rules information for the Industrial Commission.

Rule Number	Title of Rule Change	Statutory Citation	Summary of the Rule Change	Impact on State/Local/Federal Government and/or Private Sector or Substantial Economic Impact
4 NCAC 10H .0101	LOCATION OF OFFICES AND HOURS OF BUSINESS	G.S. 143-166.4	This Rule establishes the physical location of the Industrial Commission, and the hours during which paper and electronic versions of documents may be filed. This Rule is being readopted with minor and technical amendments.	None.
4 NCAC 10H .0201	DETERMINATION OF CLAIMS BY THE COMMISSION	G.S. 143-166.4	This Rule sets forth when a claim may be filed and the Industrial Commission's determination as to whether a hearing should be conducted. The Commission is proposing to move much of the content of the existing rule (Rule III Determinations of Claims in the Commission's annotated codebook) to newly proposed rules 10H .0202 - .0204. The remaining content is being readopted with minor and technical amendments.	None.
4 NCAC 10H .0202	HEARINGS BEFORE THE COMMISSION	G.S. 143-166.4	This Rule establishes the procedure for hearings at the Deputy Commissioner level within the Industrial Commission. It breaks out several paragraphs (dealing with hearings) that were previously located in the Rule for Determination of Claims (existing Rule III in the Commission's annotated codebook) by the Industrial Commission into a Rule dealing solely with hearings.	None.
4 NCAC 10H .0203	APPOINTMENT OF GUARDIAN *AD LITEM*	G.S. 1A-1, Rule 17(b)(2); 143-166.4	This Rule requires the appointment of a guardian *ad litem* in cases where minors or incompetents bring a claim under the Law-Enforcement Officers', Fireman's Rescue Squad Workers' and Civil Patrol Members' Death Benefits Act. The content of the proposed rule is currently present in Rule III Determination of Claims in the Commission's annotated codebook.	None.

4 NCAC 10H .0204	WRITTEN OR RECORDED STATEMENT	G.S. 143-166.4	This Rule was previously organized under the Rule for Determination of Claims (existing Rule III in the Commission's annotated codebook) by the Industrial Commission. This proposed Rule has been set out separately and in uniformity with a counterpart Workers' Compensation Rule, 4 NCAC 10A.0608.	None.
4 NCAC 10H .0205	REVIEW BY THE FULL COMMISSION	G.S. 143-166.4	This Rule outlines the procedural process of a request for review (i.e., an appeal) to the Full Commission from a Deputy Commissioner. This Rule was previously organized under Rule IV in the Commission's annotated codebook entitled, Appeal to the Full Commission. The name of this rule is being changed to more closely track the language used in Article 12A of Chapter 143 of the General Statutes.	None.
4 NCAC 10H .0206	SUSPENSION OF RULES	G.S. 143-166.4	This Rule provides uniformity with Industrial Commission Rules in other Subchapters of the NCAC and establishes the applicable standard for the Commission regarding the waiver of any Rule in this Subchapter.	None.
4 NCAC 10H .0207	SANCTIONS	G.S. 1A-1, Rule 37; 143-166.4	This Rule provides uniformity with Industrial Commission Rules in other Subchapters of the NCAC and establishes the applicable standard for sanctions in claims brought under the Law-Enforcement Officers', Fireman's, Rescue Squad Workers' and Civil Patrol Members' Death Benefits Act.	None.

FISCAL IMPACT ANALYSIS

Agency Proposing Rule(s): North Carolina Industrial Commission

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Fiscal Note Category: Tier I – De Minimis

Proposed Rule Actions and Fiscal Impact

Proposed Action:	Readopt as amended for placement in the North Carolina Administrative Code	
Impact Summary:	State Government:	No
	Local Government:	No
	Substantial Economic:	No
	Federal Certification:	No

- **Subchapter I** – Childhood Vaccine-Related Injury Rules of the North Carolina Industrial Commission
    - Section .0100 – Administration
    - Section .0200 – Rules of the Commission

Baseline for Costs and Benefits of Proposed Rules:

The rules outlined above have been in existence and establish a baseline for the fiscal analysis. The rules were not in the North Carolina Administrative Code, but have been published, maintained, and administered through the Commission's annotated code book and the Commission's website. The rules have been reviewed to ensure that the content is clearly written, relevant, an up-to-date with existing policy and procedures of the Commission. Any changes have been reviewed and determined to be *de minimis* by the Commission. This fiscal note includes summaries of the proposed rule changes in the table set forth below.

Public Interest:

Pursuant to Sess. Law 2011-287, the Industrial Commission will conduct all rule-making

in accordance with the North Carolina Administrative Procedure Act found in G.S. 150B. This process should result in public comment and involvement in the rule making process, along with ensuring that citizens of the State of North Carolina are aware of timely and accurate rules information for the Industrial Commission.

Rule Number	Title of Rule Change	Statutory Citation	Summary of the Rule Change	Impact on State/Local/Federal Government and/or Private Sector or Substantial Economic Impact
4 NCAC 10I .0101	LOCATIONS OF OFFICES AND HOURS OF BUSINESS	G.S. 130A-424; 130A-425(d)	This Rule establishes the physical location of the Industrial Commission, and the hours during which paper and electronic versions of documents may be filed. This Rule (existing currently as Rule 101 in the Commission's annotated codebook) is proposed for re-adoption with minor and technical amendments.	None
4 NCAC 10I .0102	OFFICIAL FORMS	G.S. 130A-424; 130A-425(d)	This Rule establishes the forms that may be filed with the Industrial Commission and the location of the identified forms. This Rule (existing currently as Rule 103 in the Commission's annotated codebook) is proposed for re-adoption with minor and technical amendments.	None.
4 NCAC 10I .0201	RULES OF CIVIL PROCEDURE	G.S. 1A-1; 130A-425(d)	This Rule provides that the North Carolina Rules of Civil Procedure as provided in G.S.1A-1 shall apply to tort claims before the Industrial Commission to the extent that the Rules of Civil Procedure are not inconsistent with the Childhood Vaccine-Related Injury Compensation Program. If there is an inconsistency, this rule provides that the Childhood Vaccine-Related Injury Compensation Program and the Industrial Commission's childhood vaccine-related rules shall control. This Rule (existing currently as Rule 201 in the Commission's annotated codebook) is proposed for re-adoption with	None.

			minor and technical amendments.	
4 NCAC 10I .0202	PROCEDURE	G.S. 130A-423; 130A-424; 130A-425; 130A-427	This Rule establishes a procedure for litigation of claims brought under the Childhood Vaccine-Related Injury Compensation Program. This Rule (existing currently as Rule 202 in the Commission's annotated codebook) is proposed for re-adoption with minor and technical amendments.	None.
4 NCAC 10I .0203	ATTORNEYS' FEES	G.S. 130A-425(d); 130A-427(a)(4)	This Rule establishes the procedural requirements for seeking payment of attorney fees allowed by statutory authority. This Rule (existing currently as Rule 203 in the Commission's annotated codebook) is proposed for re-adoption with minor and technical amendments.	None.
4 NCAC 10I .0204	SUSPENSION OF RULES	G.S. 130A-425(d)	This Rule provides uniformity with Industrial Commission Rules in other Subchapters of the NCAC and establishes the applicable standard for the Commission regarding the waiver of any Rule in this Subchapter.	None.
4 NCAC 10I .0205	SANCTIONS	G.S. 130A-425(d)	This Rule provides uniformity with Industrial Commission Rules in other Subchapters of the NCAC and establishes the applicable standard for sanctions in claims brought under the Childhood Vaccine-Related Injury Compensation Program.	None.

FISCAL IMPACT ANALYSIS

Agency Proposing Rule(s): North Carolina Industrial Commission

Agency Contacts:

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Fiscal Note Category: Tier I – De Minimis

Proposed Rule Actions and Fiscal Impact

Proposed Action:	Readopt as amended for placement in the North Carolina Administrative Code	
Impact Summary:	State Government:	No
	Local Government:	No
	Substantial Economic:	No
	Federal Certification:	No

- **Subchapter J – Fees for Medical Compensation**
  - Section .0100 – Fees for Medical Compensation

Baseline for Costs and Benefits of Proposed Rules:

The rules outlined above have been in existence and establish a baseline for the fiscal analysis. The rules were not in the North Carolina Administrative Code, but have been published, maintained, and administered through the Commission's annotated code book and the Commission's website. The rules have been reviewed to ensure that the content is clearly written, relevant, an up-to-date with existing policy and procedures of the Commission. Any changes have been reviewed and determined to be *de minimis* by the Commission. This fiscal note includes summaries of the proposed rule changes in the table set forth below.

Public Interest:

Pursuant to Sess. Law 2011-287, the Industrial Commission will conduct all rule-making in accordance with the North Carolina Administrative Procedure Act found in G.S. 150B. This process should result in public comment and involvement in the rule making process, along with

ensuring that citizens of the State of North Carolina are aware of timely and accurate rules information for the Industrial Commission.

Rule Number	Title of Rule Change	Statutory Citation	Summary of the Rule Change	Impact on State/Local/Federal Government and/or Private Sector or Substantial Economic Impact
4 NCAC 10J .0101	FEES FOR MEDICAL COMPENSATION	G.S. 97-18(i); G.S. 97-25.6; G.S. 97-26; G.S. 97-80(a); G.S. 138-6	This Rule establishes the manner and timing in which medical providers can seek payment for provided medical services. This Rule also adopts standards used by the State of North Carolina for reimbursement of expenses. Portions of the rule that restate the statute have been deleted. Subparagraph (e) has been re-organized to 4 NCAC 10A .0107 Filing of Annual Report Requirement. This Rule is current Rule 4 NCAC 10A .0107 and is being moved and readopted with minor substantive and technical amendments.	The adoption of standards used by the State of North Carolina for reimbursement expenses is a benefit to all parties to ensure clarity and uniformity in determining the costs.

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MEMORANDUM

TO: North Carolina Industrial Commission
FROM: North Carolina Association of Defense Attorneys
RE: Comments to Industrial Commission Proposed Rule Changes
Date: August 6, 2012

The NCADA appreciates the opportunity to be heard on the proposed rules of the North Carolina Industrial Commission. Below is a list of rules to which the North Carolina Association of Defense Attorneys will provide written comment before September 14, 2012. The NCADA anticipates that we will not be able to address all of our concerns during the public hearing on August 6, 2012 due to the time constraints affiliated therewith.

RULES 10A

Rule .0102 (Official Forms): The NCADA asserts that forms must be revised as part of the Administrative Procedure Act (APA) rule making process.

Rule .0105 (Electronic Payment of Costs): The proposed rule is not supported by statutory authority and is contrary to the APA.

Rule .0301(f) (Proof of Insurance Coverage): The NCADA recommends that this rule be expanded to a principal contractor, intermediate contractor, or subcontractor who has notice that the policy has lapsed, is cancelled, or is not renewed for any reason.

Rule .0404(a) (Termination and Suspension of Compensation): There is no statutory authority for the rule.

Rule .0404(c): There is no statutory authority for payment of costs associated with terminating benefits via the Fee Portal.

Rule .0404(d): There is no statutory authority for the requirement that the Commission "shall" refuse to accept the application to terminate benefits due to the failure to specify the number of pages attached.

Rule .0404(g): The language stating that a hearing is to be set "without delay" is not consistent with statutory authority and attempts to interpret the law without statutory authority, which is a violation of the APA.

Rule .0405 (Reinstatement of Compensation): There is no statutory authority for the telephonic procedure proposed in this rule. If it is determined that the Commission has statutory authority to develop such informal hearing procedures for the reinstatement of benefits, those procedures should track the same timelines for suspension of benefits.

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Rule .0406 (Discount Rate to be Used in Determining Commuted Values): This rule is unclear and ambiguous and has no statutory authority.

Rule .0408 (Application for or Stipulation to Additional Medical Compensation): There is no statutory authority for requiring the employer to state the grounds for and provide supporting documentation that the employee is not entitled to ongoing medical treatment beyond two years. The proposed rule also improperly shifts the burden to the employer.

Rule .0502(2)(b) (Compromise Settlement Agreements): The proposed rule lacks statutory authority.

Rule .0502(3)(d): The proposed rule has no legal basis in that it goes beyond the Commission's authority to approve settlements as set forth in G.S. 97-17.

Rule .0601(b) (Employer's Obligations Upon Notice; Denial of Liability; And Sanctions): There is no statutory authority for requiring the defendants to send a denial to healthcare providers.

Rule .0603 (Responding to a Party's Request for Hearing): There is no statutory authority to make the employer respond to a Form 33 but not an employee. This provision of the rule is not necessary and treats the parties to the claim differently, which is a violation of the due process clause of the US Constitution.

Rule .0604 (Appointment of Guardian Ad Litem): The NCADA asserts there is no statutory authority for the Commission's proposed rule to assess a fee to be paid by the employer to an attorney who serves as a guardian ad litem on behalf of a minor or incompetent.

Rule .0605 (Discovery): There is no statutory authority for Rule 605(9), which states that the parties shall not submit motions to compel production of information otherwise obtainable pursuant to G.S. 97-25.6.

Rule .0607 (Discovery of Records and Reports): The required production of all employment records, even if there is no showing of relevance, is contrary to statutory authority.

Rule .0608 (Statement of Incident Leading to Claim): There is no statutory authority that requires the recorded statement be provided within 45 days after the request for hearing. The NCADA contends that the recorded statement should be subject to discovery rules, namely Rule 605, and that a recorded statement should be produced within 30 days after it is requested.

Rule .0609 (Motions Practice in Contested Claims): There is no statutory authority for implementing a motions practice in contested cases.

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Rule .0609A (Medical Motions and Emergency Medical Motions): The NCADA contends that G.S. 97-78(f) did not provide statutory authority for setting up the expedited process established by the Commission that essentially eliminates live, in person hearings with depositions.

Rule .0612 (Depositions and Additional Hearings: The NCADA contends that there is no statutory authority to charge all deposition fees against the employer.

Rule .0613 (Expert Witnesses and Fees): The NCADA contends that the 10 percent penalty for failure to make payment to an expert witness within 30 days is not supported by statutory authority.

Rule .0616 (Dismissals): The NCADA contends that there is no statutory authority for the deadline for re-filing a claim under Rule 616(c) following removal of a case from a hearing docket.

Rule .0701(b) (Review by the Full Commission): The proposed rule is unclear and ambiguous. The NCADA further contends this rule contravenes G.S 97-29(c) as it relates to extended benefits.

Rule .0701(e): The proposed rule is unclear. The use of the word "paragraph" is not consistent with statutory references such as "subchapter" and "subdivision."

Rule .0701(f): The proposed rule is unclear and ambiguous. The new sentence that begins "Motions related to the issues for review..." is confusing in that it fails to establish a clear procedure to raise a motion and be heard before the Full Commission.

Rule .0701(i): The proposed rule is unclear. The requirement that exhibits be cited as "Ex 3 p 12," for example, is superfluous since the hearing transcript issued with a Form 44 does not delineate between the transcript and exhibit pages. All transcript and exhibit pages are consecutively paginated when the evidentiary record is published. Therefore, the NCADA recommends "Ex p 12."

Rule .0702(a) (Review of Administrative Decisions): The proposed rule is not supported by statutory authority.

Rule .0702(b): The proposed rule is unclear and ambiguous. The phrase "frustrate the purposes of the order, decision, or award" that begins on line 31 suggests a motion to stay may be denied in all cases.

Rule .0704 (Remand from the Appellate Courts): The proposed rule is unclear.

Rule .0801 (Suspension of Rules): The proposed rule is not supported by statutory authority and is in violation of the APA.

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Rule .0802 (Sanctions): The proposed rule is not supported by statutory authority. None of the statutes relied upon by the Commission to promulgate this rule endow the Commission with generalized authority to impose broad sanctions.

RULES 10B

Rule .0202(c): The proposed rule contradicts Rule 9(j) of the Rules of Civil Procedure as it relates to the time requirements to designate a medical expert.

RULES 10C

Rule .0101 (Applicability of the Rules): The proposed rule is not reasonably necessary to implement State law and is contrary to G.S. § 97-32.2. The NCADA also recommends that because there are now two statutes that address rehabilitation services (G.S. 97-25.5 and 97.32.2) the rules should delineate between those that apply to medical case managers and those that apply to vocational managers.

Rule .0103(3) (Definitions): There is no statutory authority for defining "Vocational Rehabilitation" to require the goal be to "substantially increase the employee's wage earning capacity." The definition is vague and ambiguous. The proposed rule is also unnecessary, redundant and repeats the content of a law in violation of the APA.

Rule .0103(5): There is no statutory authority for the proposed definition of "suitable employment" for claims arising before June 24, 2011.

Rule .0105(d) (Qualifications Required): As written, this rule appears to require both that the rehabilitation professional possess one of the professional certifications listed and have prior employment experience with the North Carolina Department of Health and Human Services as a vocational rehabilitation provider. It would not make sense for qualified medical rehabilitation professionals to have prior experience as vocational rehabilitation professionals for the State.

It is also unclear why subsection (e) is separate from subsection (d) when both appear to enumerate the requirements to serve as a rehabilitation professional.

Rule .0106(a) (Professional Responsibility of the Rehabilitation Professional in Workers' Compensation Claims): The NCADA asserts the inclusion of the word "retirement" is contradictory to the Act as amended by G.S. 97-32.2.

Rule .0106(e): The incorporation by reference to web sites for professional organizations is unnecessary to implement State law.

Rule .0106(g): It appears that the word "activity" in line 23 is superfluous and should be deleted.

Rule .0107(d) (Communication): There is no statutory authority that requires all correspondence and reports to be sent electronically. In addition, the proposed rule is unclear.

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Rule .0107(j): There is no statutory authority for this rule. The rule is also unnecessary because Rule .0106(a) details the scope of the rehabilitation professional's role. Further, the proposed rule would place an unnecessary burden upon the rehabilitation professional in violation of G.S. 150B-19.1(2) and potentially the ethical codes adopted by the respective professions.

Rule .0108(e) (Interaction with Physicians): There is no statutory authority for limiting the rehabilitation professional from "initiating" a second opinion on a rating, independent medical examination, second opinion and consult. Furthermore, the proposed rule is unclear and ambiguous in that "initiate" is not defined.

Rule .0108(e)(2): The proposed rule is unclear.

Rule .0109(d) (Vocational Rehabilitation Services and Return to Work): The NCADA suggests that this rule needs further clarification.

Rule .0109(i): The proposed rule is not reasonably necessary to implement G.S. 97-2(22) or 97-32.2.

Rule .0110 (Change of Rehabilitation Professional): This rule is unclear and ambiguous in that it allows the rehabilitation professional to be removed "to prevent manifest injustice," but provides no guideline on the definition of "manifest injustice." In addition, there is no statutory authority for this phrase.

Rule .0201 (Suspension of Rules): The proposed rule is not supported by statutory authority and is in violation of the APA. The APA does not allow an administrative agency to suspend its own rules "unless a rule establishes specific guidelines the agency must follow in determining whether to waive or modify the requirements." *See* G.S. 105B-19(6).

Rule .0202 (Sanctions): The proposed rule is not supported by statutory authority. None of the statutes relied upon by the Commission to promulgate this rule endow the Commission with generalized authority to impose broad sanctions.

RULES 10E

Rule .0201 (Document and Record Fees): There is a typographical error on line 9 in that "the actual cost." is noted twice.

Rule .0202(a) (Hearing Costs or Fees): The proposed rule is not supported by statutory authority. The rule does not specify which party shall bear the costs/fees for a given action.

Rule .0202(b): This rule is not supported by the statutory authority listed. Chapter 143 applies only to the Industrial Commission's authority to hear tort claims. It is independent and inapplicable to the Commission's jurisdiction under Chapter 97.

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Rule .0203 (Fees Set By Commission): The NCADA notes the objections to Rule .0202 apply to .0203.

Rule .0301 (Suspension of Rules): This rule is not supported by statutory authority and is in violation of the APA.

Rule .0302 (Sanctions): This rule is not supported by statutory authority. None of the statutes relied upon by the Commission to promulgate this rule endow the Commission with generalized authority to impose broad sanctions.

RULES 10G

Rule .0101(b) (Mediation and Settlement Order for Mediated Settlement Conference): This rule is unclear and ambiguous. The NCADA also notes that inconsistent terms are used throughout all rules such as "plaintiff" versus "employee" versus "injured worker."

Rule .0103(g) (Mediated Settlement Conference): The NCADA asserts this rule is unclear and ambiguous particularly as it relates to the fact "settlement agreement" is not defined.

Rule .0104(f) (Duties of Parties, Representatives and Attorneys): The NCADA asserts this rule is unnecessary in that there are several examples of settlements wherein the parties cannot submit the settlement agreement to the Commission within 20 days of the conclusion of the mediation conference (e.g., claim where parties are waiting on CMS to approve an MSA before submitting agreement to Commission).

Rule .0104A (Foreign Language Interpreters): This rule is unclear as it relates to the statutory authority that would allow the Commission to charge the employer with translation costs.

Rule .0105 (Sanctions): This rule is in violation of the APA because sanctions related to mediations are not specifically allowed by statute.

Rule .0107(b)(3) (Compensation of the Mediator): This rule is unclear and ambiguous.

Rule .0110 (Suspension of Rules): This rule is not supported by statutory authority and is in violation of the APA.

Rule .0112 (Miscellaneous): This rule violates the APA in that it repeats the content of another rule.

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July 30, 2012

***Via e-mail only* (amber.cronk@ic.nc.gov)**
Chair Pamela T. Young
Attention: Amber Cronk, Legal Assistant
North Carolina Industrial Commission
4336 Mail Service Center
Raleigh, North Carolina 27699-4336

Re: NCAJ Workers' Compensation Section's
Comments on and Objections to Proposed Rules
Public Hearing on August 6, 2012

Dear Chair Young:

Please accept this letter as the comments and objections by the Workers' Compensation Section of the North Carolina Advocates for Justice to the proposed rules that are the subject of the public hearing scheduled for August 6, 2012. I am the current Chair of the Workers' Compensation Section.

The Workers' Compensation Section is grateful to the Commission for its hard work in the rulemaking process. In reviewing the proposed rules, we focused on whether they discriminated on either a procedural or substantive basis and, of course, whether they were consistent with the statutes they implement. We have listed our specific comments and objections below and have organized them by subchapter of the proposed rules.

Workers' Compensation Rules (Subchapter 10A)

4 NCAC 10A.0402(a)—OBJECTION. The proposed rule, as currently worded, is not enforceable because it does not give a deadline in which employers must provide the Form 22. We would respectfully recommend a 30-day compliance period, consistent with the former Industrial Commission Rule 607.

4 NCAC 10A.0404(c)—OBJECTION. The proposed rule requires service of the Form 24 to unrepresented parties by regular United States mail. However, we would propose that service upon unrepresented parties take place by certified mail, return receipt requested, to ensure receipt and notice of the Form 24 upon the unrepresented parties.

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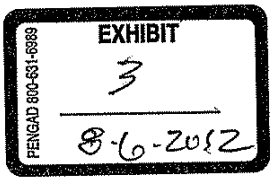

In addition, 4 NCAC 10A.0404(c) affirmatively requires that any objection to a Form 24 "shall be accompanied by all currently available supporting documentation." This mandate is contrary to the language of N.C. Gen. Stat. § 97-18.1(c), which provides an "opportunity to state their position and to submit documentary evidence"—that is, in a non-mandatory way. The mandatory aspect of the proposed rule places unrepresented employees at a distinct disadvantage, since they do normally do not have the documentation needed to combat a Form 24 Application in an expedient fashion, and might be relevant to appellate proceedings on whether the decision on the Form 24 was appropriate.

4 NCAC 10A.0404(f)—OBJECTION. The proposed rule deletes the "good cause" exception for extending the time in which the Commission can hold a Form 24 hearing. However, the language of N.C. Gen. Stat. § 97-18.1(d) specifically calls for that standard.

4 NCAC 10A.0404A(b)—OBJECTION. The proposed rule states that the employee "shall" complete and file with the Industrial Commission a completed Form 28U, and that the Form 28U "shall be completed by the physician who imposed the restrictions or one of the employee's authorized treating physicians...." To the contrary, the Court of Appeals has already held that the submission of a Form 28U is not a mandatory requirement for reinstatement of compensation. See Barbour v. Regis Corp., 167 N.C. App. 449, 458 n.2, 606 S.E.2d 119, 126 n.2 (2004); Burchette v. East Coast Millwork Distrib., 149 N.C. App. 802, 808-809, 562 S.E.2d 459 S.E.2d 459, 463 (2002).

4 NCAC 10A.0501(d)—COMMENT. The language of the proposed rule states that "when the employee signs the forms." We would recommend, however, that the language should be "when the employee *or appropriate beneficiary* signs the forms," as the case may be. For example, an employee cannot sign a Form 26D.

4 NCAC 10A.0502(b)(7)—OBJECTION. For the most part, we agree with the proposed rule. However, N.C. Gen. Stat. §44-49 and § 44-50 only require the payment of a prorated amount, and not the full amount, of medical bills during a settlement disbursement. The proposed rule should clarify that the notification to the medical providers will specify the amount of the unpaid medical expenses being paid through the settlement, as approved by the Commission, and the amount of any balance remaining after such payment, if this is the case.

4 NCAC 10A.0601(b)—OBJECTION. The proposed rule deletes the former requirement of a "detailed" statement explaining the denial of benefits. To the contrary, N.C. Gen. Stat. § 97-18(c) requires a "detailed statement of the grounds upon which the right to compensation is denied."

4 NCAC 10A.0610(a)—COMMENT. The second sentence of the proposed rule ("The parties have 15 days following the hearing within which to schedule the taking of medical depositions unless otherwise extended by the Commission in the interest of justice and judicial economy.") is duplicative of, or in the very least, belongs in 4 NCAC 10A.0613(a).

4 NCAC 10A.0614(k)—OBJECTION. The proposed rule cites to N.C. Gen. Stat. § 97-90.1(b). However, there are no subparts to N.C. Gen. Stat. § 97-90.1.

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4 NCAC 10A.0616(c)—OBJECTION. The proposed rule does not differentiate between requests for hearings in denied claims versus admittedly compensable claims. In denied claims, it makes sense to for a dismissal to be available if the claim is not prosecuted within 2 years. In admitted claims, however, the proposed rule—specifically subsection (c)—makes no sense. For example, if an employee files a Form 33 on the issue of average weekly wage and then removes the case from the hearing calendar, the currently proposed rule appears to allow the employer to move to dismiss the entire claim, even though the Form 33 did not affect the issues of compensability and liability.

4 NCAC 10A.0702(a)—OBJECTION. The first sentence is awkward and difficult to understand. We would suggest clarifying it with additional enumeration, punctuation, and language, such as the following underlined examples:

> Administrative decisions include orders, decisions, and awards made in a summary manner, without findings of fact, including decisions on (1) applications to approve agreements to pay compensation and medical bills, (2) applications to approve the termination or suspension or the reinstatement of compensation, (3) applications for change in treatment or providers of medical compensation, (4) applications to change the intervals of payments, and (5) applications for lump sum payments of compensation. Administrative decisions shall be reviewed upon the filing of a Motion for Reconsideration with the Commission addressed to the Administrative Officer who made the decisions or may be reviewed by requesting a hearing within 15 days after receipt of the decision or receipt of the ruling on a Motion to Reconsider. These issues may also be raised and determined at a subsequent hearing.

4 NCAC 10A.1001(i)—OBJECTION. The proposed rule allows peer review from doctors who are licensed in states other than North Carolina. While this is acceptable practice if the doctor practices medicine in the same state in which the employee resides, the reliance upon those doctors' recommendations for patients residing in states in which the doctor is not licensed most likely constitutes the unauthorized practice of medicine if those opinions disrupt the course of medical treatment by a duly licensed medical provider, depending on the laws of the forum state. See, e.g., N.C. Gen. Stat. § 90-1.1(5) (defining "practice of medicine" under North Carolina law.)

Rehabilitation Professionals (Subchapter 10C)

4 NCAC 10C.0110(b)—OBJECTION. The proposed rule states that a rehabilitation professional may be removed "to prevent manifest injustice." This standard is contrary to the plain language of N.C. Gen. Stat. § 97-32.2(b), which allows removal for "good cause."

Managed Care Rules (Subchapter 10D)

No comments or objections.

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Administration (Subchapter 10E)

4 NCAC 10E.0201(b)—OBJECTION. There appears to be superfluous language at the end of the proposed rule ("the actual cost"). Furthermore, the subsections go from (b) to (f) with no subsections (c) through (e) between them.

Electronic Billing (Subchapter 10F)

4 NCAC 10F.0101—OBJECTION. The proposed rule requires compliance with the new electronic billing procedures by all medical providers. However, unlicensed medical providers, such as family members providing attendant care services or transportation companies providing "sick travel" under N.C. Gen. Stat. § 97-2(19), should not be compelled to submit their bills electronically. The current proposal does not accommodate these non-professional providers, and an exception should be made to do so.

4 NCAC 10F.0106(i)—OBJECTION. The 30-day period under the proposed rule is inconsistent with the 60-day period under N.C. Gen. Stat. § 97-18(i) when it comes to the 10% penalty.

4 NCAC 10F.0107(b)—COMMENT. The proposed rule misspells "utilize" as "utilizen."

Mediated Settlement (Subchapter 10G)

10 NCAC 10G.0101(b)—OBJECTION. The proposed rule contains a "contrary to the interests of justice" standard for ordering the case to a mediated settlement conference. However, this standard appears to conflict with the standard set forth set in 4 NCAC 10G.0101(f) ("interest of justice or judicial economy" or "good cause") for reasons for which the parties or the Commission can dispense with mediation. The two standards should be commensurate with each other.

Medical Fees Compensation (Subchapter 10J)

General—COMMENT. Although it does not appear to do otherwise, the medical fee schedule should confine itself to the establishment of fees for the provision of medical compensation. It should not, as prior opinions from the appellate courts have observed, go beyond this scope and, for example, impose any other conditions on medical compensation, such as preapproval in the section of the fee schedule struck down by *Forrest v. Pitt County*, 100 N.C. App. 119, 394 S.E.2d 659 (1990), aff'd, 328 N.C. 327, 401 S.E.2d 366 (1991) (per curiam). See also Godwin v. Swift & Co., 270 N.C. 690, 155 S.E.2d 157 (1967) (restricting prior opinion of *Hatchett v. Hitchcock Corp.*, 240 N.C. 591, 83 S.E.2d 539 (1954), when it comes to preauthorization of attendant care services, based on prior Industrial Commission rule now found in Section 14 of the Medical Fee Schedule).

Thank you for your consideration of these comments and objections. We look forward to discussing them with the Commission on August 6, 2012.

With kindest regards, I am,

Very truly yours,

Vernon Sumwalt
Chair, NCAJ Workers' Compensation Section

VRS:vrs

cc: WC Section Executive Committee

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Rehabilitation Management, Inc.

August 6, 2012

Amber Cronk
North Carolina Industrial Commission
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Raleigh, NC 27699

Rehabilitation Management, Inc. (RMI)) has reviewed the Proposed Rehabilitation Rule Changes related to the recent reform in the Worker's Compensation law in North Carolina. We appreciate the efforts of the North Carolina Industrial Commission's to amend the Rules in accordance with House Bill 709.

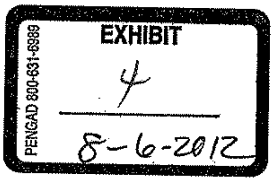
The owners of Rehabilitation Management, Inc. (RMI)) have related the following concerns regarding the proposed rules:

1. Definition #5: The old definition of suitable employment remains but the new definition is not spelled out with the distinction between Pre MMI and Post MMI. RMI's position is that the definition should be spelled out as it was in the previous rules and as it is in the new Law:
    a. *Employment offered or available to the employee that:*
        i. *prior to reaching MMI is within the EE's work restrictions, including rehabilitative or other noncompetitive employment, with the ER of injury and approved by the EE's authorized health care provider or*
        ii. *after reaching MMI is employment that the EE is capable of performing considering the EE's preexisting and injury-related physical and mental limitations, vocational skills, education, and experience and is located within a 50-miles radius of the EE's residence at the time of injury or the EE's current residence if the EE had a legitimate reason to relocate since the DOI.*
        iii. *No one factor shall be considered exclusively in determining Suitable Employment.*

2. Definition #3 "Vocational Rehabilitation": The phrase....."*and to substantially increase the employee's wage-earning capacity."* RMI's position is this should be removed from the definition of "Vocational Rehabilitation." The most significant portion of the new definition of "Suitable Employment" is that wages have been removed from the definition. As based on the new reform laws, there is no requirement that the post-MMI job offer include any specific likelihood that the claimant will even advance to their pre-injury average weekly wage.

3. Interactions with Physicians: It is our position that as part of the definitions of "Medical Rehabilitation" and "Vocational Rehabilitation", RP's should have the same "Reasonable Access to Medical Information" as outlined in the Law (N.C.G.S 97-25.6): Stating:

    a. *Relevant medical information shall be requested and provided subject to the following provisions:*



i. *An employer is entitled, without the express authorization of the employee, to obtain the employee's medical records containing relevant information from the employee's health care providers.*
ii. *An employer may communicate with the employee's authorized health care provider in writing, without the express authorization of the employee, to obtain relevant information not available in the employee's medical record.*
    1. *The employer shall provide a copy of the health care provider's response to the employee within 10 business days of its receipt by the Employer.*
iii. *An employer may communicate with the employee's authorized health care provider by oral communication to obtain relevant information not contained in the employee's medical records, not available through written communication, and not otherwise available to the employer.*

RMI's position is in written communications to the physician such as in the case with a Job Site Analysis, the precedence set forth in the law regarding providing a copy to the employee within 10 days of the response from the physician should apply. (N.C.G.S. 97-25.6; (c), (2), f.)

4: Vocational Rehabilitation (g): *The worker or the worker's attorney shall have seven business days from the mailing of the description to notify the RP, all parties, and the physician of any objections or amendments thereto. The job description and the objections or amendments, if any, shall be submitted to the physician simultaneously.* RMI does not agree that an attorney can amend a job description. It is also RMI's position that this seems counter to the law. The law specifies any job is reasonable as long as the physician agrees it is part of the treatment or rehabilitation plan of the injured worker.

5: Vocational Rehabilitation (h): *You **shall** reference the DOT#.* RMI does not agree that the DOT should be the sole reference utilized and should not be required on the JSA. RMI's position is this should be removed.

6. Rehabilitation Management, Inc. (RMI)) has concern that the rules do not reflect the new statutes in the law pertaining to vocational rehabilitation and feels that "Vocational Rehabilitation" should reflect the framework of the new law. Example, the new law does not reference the Federal Hierarchy of return to work; however, this priority of return to work remains in the framework of the proposed revision to the new rules. RMI does not agree this should be included as proposed in the revised rules but rather modified to reflect the language in the new law.

a. N.C.G.S 97-32.2; Vocational Rehabilitation (f): Return to work options should be considered, with order of priority given to returning the employee to suitable employment with the current employer, returning the employee to suitable employment with a new employer, and, if appropriate, formal education or vocational training to prepare the employee for suitable employment with the current employer or new employer.

We thank you for your time and attentiveness to the concerns submitted before you today.

Respectfully Submitted,

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Cc: Jerry Pruette – Owner RMI
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