

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

2

3

**CHAPTER 10 - INDUSTRIAL COMMISSION**

4

5

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

6

7

**SECTION .0100 - ADMINISTRATION**

8

9

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

10

The offices of the North Carolina Industrial Commission ~~(hereinafter "Industrial Commission")~~ are located in the

11

Dobbs Building, 430 North Salisbury Street, ~~in~~ Raleigh, North ~~Carolina, 27611. Carolina. The same office hours~~

12

~~will be observed by the Industrial Commission as are, or may be, observed by other State offices in Raleigh.~~

13

Documents ~~that are not being filed electronically~~ may be filed between the hours of 8:00 a.m. and 5:00 p.m. only.

14

Documents permitted to be filed electronically may be filed until 11:59 p.m. on the ~~day due. required filing date.~~

15

16

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

17

*Eff. January 1, 1990;*

18

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

19

1 04 NCAC 10A .0102 is amended as published in 27:02 NCR 168 as follows:

2

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

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

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

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

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

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

13

14 *History Note: Authority G.S. 97-80(a); 97-81(a);*  
15 *Eff. January 1, 1990;*  
16 *Amended Eff. January 1, 2013; June 1, 2000.*

17

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

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

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

~~Form 17 Workers' Compensation Notice~~

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

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

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

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

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

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

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

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

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

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

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

~~Form 25R Evaluation for Permanent Impairment~~

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

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

~~Form UB-92 Hospital Bill~~

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

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

~~Form 28 Return to Work Report~~

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

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

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

~~Form 29 Supplementary Report for Fatal Accidents~~

~~Form 30 Agreement for Compensation for Death~~

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

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

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

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

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

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

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

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

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

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

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

1           ~~Form IIIb—Order for Approving Compromise Settlement Agreements (denied liability, unpaid medical)~~  
2           ~~(d) Copies of rules, forms and Industrial Commission Minutes can be obtained by contacting the Administrator's~~  
3           ~~Office of the Industrial Commission, 4319 Mail Service Center, Raleigh, NC 27699-4319.~~  
4           To give notice of an accident or occupational disease and to make a workers' compensation claim, an employee may  
5           complete a Form 18 Notice of Accident to Employer and Claim of Employee, Representative, or Dependent and file  
6           it electronically with Claims Administration, or by mail to North Carolina Industrial Commission, 4335 Mail  
7           Service Center, Raleigh, NC 28799-4335.

8  
9           *History Note:*     Authority G.S. 97-22; 97-24; 97-58; 97-80(a); 97-81;  
10                            *Eff. January 1, 1990*  
11                            *Amended Eff. January 1, 2013.*  
12

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

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

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

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

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

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

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

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

28 *Eff. March 15, 1995;*

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

30

1 04 NCAC 10A .0105 is amended as published in 27:02 NCR 170 as follows:

2

3 **04 NCAC 10A .0105 ELECTRONIC PAYMENT OF COSTS**

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

6

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

8 *Eff. January 1, 2011;*

9 *Amended Eff. January 1, 2013.*

10

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

2

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

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

7

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

9

*Eff. January 1, 2013.*

10



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

2

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

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

13

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

15 *Eff. January 1, 2013.*

16

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

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

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

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

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

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

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

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

20  
21 *History Note: Authority G.S. 97-80(a); 97-93;*  
22 *Eff. January 1, 1990;*  
23 *Amended Eff. January 1, 2013; March 15, 1995.*

1

2

04 NCAC 10A .0301 is amended with changes as published in 27:02 NCR 170 as follows:

**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 changes 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

1 indicating the employer has qualified as a self-insured employer for workers' compensation  
2 purposes;

3 (3) submitting a copy of the Form 18WC Application for Membership indicating the employer is a  
4 member of a self-insurance group or fund;

5 (4) submitting a copy of a declaration of coverage page from an insurance policy procured in another  
6 state that indicates North Carolina is a covered jurisdiction under the workers' compensation  
7 policy;

8 (5) submitting the names of the general contractor, subcontractor, professional employer organization  
9 or other entity that has provided workers' compensation coverage for the employer; provided  
10 however, that coverage shall be verified by the Commission in order to be removed from the non-  
11 insured docket; or

12 (6) submitting other documentation or information relevant to the workers' compensation claim upon  
13 request of the Commission.

14 (f) A principal contractor, intermediate contractor or subcontractor may satisfy the requirements of G.S. 97-19 by  
15 obtaining a certificate of insurance from the insurance agent who procured insurance on behalf of the contractor or  
16 subcontractor. If the principal contractor, intermediate contractor or subcontractor who has notice that the policy  
17 has lapsed, is cancelled, is not renewed, ~~allows its insurance to lapse~~ or ceases to qualify as a self-insured  
18 employer, the principal contractor, intermediate contractor or subcontractor shall, within 24 hours, notify any  
19 contractor to whom it has provided a certificate of insurance that the certificate is no longer valid.

20  
21 *History Note: Authority G.S. 97-19; 97-80(a); 97-93;*  
22 *Eff. January 1, 1990;*  
23 *Amended Eff. January 1, 2013; June 1, 2000.*  
24  
25

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

2

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

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

11

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

13 *Eff. January 1, 2011;*

14 *Amended Eff. January 1, 2013.*

15

16

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

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

4  
5 **04 NCAC 10A .0401 CALCULATING THE SEVEN-DAY WAITING PERIOD**

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

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

12 (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  
13 day's wages due to injury, shall be counted in computing the waiting period even though the days may not be  
14 consecutive, ~~or regularly scheduled workdays. and even though these are not regularly scheduled workdays.~~

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

17  
18 *History Note: Authority G.S. 97-28; 97-80(a);*  
19 *Eff. January 1, 1990;*  
20 *Amended Eff. January 1, 2013.*  
21  
22

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

2

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

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

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

9

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

11 *Eff. January 1, 1990;*

12 *Amended Eff. January 1, 2013.*

13

14



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

2

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

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

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

11

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

15

16

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

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

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

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

(1) 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 by e-

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

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

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

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

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

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

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

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

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

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

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

- 1 *Eff. January 1, 1990;*
- 2 *Amended Eff. January 1, 2013; June 1, 2000; March 15, 1995.*

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

2  
3 **04 NCAC 10A .0404A TRIAL RETURN TO WORK**

4 (a) Except as provided in ~~subparagraph (7), Paragraph (g) of this Rule,~~ when compensation for total disability being  
5 paid pursuant to ~~G.S. § 97-29~~ G.S. 97-29 is terminated because the employee has returned to work for the same or a  
6 different employer, ~~such the~~ termination is subject to the ~~trial return to work~~ provisions of ~~G.S. § 97-32.1,~~ G.S. 97-  
7 32.1 (trial return to work). When compensation is terminated under these circumstances, the ~~employer employer, or~~  
8 ~~carrier/administrator carrier, or administrator~~ shall, within 16 days of the termination of compensation, file a Form  
9 28T Notice of Termination of Compensation by Reason of Trial Return to Work with the ~~Industrial~~ Commission and  
10 provide a copy of it to ~~the employee and~~ the employee's attorney of ~~record, if any,~~ record or the employee, if  
11 unrepresented.

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

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

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

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

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

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

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

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

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

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

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

9  
10 *History Note:* Authority G.S. 97-18(h); 97-29; 97-32.1; 97-80(a);  
11 Eff. February 15, 1995;  
12 Amended Eff. January 1, 2013; August 1, 2006; June 1, 2000.  
13  
14



1 04 NCAC 10A .0405 is amended as published in 27:02 NCR 175 as follows:

2  
3 **04 NCAC 10A .0405 REINSTATEMENT OF COMPENSATION**

4 ~~(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~~  
5 ~~nail will be considered as equivalent to the loss of one fourth of such finger or toe.~~

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

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

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

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

19 (b) When reinstatement is sought by the filing of a Form 23 Application to Reinstate Payment of Disability  
20 Compensation, the original Form 23 Application to Reinstate Payment of Disability Compensation and the attached  
21 documents shall be sent to the Commission at the same time and by the same method by which a copy of the Form  
22 23 and attached documents are sent to the employer, carrier, or administrator and the employer's, carrier's, or  
23 administrator's attorney of record. The Form 23 Application to Reinstate Payment of Disability Compensation shall  
24 specify the number of pages of documents attached which are to be considered by the Commission. Failure to  
25 specify the number of pages shall result in the refusal of the Commission to accept the same for filing. Upon receipt  
26 of the Form 23 Application to Reinstate Payment of Disability Compensation, the Commission shall notify the  
27 employer, carrier, or administrator that the Form 23 Application to Reinstate Payment of Disability Compensation  
28 has been received by providing a copy of a Form 23 Application to Reinstate Payment of Disability Compensation  
29 via facsimile or electronic mail. Within 10 days of the receipt of the Form 23 Application to Reinstate Payment of  
30 Disability Compensation from the Commission, the employer, carrier, or administrator shall complete Section B of  
31 the Form 23 Application to Reinstate Payment of Disability Compensation and send it to the Commission and to the  
32 employee, or the employee's attorney of record, at the same time and by the same method by which the form is sent  
33 to the Commission.

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

1 the time within which the employer, carrier, or administrator could have filed a response to the Form 23 Application  
2 to Reinstate Payment of Disability Compensation.

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

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

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

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

35  
36 *History Note: Authority G.S. 97-18(k); 97-80(a);*  
37 *Eff. January 1, 1990;*

1  
2  
3

Amended Eff. January 1, 2013.

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

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

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

To commute 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.

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

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

2

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

4

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

6 *Eff. January 1, 1990;*

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

8

1 04 NCAC 10A .0408 is amended with changes as published in 27:02 NCR 177 as follows:

2  
3 **04 NCAC 10A .0408 APPLICATION FOR OR STIPULATION TO ADDITIONAL MEDICAL**  
4 **COMPENSATION**

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

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

18 ~~(c)(b) Upon receipt of the claim,~~ application, the ~~Industrial~~ Commission ~~will~~ shall notify the ~~employer~~ employer, ~~or~~  
19 ~~carrier/administrator~~ carrier, or administrator that the claim has been received by providing a copy of ~~a the~~ Form  
20 18M Employee's Application for Additional Medical Compensation or ~~a the~~ written ~~claim,~~ request. ~~The Within 30~~  
21 ~~days, the~~ ~~employer~~ employer, ~~or carrier/administrator~~ carrier, or administrator ~~shall, within 30 days,~~ [shall] may  
22 send to the ~~Industrial~~ Commission and ~~to the employee and~~ the employee's attorney of ~~record, if any,~~ record or the  
23 employee, if unrepresented, a written statement as to whether the ~~employee's~~ request is accepted or denied. If the  
24 request is denied, the ~~employer~~ employer, ~~or carrier/administrator~~ carrier, or administrator shall may state in writing  
25 the grounds for the denial and shall attach any supporting documentation to the statement of denial.

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

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

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

36  
37 *History Note: Authority G.S. 97-25.1; 97-80(a);*

1  
2  
3  
4

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

1 04 NCAC 10A .0409 is amended as published in 27:02 NCR 177 as follows:

2  
3 **04 NCAC 10A .0409 CLAIMS FOR DEATH BENEFITS**

4 ~~(a) Report of Fatalities~~

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

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

15 ~~(b) Identifying Beneficiaries~~

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

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

21 ~~(3)(d)~~ If an issue exists as to whether a person is a beneficiary under G.S. § 97-38, the employer, ~~or~~  
22 ~~carrier/administrator, carrier, administrator, and/or or~~ any person asserting a claim for benefits may file a Form  
23 ~~33 Request for Hearing~~ *Request that Claim be Assigned for Hearing* for a determination by a Deputy Commissioner.

24 ~~(e) Liability Accepted by Employer~~

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

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

33 ~~(d) Liability Denied by Employer~~

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



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

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

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

6 ~~(+)(i)~~ Upon approval ~~of by~~ the ~~Industrial~~ Commission of a Form ~~30, 30~~ Agreement for Compensation for Death, or  
7 the issuance of a final order of the ~~Industrial~~ Commission directing payment of death benefits pursuant to ~~G.S. § 97-~~  
8 ~~38, G.S. 97-38,~~ payment ~~may- shall~~ be made by the ~~employer employer, or carrier/administrator~~ carrier, or  
9 administrator directly to the beneficiaries, with the following exceptions: (1) any applicable award of attorney fees  
10 shall be paid directly to the attorney; and (2) benefits due to a minor or incompetent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 |  
16 | *History Note: Authority G.S. 97-38; 97-39; 97-80(a);*

17 | *Eff. June 1, 2000;*

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

19 |

20 |

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

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

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

6 Commission's Medical Status Questionnaire.

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

9 (1) the proposed written communication and any proposed additional information from which the  
10 employee seeks a protective order;

11 (2) description of any attempt to resolve the issue cooperatively;

12 (3) grounds for the protective order; and

13 (4) any alternative methods to discover the information.

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

16 (1) the statutory provision on which the proposed communication is based;

17 (2) description of any attempts which have been made to resolve the issue cooperatively;

18 (3) description of any other attempts which have been made to obtain the relevant medical  
19 information; and

20 (4) justification for the communication.

21 (d) When an employer seeks the Commission's authorization for other forms of communication pursuant to G.S. 97-  
22 25.6(g), the employer shall follow the procedures for motions in Rule .0609 of this Subchapter.

23

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

25 *Eff. January 1, 2013.*

26

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

2  
3 **SECTION .0500 – AGREEMENTS**

4  
5 **04 NCAC 10A .0501 AGREEMENTS FOR PROMPT PAYMENT OF COMPENSATION**

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

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

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

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

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

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

1 *History Note: Authority G.S. 97-18; 97-80(a); 97-82;*  
2 *Eff. January 1, 1990;*  
3 *Amended Eff. January 1, 2013; August 1, 2006.*  
4  
5

1 04 NCAC 10A .0502 is amended as published in 27:02 NCR 179 as follows:

2  
3 **04 NCAC 10A .0502 COMPROMISE SETTLEMENT AGREEMENTS**

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

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

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

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

15 ~~(3)(1) That the~~ The employee knowingly and intentionally waives the right to further benefits under the  
16 Workers' Compensation Act for the injury which is the subject of this agreement.

17 ~~(4)(2) That the~~ The employer employer, or carrier/administrator will carrier or administrator shall pay all  
18 costs incurred.

19 ~~(5)(3) That no~~ No rights other than those arising under the provisions of the Workers' Compensation Act  
20 are compromised or ~~released.~~ released by this agreement.

21 ~~(6)(4) That the~~ The employee has, or has not, returned to a job or position at the same or a greater  
22 average weekly wage as was being earned prior to the injury or occupational disease.

23 ~~(7)(5)~~ (5) Where the employee has not returned to a job or position at the same or a greater wage as was  
24 being earned prior to the injury or occupational disease, ~~that~~ the employee has, or has not, returned  
25 to some other job or position, and, if so, the description of the particular job or position, the name  
26 of the employer, and the average weekly wage earned. This ~~Paragraph Subparagraph of the Rule~~  
27 ~~shall~~ does not apply ~~where the employee is represented by counsel or, even if the employee is not~~  
28 ~~represented by counsel,~~ where the employee or counsel certifies that partial wage loss due to an  
29 injury or occupational disease is not being claimed.

30 ~~(8)(6)~~ (6) Where the employee has not returned to a job or position at the same or a greater average weekly  
31 wage as was being earned prior to the injury or occupational disease, ~~the agreement shall~~  
32 ~~summarize a summary of~~ the employee's age, educational level, past vocational training, past work  
33 experience, and any impairment, emotional, mental or physical, which predates the current injury  
34 or occupational disease. ~~This Subparagraph does not apply upon a showing of: The parties will be~~  
35 ~~relieved of this duty only upon a showing that providing such information creates an~~

36 (A) unreasonable burden upon ~~them the parties;~~ This subsection of the Rule shall not apply  
37 where

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

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

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

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

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

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

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

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

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

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

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

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

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

10          ~~(5)~~(9) The settlement agreement ~~must contain~~ contains a finding that the positions of the parties to the  
11          agreement are reasonable as to the payment of medical expenses.

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

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

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

24  
25          History Note:     Authority G.S. 97-17; 97-80(a); 97-82;  
26                             Eff. January 1, 1990;  
27                             Amended Eff. January 1, 2013; August 1, 2006; June 1, 2000; March 15, 1995.



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

2

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

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

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

11

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

13 *Eff. January 1, 1990;*

14 *Amended Eff. January 1, 2013.*

15

1 04 NCAC 10A .0601 is amended with changes as published in 27:02 NCR 181 as follows:

2  
3 **SECTION .0600 – CLAIMS ADMINISTRATION AND PROCEDURES**

4  
5 **04 NCAC 10A .0601 EMPLOYER'S OBLIGATIONS UPON NOTICE; DENIAL OF LIABILITY; AND**  
6 **SANCTIONS**

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

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

- 15 (1) ~~Notify~~ File a Form 60 Employer's Admission of Employee's Right to Compensation to notify the  
16 Commission and the employee in writing that ~~the employer~~ is admitting the employee's right to  
17 compensation and, if applicable, satisfy the requirements for payment of compensation under G.S.  
18 97-18(b).
- 19 (2) ~~Notify~~ File a Form 61 Denial of Workers' Compensation Claim to notify the Commission and the  
20 employee that ~~the employer~~ denies the employee's right to compensation consistent with G.S.  
21 97-18(c).
- 22 (3) ~~File a Form 63 Notice to Employee of Payment of Compensation Without Prejudice Initiate~~  
23 ~~payments without prejudice and without liability and satisfy the requirements of consistent with~~  
24 G.S. 97-18(d).

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

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

29 ~~(e)(b) If the employer or insurance carrier denies~~ When liability in any ~~case, case is denied, the employer or~~  
30 ~~insurance carrier shall provide~~ a **detailed** statement of the basis of denial ~~must that shall~~ be set forth in a letter of  
31 denial or Form ~~64,~~ 61 Denial of Workers' Compensation Claim, and which shall be sent to the ~~plaintiff or his~~  
32 ~~employee's~~ attorney of ~~record, if any record or the employee, if unrepresented,~~ all known health care providers  
33 ~~which who~~ have submitted bills to the ~~employer/carrier, employer or carrier,~~ and the ~~Industrial~~ Commission. ~~The~~  
34 ~~detailed statement of the basis of denial shall set forth a statement of the facts, as alleged by the employer,~~  
35 ~~concerning the injury or any other matter in dispute; a statement identifying the source, by name or date and type of~~  
36 ~~document, of the facts alleged by the employer; and a statement explaining why the facts, as alleged by the~~  
37 ~~employer, do not entitle the employee to workers' compensation benefits.~~

1

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

3 *Eff. January 1, 1990;*

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

5

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

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

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

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

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

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

1 04 NCAC 10A .0603 is amended as published in 27:02 NCR 182 as follows:

2  
3 **04 NCAC 10A .0603 RESPONDING TO A PARTY'S REQUEST FOR HEARING**

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

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

- 9 (1) ~~The~~ the basis of the disagreement between the parties, including a statement of the ~~specific~~ issues  
10 raised by the plaintiff which are conceded and the ~~specific~~-issues raised by the plaintiff which are  
11 ~~denied.~~ denied;
- 12 (2) ~~The~~ the date of the injury, if it is contended to be different than that alleged by the ~~plaintiff.~~  
13 plaintiff;
- 14 (3) ~~The~~ the part of the body injured, if it is contended to be different than that alleged by the ~~plaintiff.~~  
15 plaintiff;
- 16 (4) ~~The~~ the city and county where the injury occurred, if they are ~~contended~~ contended to be different  
17 than that alleged by the ~~plaintiff.~~ plaintiff;
- 18 (5) ~~The~~ the names and addresses of all doctors and other expert witnesses whose testimony is needed  
19 by the ~~defendant(s).~~ defendant(s);
- 20 (6) ~~The~~ the names of all lay witnesses known by the defendant(s) whose testimony is to be ~~taken.~~  
21 taken;
- 22 (7) ~~An~~ an estimate of the time required for the hearing of the ~~case.~~ case; and
- 23 (8) ~~The~~ the telephone ~~number(s)~~ number(s), and address(es) email address(es), and mailing  
24 address(es) of the party(ies) responding to the ~~Request for Hearing,~~ request for hearing and their  
25 legal counsel.

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

33  
34 *History Note:* Authority G.S. 97-80(a); 97-83;  
35 Eff. January 1, 1990;  
36 Amended Eff. January 1, 2013; June 1, 2000.

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

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

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

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

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

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

1 04 NCAC 10A .0605 is amended with changes as published in 27:02 NCR 183 as follows:

2  
3 **04 NCAC 10A .0605 DISCOVERY**

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

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

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

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

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

31 ~~(2)~~(5) Interrogatories and requests for production of documents shall may relate to matters ~~which that~~ are  
32 not privileged, ~~which that~~ are relevant to an issue ~~presently~~ in dispute, ~~or which that~~ the requesting  
33 party reasonably believes may later be disputed. ~~Signature~~ The signature of a party or attorney  
34 serving interrogatories or requests for production of documents constitutes a certificate by such  
35 person that he or she has personally read each of the interrogatories and requests for production of  
36 documents, that no such interrogatory or request for production of documents will oppress a party  
37 or cause any unnecessary expense or delay, that the information requested is not known or equally

available to the requesting party, and that the interrogatory or requested document relates to an issue presently in dispute or which 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.

~~(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 in the interests of justice or to promote judicial economy. [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.

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

*Eff. January 1, 1990;*

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



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

2

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

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

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

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

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

11

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

13 *Eff. January 1, 1990;*

14 *Amended Eff. January 1, 2013.*

15

1 04 NCAC 10A .0607 is amended as published in 27:02 NCR 184 as follows:

2

3 **04 NCAC 10A .0607 DISCOVERY OF RECORDS AND REPORTS**

4 ~~(a) Upon written request, any party shall furnish, without cost, provide to~~ the requesting party without cost, a copy  
5 of ~~any and~~ all medical, vocational and rehabilitation reports, employment records, ~~Industrial~~ Commission forms, and  
6 written communications with medical providers in its possession, within 30 days of the request, unless objection is  
7 made within that time period. ~~This obligation-The duty to respond~~ exists whether or not a request for hearing has  
8 been ~~filed. This obligation filed and~~ is a continuing one, and any such reports and records ~~which that~~ come into the  
9 possession of a party after receipt of a request pursuant to this Rule shall be provided to the requesting party within  
10 15 days from ~~its the party's~~ receipt of these reports and records. ~~Upon receipt of a request, an insurer or~~  
11 ~~administrator for an employer's workers' compensation program shall inquire of the employer concerning the~~  
12 ~~existence of records encompassed by the request.~~

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

15

16 *History Note: Authority G.S. 97-80(a); 97-80(b); 97-80(f);*  
17 *Eff. January 1, 1990;*  
18 *Amended Eff. January 1, 2013; June 1, 2000; March 15, 1995.*

19

1 04 NCAC 10A .0608 is amended with changes as published in 27:02 NCR 184 as follows:

2

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

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

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

16

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

20

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

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

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

(1) ~~All motions~~ in cases which 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

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

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

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

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

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

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

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

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

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

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

3  
4 *History Note:* Authority G.S. 97-79(b); 97-80(a); 97-84; 97-91;  
5 *Eff. January 1, 1990;*  
6 *Amended Eff. January 1, 2013; June 1, 2000; March 15, 1995.*  
7

1 04 NCAC 10A .0609A is amended as published in 27:02 NCR 186 as follows:

2  
3 **04 NCAC 10A .0609A MEDICAL MOTIONS AND EMERGENCY MEDICAL MOTIONS**

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

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

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

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

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

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

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

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

35 ~~(A) — A letter expressing an intent to appeal a Deputy Commissioner's Order on an Expedited Medical~~  
36 ~~Motion shall be considered notice of appeal to the Full Commission, provided that it clearly~~  
37 ~~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, if any.

~~(b) Emergency Medical Motions:~~

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

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

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

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

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

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

~~(F)(6)~~ (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.

~~(g)~~ (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.

~~(h)~~ (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)~~ (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.



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

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

6  
7 *History Note: Authority G.S. 97-25; 97-78(f)(2); 97-78(g)(2); 97-80(a);*  
8 *Eff. January 1, 2011;*  
9 *Amended Eff. January 1, 2013.*  
10

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

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

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

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

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

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

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

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

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

3

4 *History Note: Authority G.S. 97-80(a); 97-80(b); 97-83;*

5 *Eff. January 1, 1990;*

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

7

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

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

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

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

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

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

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

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

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

29  
30 *History Note: Authority G.S. 97-79; 97-80(a); 97-84; 97-91;*

31 *Eff. January 1, 1990;*

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

33

1 04 NCAC 10A .0612 is amended with changes as published in 27:02 NCR 188 as follows:

2  
3 **04 NCAC 10A .0612 DEPOSITIONS AND ADDITIONAL HEARINGS**

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

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

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

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

23  
24 *History Note:* Authority G.S. 97-80(a); 97-88; 97-88.1;  
25 Eff. June 1, 1990;  
26 Amended Eff. January 1, 2013; June 1, 2000.

27

04 NCAC 10A .0613 is amended with changes as published in 27:02 NCR 188 as follows:

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

~~(a) Dismissals:~~

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

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

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

~~(b) Removals:~~

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

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

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

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

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

~~(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~~

1           (6) the length of time the expert spent preparing, excluding any time meeting with parties' counsel, for  
2           the deposition.

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

5           (c) Failure to make payment to an expert witness within 30 days following the entry of a fee order shall result in  
6           the assessment of a 10 percent penalty in an amount equal to 10 percent being added to the fee payable to the expert  
7           witness.

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

10  
11           *History Note: Authority G.S. 97-18(i); 97-80(a); 97-80(f);*  
12                            *Eff. January 1, 1990;*  
13                            *Amended Eff. January 1, 2013; January 1, 2011; June 1, 2000.*  
14

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

**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 *Medical Provider Dispute Resolution Questionnaire* inquiry regarding a medical fee dispute within 20 days, or denies liability as a Form 26I *Medical Provider Dispute Resolution Questionnaire* response, the medical 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;~~



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

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

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

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

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

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

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

14 (A) the Medical Provider has treated the employee;

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

16 (C) the Medical Provider reasonably believes that the employer or carrier named on the Form  
17 26I Medical Provider Dispute Resolution Questionnaire is obligated to pay the fees under  
18 the Workers' Compensation Act; and

19 (9) a certification of service upon both the employee and the employer or carrier named on the Form  
20 26I Medical Provider Dispute Resolution Questionnaire.

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

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

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

27 (2) a statement of the relief sought;

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

30 (4) a copy of the order denying intervention.

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

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

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

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

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

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

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

12  
13 *History Note: Authority G.S. 97-26(i); 97-80(a);*  
14 *Eff. January 1, 1990;*  
15 *Amended Eff. January 1, 2013; January 1, 2011; June 1, 2000; March 15, 1995.*  
16

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

2

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

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

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

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

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

15

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

19

1 04 NCAC 10A .0616 is amended with changes as published in 27:02 NCR 190 as follows:

2  
3 **04 NCAC 10A .0616 DISMISSALS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27  
28 *History Note: Authority G.S. 97-80(a); 97-90; 97-91;*  
29 *Eff. January 1, 2011;*  
30 *Amended Eff. January 1, 2013.*  
31

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

2

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

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

7

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

9

*Eff. January 1, 2013.*

10

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

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

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

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

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

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

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

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

37



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

1 04 NCAC 10A .0701 is amended with changes as published in 27:02 NCR 192 as follows:

2 **SECTION .0700 – APPEALS**

3  
4 **04 NCAC 10A .0701 REVIEW BY THE FULL COMMISSION**

5 (a) A letter expressing ~~an intent to appeal shall be~~ a request for review is considered ~~notice of appeal an application~~  
6 of review to the Full Commission within the meaning of ~~G.S. § 97-85, G.S. 97-85,~~ provided that ~~it~~ the letter  
7 specifies the Order or Opinion and Award from which appeal is taken.

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

18 (c) The time for filing a request for review from the decision of a Deputy Commissioner under the Rules in this  
19 Subchapter shall be tolled until a timely motion to reconsider or to amend the decision has been ruled upon by the  
20 Deputy Commissioner. A motion to reconsider or to amend the decision of a Deputy Commissioner shall be filed  
21 within 15 days of receipt of notice of the award.

22 ~~(e)(d) Particular grounds~~ Grounds for appeal review not set forth in the ~~application for review Form 44 Application~~  
23 ~~for Review shall be are~~ deemed abandoned, and argument thereon shall not be heard before the Full Commission.

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

35 ~~(e)(f)~~ After ~~notice of appeal request for review~~ has been given to the Full Commission, any motions related to the  
36 issues for review before the Full Commission shall be filed ~~in triplicate~~ with the Full Commission, with service on  
37 the other parties. Motions related to the issues for review including motions for new trial, to amend the record, or to

1 take additional evidence, filed during the pendency of a request for review to the Full Commission shall be argued  
 2 before the Full Commission at the time of the hearing of the request for review.

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

5 (g) Cases ~~should~~ shall be cited to the North Carolina ~~Reports Reports~~, the North Carolina Court of Appeals Reports,  
 6 or the North Carolina Reporter, and ~~preferably, when possible,~~ to the Southeastern Reporter. Counsel shall not  
 7 discuss matters outside the record, assert personal opinions or relate personal experiences, or attribute ~~unworthy~~  
 8 ~~wrongful~~ acts or motives to opposing counsel.

9 ~~(h) The Industrial Commission or any one of the parties with permission of the Industrial Commission may waive~~  
 10 ~~oral argument before the Full Commission.~~ Upon the request of a party or on its own motion, the Commission may  
 11 waive oral argument [to prevent manifest injustice, promote judicial economy, or expedite a decision in the public  
 12 interest] in the interests of justice or to promote judicial economy. In the event of such waiver, the Full Commission  
 13 ~~will shall~~ file ~~a decision, an award,~~ based on the ~~record, assignments of error record~~ and briefs.

14 ~~(i)~~ (i) Briefs to the Full Commission shall not exceed 35 pages, excluding attachments. No page limit ~~shall apply~~  
 15 ~~applies~~ to the length of attachments. Briefs shall be prepared ~~entirely~~ using a 12 point ~~font, type,~~ shall be double  
 16 spaced, and shall be prepared with non-justified right margins. Each page of the brief shall be numbered at the  
 17 bottom right of the page. When a party quotes or paraphrases ~~quoting or paraphrasing~~ testimony or other evidence  
 18 from a transcript of the evidence or from an exhibit in the party's brief, the party shall include, at the end of the  
 19 sentence in the brief that quotes or paraphrases the testimony or other evidence, a parenthetic entry ~~in the text that~~  
 20 designates the source of the quoted or paraphrased material and the page number location within the applicable  
 21 source. to include the exact page number location within the transcript of the evidence of the information being  
 22 referenced shall be placed at the end of the sentence citing the information [Example: (T.p.38)]. The party shall use  
 23 "T" for transcript, "Ex" for exhibit, and "p" for page number. For example, if a party quotes or paraphrases material  
 24 located in the transcript on page 11, the party shall use the following format "(T p 11)", and if a party quotes or  
 25 paraphrases material located in exhibit [three] on page 12, the party shall use the following format "(Ex [3] p 12)".  
 26 When a party quotes or paraphrases ~~quoting or paraphrasing~~ testimony or other evidence in the transcript of a  
 27 deposition in the party's brief, the party shall include, at the end of the sentence in the brief that quotes or  
 28 paraphrases the testimony or other evidence from the deposition, a parenthetic entry ~~in the text to include that~~  
 29 contains the name of the name of the person deposed and ~~exact the~~ page number location within the transcript of the  
 30 deposition. ~~of the information being referenced shall be placed at the end of the sentence citing the information.~~  
 31 ~~[Example: (Smith p.15)].~~ For example, if a party quotes or paraphrases the testimony of John Smith, located on  
 32 page 11 of the transcript of the deposition, the party shall use the following format "(Smith p 11)".

33 ~~(j)~~ (j) A plaintiff An employee appealing requesting a review of the amount of a disfigurement award shall  
 34 personally appear before the Full Commission to permit the Full Commission to view the disfigurement.

36 *History Note:* Authority G.S. 97-80(a); 97-85;

37 Eff. January 1, 1990;

1  
2

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

1 04 NCAC 10A .0702 is amended with changes as published in 27:02 NCR 193 as follows:

2 **04 NCAC 10A .0702 REVIEW OF ADMINISTRATIVE DECISIONS**

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

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

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

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

- 17 (1) applications to approve agreements to pay compensation and medical bills;
- 18 (2) applications to approve the termination or suspension or the reinstatement of compensation;
- 19 (3) applications for change in treatment or providers of medical compensation;
- 20 (4) applications to change the interval of payments; and
- 21 (5) applications for lump sum payments of compensation

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

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

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

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

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

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

8  
9 *History Note: Authority G.S. 97-80(a); 97-85*

10 *Eff. January 1, 1990;*

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

12

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

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

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

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

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

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

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

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

34  
35 *History Note: Authority G.S. 97-80(a); 97-86;*

36 *Eff. March 15, 1995;*

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





1 04 NCAC 10A .0704 is adopted as published in 27:02 NCR 193 as follows:

2

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

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

10

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

12 *Eff. January 1, 2013.*

13

1 04 NCAC 10A .0801 is amended with changes as published in 27:02 NCR 194 as follows:

2

3

**SECTION .0800 – RULES OF THE COMMISSION**

4

**04 NCAC 10A .0801 SUSPENSION OF RULES**

6

~~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.~~

7

8

9

In the interests of justice or to promote judicial economy ~~[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.

10

11

12

13

14

15

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

16

*Eff. January 1, 1990;*

17

*Amended Eff. January 1, 2013.*

18

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

2

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

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

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

13

14 *History Note: Authority G.S. 1A-1, Rule 37; 97-18; 97-80(a); 97-88.1;*  
15 *Eff. January 1, 1990;*  
16 *Amended Eff. January 1, 2013; June 1, 2000.*

17

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

2

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

4

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

6                              *Repealed Eff. January 1, 2013.*

7

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

2

3

**SECTION .0900 – REPORT OF EARNINGS**

4

**04 NCAC 10A .0901 CHECK ENDORSEMENT**

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

9

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

15

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

17 *Eff. June 1, 2000;*

18 *Amended Eff. January 1, 2013.*

19

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

**04 NCAC 10A .0902 NOTICE**

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

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

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

Please TAKE NOTICE of the following:

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

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

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

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

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

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

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

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

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

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

23  
24 *History Note:* Authority G.S. 97-80(a); 97-88.2;  
25 Eff. June 1, 2000;  
26 Amended Eff. January 1, 2013; August 1, 2006.  
27

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

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

4  
5 **04 NCAC 10A .1001 PREAUTHORIZATION FOR SURGERY AND INPATIENT TREATMENT**

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

8 (b) As used in this Section:

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

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

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

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

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

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

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

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

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

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

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

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



- 1 (5) Upon receipt of a request for preauthorization, the insurer shall provide to the health care provider  
2 or person making the request the name, telephone number, fax number and email address of the  
3 Preauthorization Agent. The Preauthorization Agent must be available on a continuous basis,  
4 every business day (which excludes weekends and holidays) from 8:00 a.m. to 8:00 p.m. Eastern  
5 Standard Time to facilitate responses to insurer communications or determinations;
- 6 (6) a statement that the insurer shall provide a statement with supporting documentation of the  
7 substantive clinical justification for a denial of preauthorization, including the relevant clinical  
8 criteria upon which the denial is based. Denials based upon lack of information shall specify what  
9 information is needed to make a determination;
- 10 (7) an outline of the appeal rights and procedures with instructions on how to submit appeals by mail,  
11 email or fax;
- 12 (8) a statement that advises the appealing party of the right to seek authorization for any denied  
13 treatment from the Commission; and
- 14 (9) the name, title, address, telephone number, fax number, email address and other contact  
15 information for the person with authority over all decision-making for preauthorization  
16 determinations (in addition to the claims adjuster), and the normal business hours and time zone of  
17 this contact person.

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

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

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

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

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

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

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

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

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

11

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

13 *Eff. January 1, 2013.*

14

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

2

3

**SUBCHAPTER 10B – TORT CLAIMS RULES**

4

5

**SECTION .0100 – ADMINISTRATION**

6

7

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

8

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

15

16

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

17

*Eff. January 1, 1989;*

18

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

19

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

2

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

4

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

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

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

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

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

15

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

19

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

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

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

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

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

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

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

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

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

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

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

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

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

31  
32 *History Note: Authority G.S. 143-291.2; 143-300;*  
33 *Eff. January 1, 1989;*  
34 *Amended Eff. January 1, 2013; May 1, 2000*  
35

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

2

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

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

10

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

12 *Eff. May 1, 2000;*

13 *Amended Eff. January 1, 2013.*

14

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

**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.~~

*History Note: Authority G.S. 143-300;  
Eff. January 1, 1989;  
Amended Eff. January 1, 2013; January 1, 2011; May 1, 2000*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

8  
9 *History Note: Authority G.S. 143-300;*  
10 *Eff. January 1, 1989;*  
11 *Recodified from 4 NCAC 10B .0206 Eff. April 17, 2000;*  
12 *Amended Eff. January 1, 2013; May 1, 2000.*  
13

1 04 NCAC 10B .0203 is amended with changes as published in 27:02 NCR 199 as follows:

2 **04 NCAC 10B .0203 INFANTS AND INCOMPETENTS**

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

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

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

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

17

18 *History Note: Authority G.S. 143-300; 143-291; 143-295;*

19 *Eff. January 1, 1989;*

20 *Recodified from 4 NCAC 10B .0307 Eff. April 17, 2000;*

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

22

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 *Eff. January 1, 1989;*

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

12

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37

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



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

**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] interests 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.~~

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

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

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

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

5

6 History Note: Authority G.S. 143-291.1; 143-291.2; 143-300; 7A-305;

7 Eff. January 1, 2013.

8

1 04 NCAC 10B .0301 is amended as published in 27:02 NCR 201 as follows:  
2

3 **SECTION .0300 - APPEALS TO FULL COMMISSION**  
4

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

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

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

13  
14 *History Note:* Authority *G.S. 143-292; 143-300;*  
15 *Eff. January 1, 1989;*  
16 *Amended Eff. January 1, 2013; May 1, 2000.*  
17

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

2

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

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

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

10

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

12 *Eff. January 1, 1989;*

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

14

15

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

2

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

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

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

12

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

17

18

19

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

2

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

4

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

6 *Eff. January 1, 1989;*

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

8 *Amended Eff. May 1, 2000;*

9 *Repealed Eff. January 1, 2013.*

10

11

12

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

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

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

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

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

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

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

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

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

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

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

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



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

2

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

4

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

6 *Eff. January 1, 1989;*

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

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

9

10

11

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

2

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

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

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

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

16

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

18 *Eff. May 1, 2000;*

19 *Amended Eff. January 1, 2013.*

20

21

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

2

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

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

7

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

9 *Eff. May 1, 2000;*

10 *Amended Eff. January 1, 2013.*

11

12

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

2

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

4

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

6 *Eff. January 1, 1989;*

7 *Amended Eff. May 1, 2000;*

8 *Repealed Eff. January 1, 2013.*

9

10

11

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

2

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

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

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

12

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

17

18

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

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

3

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

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

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

9

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

11 *Eff. January 1, 1989;*

12 *Amended Eff. January 1, 2013.*

13

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

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

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

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

6  
7 *History Note: Authority G.S. 143-292; 143-294; 143-296; 143-300;*

8 *Eff. January 1, 1989;*

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

10

11

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

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

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

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

9 .

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

13

14



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

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

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

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

13

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

15 *Eff. January 1, 1989;*

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

1 04 NCAC 10B .0501 is amended with changes as published in 27:02 NCR 204 as follows:

2  
3  
4

**SECTION .0500 – RULES OF THE COMMISSION**

5 **04 NCAC 10B .0501 SUSPENSION OF RULES**

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

8 In the interests of justice or to promote judicial economy ~~[To prevent manifest injustice to a party, or to expedite a~~  
9 ~~decision in the public interest],~~ the Commission may, except as otherwise provided by the Rules in this Subchapter,  
10 suspend or vary the requirements or provisions of any of the Rules in this Subchapter in a case pending before the  
11 Commission upon application of a party or upon its own initiative, and may order proceedings in accordance with its  
12 directions.

13 |  
14 *History Note: Authority G.S. 143-291; 143-300;*  
15 *Eff. January 1, 1989;*  
16 *Amended Eff. January 1, 2013; May 1, 2000.*  
17

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

2

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

4

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

6                              *Eff. January 1, 1989;*

7                              *Repealed Eff. January 1, 2013.*

8

9

10

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

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

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

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

10

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

12 *Eff. January 1, 2011;*

13 *Amended Eff. January 1, 2013.*

14

15

16

1 04 NCAC 10C .0101 is amended as published in 27:02 NCR 204 as follows:

2  
3 **SUBCHAPTER 10C - NORTH CAROLINA INDUSTRIAL COMMISSION RULES FOR UTILIZATION**  
4 **OF REHABILITATION PROFESSIONALS IN WORKERS' COMPENSATION CLAIMS**

5  
6 **SECTION .0100 – ADMINISTRATION**

7  
8 **4 NCAC 10C .0101 APPLICABILITY OF THE RULES**

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

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

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

22  
23 *History Note:* Authority G.S. 97-18(d); 97-25.4; 97-25.5; 97-32.2; 97-80;  
24 Eff. January 1, 1996;  
25 Recodified from 4 NCAC 10C .0103, Eff. April 17, 2000;  
26 Amended Eff. January 1, 2013; June 1, 2000.  
27  
28

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

2

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

4

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

8

9

10

11

12

1 04 NCAC 10C .0103 is amended as published in 27:02 NCR 205 as follows:

2  
3 **4 NCAC 10C .0103 DEFINITIONS**

4 As used in this Subchapter:

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

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

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

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

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

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

24 (c) evaluation of treatment results;

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

27 (e) referral for further vocational rehabilitation services.

28 ~~(e)(3) "Vocational Rehabilitation"~~ "Vocational rehabilitation" refers to means the delivery and  
29 coordination of services under an individualized written plan, with the goal of assisting the injured  
30 workers-worker to return to suitable employment-employment, as defined by Item (5) of this Rule  
31 or applicable statute, and to substantially increase the employee's wage-earning capacity.

32 ~~(1) Specific vocational rehabilitation services may include, but are not limited to: vocational~~  
33 ~~assessment, vocational exploration, counseling, job analysis, job modification, job development~~  
34 ~~and placement, labor market survey, vocational or psychometric testing, analysis of transferable~~  
35 ~~skills, work adjustment counseling, job seeking skills training, on the job training and retraining,~~  
36 ~~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.~~

~~(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.~~

~~(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.~~



1  
2  
3  
4  
5  
6  
7

*History Note:*                    *Authority* G.S. 97-2(22); 97-25.4; 97-25.5; 97-32.2; 97-80;  
*Eff. January 1, 1996;*  
*Recodified from 4 NCAC 10C .0101, Eff. April 17, 2000;*  
*Amended Eff. January 1, 2013; June 1, 2000.*

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

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

(a) ~~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):~~

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

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

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

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

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

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

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

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

25 (1) possess one of the following certifications:

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

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

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

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

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

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

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

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

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

7 (e) A qualified rehabilitation professional must also:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) for Certified Rehabilitation Counselors and Certified Vocational Evaluators, the Commission on Rehabilitation Counselor Certification Code of Professional Ethics),  
<http://www.crccertification.com/filebin/pdf/CRCCCodeOfEthics.pdf>;

(2) for Certified Registered Rehabilitation Nurses and Orthopaedic Nurse Certified, the Code of Ethics for Nurses,  
<http://www.nursingworld.org/MainMenuCategories/EthicsStandards/CodeofEthicsforNurses/Code-of-Ethics.pdf>;

(3) for Certified Disability Management Specialists, the Certification of Disability Management Specialists Commission Code of Professional Conduct,  
<http://new.cdms.org/docs/CDMS%20Code%20of%20Professional%20Conduct%2008012011.pdf>;

(4) for Certified Occupational Health Nurses and Certified Occupational Health Nurse-Specialists, the American Association of Occupational Health Nurses, Inc. Code of Ethics,  
[https://www.aaohn.org/dmdocuments/Code\\_of\\_Ethics\\_2009.pdf](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](http://www.ccmcertification.org/sites/default/files/downloads/2012/CCMC_Code_of_Conduct%202-22-12.pdf).

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

~~(f) Prohibited Conduct:~~

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

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

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

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

1 04 NCAC 10C .0107 is amended with changes as published in 27:02 NCR 209 as follows:

2  
3 **4 NCAC 10C .0107           COMMUNICATION**

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

24 |  
25 | *History Note:* Authority G.S. 97-25.4; 97-25.5, 97-32.2, 97-2(19), 97-80;

26 | *Eff. January 1, 1996;*

27 | *Amended Eff. January 1, 2013; June 1, 2000.*  
28 |  
29 |

1 04 NCAC 10C .0108 is amended with changes as published in 27:02 NCR 210 as follows:

2  
3 **4 NCAC 10C .0108 INTERACTION WITH PHYSICIANS**

4 (a) At the initial visit with a physician the RP-rehabilitation professional shall provide ~~professional~~-identification in  
5 the form of a company identification or business card and ~~shall~~-explain the RP's rehabilitation professional's role in  
6 the case.

7 (b) In all cases, the RP-rehabilitation professional shall advise the worker that ~~he or she~~-the worker has the right to a  
8 private examination by the medical provider outside of the presence of the RP-rehabilitation professional. If the  
9 worker prefers, he or she may request that the RP-rehabilitation professional accompany him or her during the  
10 examination. However, if the worker or the worker's attorney notifies the RP-rehabilitation professional in writing  
11 that the worker desires a private examination, no subsequent waiver of that right shall be effective unless the waiver  
12 is ~~revoked-made~~ in writing by the worker or, if represented, by the worker's attorney.

13 (c) If the RP-rehabilitation professional ~~wishes~~ needs to have a an personal-in-person conference with the physician  
14 following an examination, the RP-rehabilitation professional ~~should~~ shall reserve with the physician sufficient  
15 appointment time for ~~a-the~~ conference. The worker ~~must~~-shall be offered the opportunity to attend ~~this-the~~  
16 conference with the physician. If the worker or the physician does not consent to a joint conference, or if in the  
17 physician's opinion it is medically contraindicated for the worker to participate in the conference, the RP  
18 rehabilitation professional ~~will~~-shall note this in his or her report, ~~and~~-may ~~in such case~~-communicate directly with  
19 the physician, and shall report the substance of the communication.

20 (d) When the RP-rehabilitation professional determines that it is necessary to communicate with a physician other  
21 than at a joint meeting, the RP-rehabilitation professional shall first notify the injured worker, or ~~his/her~~-his or her  
22 attorney if represented, of the RP's rehabilitation professional's intent to communicate and the reasons therefore.  
23 The RP-rehabilitation professional ~~need is not required to~~ obtain the injured worker's or his or her attorney's prior  
24 consent ~~for the following types of communication: if:~~

- 25 (1) The communication is limited to scheduling issues or requests for time-sensitive medical records;
- 26 (2) A medical emergency is involved;
- 27 (3) The injured worker's health or medical treatment would either be adversely affected by a delay or  
28 benefited by immediate action;
- 29 (4) The communication is limited to advising the physician of the employer or carrier approval for  
30 recommended testing or treatment;
- 31 (5) The injured worker or attorney has consented to ~~such-the~~ communications communications;  
32 ~~through a valid, current authorization;~~
- 33 (6) The communication is initiated by the physician; or
- 34 (7) The injured worker failed to show up for a scheduled appointment or arrived at a time other than  
35 the scheduled appointment time.

36 ~~Whenever an RP-~~When a rehabilitation professional communicates with a physician without the prior consent or  
37 presence of the injured worker, the RP-rehabilitation professional must ~~promptly~~-document the reasons for and the

1 substance of the communication and ~~promptly~~ report ~~such the reasons and substance~~ to the injured worker or his or  
2 her attorney, if represented, pursuant to Rule ~~VI-.0106~~ of this Subchapter.

3 ~~(e) The RP may assist in scheduling second opinions requested by the treating physician, as well as supporting~~  
4 ~~treatment. In such case, the worker shall receive at least 10 calendar days notice of an appointment for a second~~  
5 ~~opinion unless otherwise agreed by the parties or required by statute.~~

6 ~~(f) The RP may assist in obtaining from the treating physician an opinion as to the degree of permanent partial~~  
7 ~~impairment retained by the worker at maximum medical improvement. The decision to obtain a second physician's~~  
8 ~~opinion on the degree of impairment is not within the practice of rehabilitation. However, if requested by the party~~  
9 ~~who desires a second opinion, the RP may assemble information, schedule, coordinate, and, with the worker's~~  
10 ~~consent, attend the appointment with that physician.~~

11 ~~(g) If a party requests a second opinion or an independent medical examination, the RP's involvement is limited to~~  
12 ~~assembling and forwarding medical records and information, and scheduling, coordinating, and, with the worker's~~  
13 ~~consent, attending the appointment with that physician.~~

14 (e) The following guidelines apply to interactions regarding impairment ratings, independent medical examinations,  
15 second opinions or consults:

16 (1) Rehabilitation professionals shall not initiate a request for impairment ratings, second opinions or  
17 independent medical examinations. Rehabilitation professionals may communicate the requests to  
18 medical providers, injured workers and carriers, and shall clearly communicate the source of the  
19 requests.

20 (2) When a party or medical provider requests a consult, second opinion or independent medical  
21 examination, the rehabilitation professional may assemble and forward medical records and  
22 information, schedule and coordinate an appointment, and, if the worker consents, have a joint  
23 meeting with the medical provider and the worker after a private exam, if requested.

24 (3) When any such exam is requested by the carrier, the worker shall receive at least 10 calendar days'  
25 notice of the appointment unless the parties agree otherwise or unless otherwise required by  
26 statute.

27 ~~(h)(f)~~ The RP-rehabilitation professional shall simultaneously send ~~copies~~ to the parties copies of all written  
28 communications ~~to-with~~ medical care ~~providers, providers~~ and shall accurately and completely record and report all  
29 oral communications.

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

04 NCAC 10C .0109 is amended with changes as published in 27:02 NCR 211 as follows:

**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 work restrictions 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 capacity, 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 hereby Item (5) of Rule .0103 of this Subchapter or by applicable statute.

1 (c)(g) If the ~~RP-rehabilitation professional~~ intends to utilize written or videotaped job descriptions in the return-to-  
2 work process, the ~~RP-rehabilitation professional~~ shall provide a copy of the description to all parties for review  
3 before the job description is provided to the doctor. The worker or the worker's attorney shall have seven business  
4 days from ~~the mailing of the description, description~~ to notify the ~~RP-rehabilitation professional~~, all parties, and the  
5 physician of any objections or amendments ~~to the job description thereto~~. The job description and the objections or  
6 amendments, if any, shall be submitted to the physician simultaneously. This process ~~may shall~~ be expedited ~~on~~  
7 ~~occasions~~ when job availability is critical. ~~This waiting period does not apply if the worker or the worker's attorney~~  
8 ~~has pre-approved the job description.~~

9 (d)(h) In preparing written job descriptions, the ~~RP-rehabilitation professional~~ shall utilize **standards including**  
10 ~~recognized standards which may include but not be limited to~~ the Dictionary of Occupational Titles ~~and/or and~~ the  
11 Handbook for Analyzing Jobs published by the ~~U.S.-United States~~ Department of ~~Labor, Labor, which are~~  
12 ~~recognized as national standard references for use in vocational rehabilitation.~~

13 (e)(i) In identifying proposed employment for the injured worker, the ~~RP-rehabilitation professional should shall~~  
14 consider the worker's transportation requirements.

15 (f)-(j) ~~The rehabilitation professional may conduct~~ follow-up after ~~job~~ placement ~~may be carried out~~ to verify the  
16 appropriateness of the job placement.

17 (g)(k) The ~~RP-rehabilitation professional~~ shall not initiate or continue placement activities ~~which that~~ do not appear  
18 reasonably likely to result in placement of the injured worker in suitable employment. The ~~RP-rehabilitation~~  
19 ~~professional~~ shall report to the parties when efforts to place the worker in suitable employment do not appear  
20 reasonably likely to result in placement of the injured worker in suitable employment.

21  
22 *History Note:* Authority G.S. 97-25.4; ~~97-25.5; 97-32.2; 97-2(22)~~;  
23 *Eff. January 1, 1996;*  
24 *Amended Eff. January 1, 2013; June 1, 2000.*  
25  
26

04 NCAC 10C .0110 is amended with changes as published in 27:02 NCR 211 as follows:

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

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

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

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

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

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

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

1 04 NCAC 10C .0201 is adopted with changes as published in 27:02 NCR 212 as follows:

2

3

**SECTION .0200 - RULES OF THE COMMISSION**

4 |

**4 NCAC 10C .0201       SUSPENSION OF RULES**

6 In the interests of justice or to promote judicial economy ~~To prevent manifest injustice to a party, or to expedite a~~  
7 ~~decision in the public interest~~, the Commission may, except as otherwise provided by the Rules in this Subchapter,  
8 suspend or vary the requirements or provisions of any of the Rules in this Subchapter in a case pending before the  
9 Commission upon application of a party or upon its own initiative, and may order proceedings in accordance with its  
10 directions.

11 |

12 *History Note:     Authority G.S. 97-25.4; 97-80;*

13 *Eff. January 1, 2013.*

14

15

1 04 NCAC 10C .0202 is adopted as published in 27:02 NCR 212 as follows:

2

3 **4 NCAC 10C .0202            SANCTIONS**

4 (a) For ineffective delivery of rehabilitation services, failure to comply with applicable laws, rules or regulations, or  
5 failure to respond to lawful orders of the Commission or other regulatory authorities, the Commission shall prohibit  
6 or restrict a rehabilitation professional, or group of rehabilitation professionals, further participation by particular  
7 workers, employers, or health care providers, groups or classes of them, or all of them.

8 (b) As provided in 4 NCAC 10A .0802, the Commission shall impose appropriate sanctions for violation of the  
9 Rules in this Subchapter.

10

11 *History Note:*     *Authority G.S. 97-25.4; 97-25.5; 97-32.2; 97-80; 97-84;*

12                     *Eff. January 1, 2013.*

13



1 04 NCAC 10D .0101 is amended with changes as published in 27:02 NCR 212 as follows:

2

3

**SUBCHAPTER 10D – WORKERS’ COMPENSATION RULES FOR MANAGED CARE**

4

**ORGANIZATIONS**

5

**SECTION .0100 – RULES**

6

**4 NCAC 10D .0101 PURPOSE**

8

~~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

9

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

10

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.

11

12

13

14

*History Note:* Authority G.S. 97-2(19); 97-2(20); 97-2(21); 97-25; 97-25.2; 97-25.3(e); 97-25.4(a); 97-26(b); 97-26(c);

15

16

*Eff.* January 1, 1996;

17

*Amended Eff.* January 1, 2013.

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

2

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

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

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

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

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

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

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

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

27 *History Note:*

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

29 *Eff. January 1, 1996;*

30 *Amended Eff. January 1, 2013.*

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

2

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

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

16

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

18 *Eff.* January 1, 1996;

19 Repealed *Eff. January 1, 2013.*

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

2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15

**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 change the provision of medical compensation in accordance with the Act.

*History Note:* Authority G.S. 97.25; 97-25.2.  
*Eff.* January 1, 1996;  
*Amended Eff.* January 1, 2013.

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

**4 NCAC 10D .0105 NOTICE TO COMMISSION**

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

~~Commission:~~ Commission the following:

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

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

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

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

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

1 04 NCAC 10D .0106 is amended as published in 27:02 NCR 213 as follows:

2  
3 **4 NCAC 10D .0106 CONTRACT PROVISIONS**

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

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

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

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

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

**INFORMATION FOR ~~EMPLOYEE/PATIENT-EMPLOYEE~~**

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

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

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

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

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

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

2

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

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

14

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

16 Eff. January 1, 1996;

17 Amended Eff. January 1, 2013.



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

2

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

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

8

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

10 *Eff.* January 1, 1996;

11 *Amended Eff.* January 1, 2013.



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

2

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

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

8 (b) Failure to timely file forms as required by either the Rules in this Subchapter or pursuant to the Act may result  
9 in fines or other sanctions.

10

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

12 Eff. January 1, 2013.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

2

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

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

7 (b) The request shall:

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

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

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

11

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

13 Eff. *January 1, 2013*

1 4 NCAC 10E .0201 is adopted with changes as published in 27:02 NCR 216 as follows:

2

3

**SECTION .0200 – FEES**

4

**4 NCAC 10E .0201 DOCUMENT AND RECORD FEES**

6 (a) The fees in this Rule apply to all subject areas within the authority of the Commission.

7 (b) Upon written request, to the extent permitted by Article 1 of Chapter 97, Article 31 of Chapter 143, and Chapter  
8 132 of the North Carolina General Statutes, transcripts of Commission proceedings, copies of recordings of  
9 Commission proceedings, copies of exhibits from Commission proceedings, and copies of all other public  
10 documents are available at the “actual cost” as defined by G.S. 132.6.2(b). The Commission shall provide the  
11 “actual cost” on the Commission’s website. ~~the actual cost.~~

12 ~~(c)~~ Certified copies are available upon request at a cost of one dollar (\$1.00) per certification in addition to any  
13 other applicable cost for the document. Electronic copy certification is not available.

14 ~~(d)~~ Documents shall be sent via certified mail upon request at the actual cost established by the United States  
15 Postal Service.

16 ~~(e)~~ North Carolina sales tax shall be added if applicable.

17

18 *History Note:* Authority G.S. 7A-305; 97-73; 97-79; 97-80; 132-6.2; 143-291.1; 143-291.2; 143-300

19 *Eff. January 1, 2013.*

1 4 NCAC 10E .0202 is adopted with changes as published in 27:02 NCR 216 as follows:

2  
3 **4 NCAC 10E .0202 HEARING COSTS OR FEES**

4 (a) The following hearing costs or fees apply to all subject areas within the authority of the Commission:

- 5 (1) one hundred twenty dollars (\$120.00) for a hearing before a Deputy Commissioner;
- 6 (2) one hundred twenty dollars (\$120.00) if a case is withdrawn after the case is calendared for a  
7 specific hearing date;
- 8 (3) two hundred twenty dollars (\$220.00) for a hearing before the Full Commission;
- 9 (4) one hundred twenty dollars (\$120.00) if an appeal or request for review to the Full Commission is  
10 withdrawn before the appeal or request for review is scheduled for specific hearing date;
- 11 (5) one hundred fifty-five dollars (\$155.00) if an appeal or request for review to the Full Commission  
12 is withdrawn after the appeal or request for review is calendared for specific hearing date;
- 13 (6) one hundred twenty dollars (\$120.00) for the dismissal of an appeal or request for review due to  
14 the failure to prosecute or perfect the appeal or request for review before the appeal or request for  
15 review is calendared for a specific hearing date; and
- 16 (7) one hundred and fifty-five dollars (\$155.00) for the dismissal of an appeal or request for review  
17 due to the failure to prosecute or perfect the appeal or request for review after the appeal or request  
18 for review is calendared for a specific hearing date.

19 (b) Failure to pay fees or costs assessed by the Commission may result in further penalty, including a notice and  
20 order to show cause as to why a fee or cost assessed by the Commission has not been paid.

21  
22 *History Note:* Authority G.S. 7A-305; 97-73; 97-80; 143-291.1; 143-291.2; 143-300;  
23 | *Eff.* January 1, 2013  
24



1 4 NCAC 10E .0203 is adopted as published in 27:02 NCR 216 as follows:

2

3 **4 NCAC 10E .0203 FEES SET BY THE COMMISSION**

4 (a) In workers' compensation cases, the Commission sets the following fees:

5 (1) three hundred seventy-five dollars (\$375.00) for the processing of a compromise settlement  
6 agreement;

7 (2) two hundred fifty dollars (\$250.00) for the processing a Form 21 *Agreement for Compensation for*  
8 *Disability*, Form 26 *Supplemental Agreement as to Payment of Compensation*, or Form 26A  
9 *Employer's Admission of Employee's Right to Permanent Partial Disability*;

10 (3) three hundred dollars (\$300.00) for the processing of a request for a third party distribution order;

11 (4) one hundred seventy-five dollars (\$175.00) for the processing of a Form 24 *Application to Stop or*  
12 *Suspend Payment of Compensation*; and

13 (5) a fee equal to the filing fee required to file of a civil action in the Superior Court division of the  
14 General Court of Justice for the processing of a Form 33I *Intervenor's Request that Claim be*  
15 *Assigned for Hearing*.

16 (b) In tort claims cases, the filing fee is an amount equal to the filing fee required to file a civil action in the  
17 Superior Court division of the General Court of Justice.

18

19 *History Note:* Authority G.S. 97-10.2; 97-17; 97-18.2; 97-26(i); 97-73; 97-80; 143-291.2; 143-300.  
20 *Eff.* January 1, 2013.

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

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

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

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

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

34  
35 *History Note:* Authority G.S. 97-73(~~d~~); 97-80;

36 *Eff.* January 1, 2013.

1 4 NCAC 10E .0301 is adopted with changes as published in 27:02 NCR 217 as follows:

2

3

**SECTION .0300 – RULES OF THE COMMISSION**

4

**4 NCAC 10E .0301       SUSPENSION OF RULES**

6 In the interests of justice or to promote judicial economy ~~To prevent manifest injustice to a party, or to expedite a~~  
7 ~~decision in the public interest,~~ the Commission may, except as otherwise provided by the Rules in this Subchapter,  
8 suspend or vary the requirements or provisions of any of the Rules in this Subchapter in a case pending before the  
9 Commission upon application of a party or upon its own initiative, and may order proceedings in accordance with its  
10 directions.

11

12 *History Note:*                    *Authority G.S. 97-25.2; 97-25.4; 97-73; 97-80; 130A-425(d); 143-166.4; 143-296; 143-*  
13 *300.*

14 *Eff. January 1, 2013*

1 4 NCAC 10E .0302 is adopted with changes as published in 27:02 NCR 217 as follows:

2

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

4 (a) The Commission may, on its own initiative or motion of a party, impose a sanction against a party or attorney or  
5 both when the Commission determines that such party, or attorney, or both failed to comply with the Rules in this  
6 Subchapter. The Commission may impose sanctions of the type and in the manner prescribed by Rule 37 of the  
7 North Carolina Rules of Civil Procedure.

8 (b) Failure to timely file forms as required by either the Rules in this Subchapter or pursuant to the Act may result  
9 in fines or other sanctions.

10

11 History Note: *Authority* G.S. 1A-1, Rule 37; G.S. 97-18; 97-25; 97-25.2; 97-25.4; 97-25.5; 97-32.2; 97-  
12 73; 97-80; 97-84; 97-88(1); 130A-425(d); 143-166.4; 143-296; 143-300;  
13 *Eff.* January 1, 2013.

1 04 NCAC 10F .0101 is adopted with changes as published in 27:02 NCR 217 as follows:

2

3

**SUBCHAPTER 10F –ELECTRONIC BILLING RULES**

4

**SECTION .0100 –ADMINISTRATION**

5

6 **04 NCAC 10F .0101 ELECTRONIC MEDICAL BILLING AND PAYMENT REQUIREMENT**

7 Carriers and licensed medical providers shall utilize electronic billing and payment in workers' compensation  
8 claims. Carriers and medical providers shall develop and implement electronic billing and payment processes  
9 consistent with 45 CFR 162. Carriers and medical providers shall comply with this Rule on or before March 1,  
10 2014. 45 CFR 162 is hereby incorporated by reference and includes subsequent amendments and editions. A copy  
11 may be obtained at no charge from the National Archives and Records Administration's website,  
12 [http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title45/45cfr162\\_main\\_02.tpl](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title45/45cfr162_main_02.tpl), or upon request,  
13 at the offices of the Commission, located in the Dobbs Building, 430 North Salisbury Street, Raleigh, North  
14 Carolina, between the hours of 8:00 a.m. and 5:00 p.m.

15

16 *History Note:* Authority G.S. 97-26(g1); 97-80;

17 *Eff.* January 1, 2013.

1 04 NCAC 10F .0102 is amended with changes as published in 27:02 NCR 217 as follows:

2  
3 **04 NCAC 10F .0102 DEFINITIONS**

4 ~~(a) The Revised Medical Fee Schedule is being published for the Commission by Medicode, Inc., of Salt Lake City,~~  
5 ~~Utah, and is expected to be available prior to the effective date of January 1, 1996.~~

6 ~~(b) In developing the 1996 Revised Medical Fee Schedule (hereafter, the 1996 Fee Schedule) the Commission has~~  
7 ~~made the following determinations:~~

8 ~~(1) The medical fees should be based on the 1995 CPT codes adopted by the American Medical Association~~  
9 ~~with values based on a Resource Based Relative Value System (RBRVS).~~

10 ~~(2) CPT codes for General Medicine will be based on North Carolina 1995 Medicare values multiplied by~~  
11 ~~1.58, which the Commission believes would leave the General Medicine charges as a whole at roughly the same~~  
12 ~~level as in the Commission's fee schedule that has been in effect since January 1, 1993 (hereafter, the 1993 Fee~~  
13 ~~Schedule). Since the Medicare relative value codes for each procedure in the schedule are likely to be different than~~  
14 ~~the codes used in the 1993 Fee Schedule, individual codes under the 1996 Fee Schedule will likely be more or less~~  
15 ~~than the code for the same procedure in the 1993 Fee Schedule, but on average the charges for General Medicine~~  
16 ~~will be at the same level.~~

17 ~~(3) CPT codes for Physical Medicine will be based on North Carolina 1995 Medicare values multiplied by~~  
18 ~~1.30, which the Commission believes would be a slight decrease from the 1993 Fee Schedule. Since the Medicare~~  
19 ~~relative value codes for each procedure in the schedule are likely to be different than the codes used in the 1993 Fee~~  
20 ~~Schedule, individual codes under the 1996 Fee Schedule will likely be more or less than the code for the same~~  
21 ~~procedure in the 1993 Fee Schedule, but on average the charges for Physical Medicine under the 1996 Fee Schedule~~  
22 ~~will be slightly lower than the 1993 Fee Schedule.~~

23 ~~(4) CPT codes for Radiology will be based on North Carolina 1995 Medicare values multiplied by 1.96, which~~  
24 ~~the Commission believes would be a 20% decrease from the 1993 Fee Schedule. Since the Medicare relative value~~  
25 ~~codes for each procedure in the schedule are likely to be different than the codes used in the 1993 Fee Schedule,~~  
26 ~~individual codes under the 1996 Fee Schedule will likely be more or less than the code for the same procedure in the~~  
27 ~~1993 Fee Schedule, but on average the charges for Radiology under the 1996 Fee Schedule will be approximately~~  
28 ~~20% lower than the 1993 Fee Schedule.~~

29 ~~(5) CPT codes for Surgery will be based on North Carolina 1995 Medicare values multiplied by 2.06, which~~  
30 ~~the Commission believes would be an 8% decrease from the 1993 Fee Schedule. Since the Medicare relative value~~  
31 ~~codes for each procedure in the schedule are likely to be different than the codes used in the 1993 Fee Schedule,~~  
32 ~~individual codes under the 1996 Fee Schedule will likely be more or less than the code for the same procedure in the~~  
33 ~~1993 Fee Schedule, but on average the charges for Surgery under the 1996 Fee Schedule will be 8% lower than the~~  
34 ~~1993 Fee Schedule.~~

35 ~~(c) As a whole, the Commission believes that the 1996 Fee Schedule will result in at least an 11% reduction in~~  
36 ~~charges under that schedule.~~

1 ~~(d) As has been the case in the past, charges under the 1996 Fee Schedule are a ceiling and if the provider usually~~  
2 ~~charges a lesser fee for such services, the provider shall charge the lesser fee for cases under the Workers'~~  
3 ~~Compensation Act.~~

4 ~~(e) Also, upon request the Commission will consider greater charges than that set forth in the 1996 Revised Fee~~  
5 ~~Schedule on a case by case basis based on the merits of extenuating circumstances proven by the provider.~~

6 ~~(f) Treatments not covered under the 1996 Fee Schedule will be handled on a "by report" basis.~~

7 ~~(g) The Chiropractic Fee Schedule will stay the same in 1996 as it was in 1993, as will the Dental Fee Schedule.~~

8 ~~(h) The Commission has outsourced the publication of the 1996 Fee Schedule to Medicode, Inc., of Salt Lake City,~~  
9 ~~Utah, in an effort to trim the cost of government services. Copies of the fee schedule will be available through~~  
10 ~~Medicode, Inc. at a price of seventy five dollars (\$75.00), plus tax and shipping. Copies on magnetic media will be~~  
11 ~~available through Medicode, Inc., at a price of two hundred ninety five dollars (\$295.00), plus tax and shipping.~~  
12 ~~The magnetic media price includes one free printed copy. Medicode's address and phone number is Medicode, Inc.,~~  
13 ~~5225 Wiley Post Way, Suite 500, Salt Lake City, Utah 84116, TEL: (801) 536 1000, FAX: (801) 536 1009.~~

14 As used in this Subchapter:

15 (1) "Clearinghouse" means a public or private entity, including a billing service, repricing company,  
16 community health management information system or community health information system, and  
17 "value-added" networks and switches, that is an agent of either the payer or the provider and that  
18 may perform the following functions:

19 (a) Processes or facilitates the processing of medical billing information received from a  
20 client in a nonstandard format or containing nonstandard data content into standard data  
21 elements or a standard transaction for further processing of a bill related transaction; or

22 (b) Receives a standard transaction from another entity and processes or facilitates the  
23 processing of medical billing information into nonstandard format or nonstandard data  
24 content for a client entity.

25 (2) "Complete electronic bill" submission means a medical bill that meets all of the criteria  
26 enumerated in this Subchapter.

27 (3) "Electronic" refers to a communication between computerized data exchange systems that  
28 complies with the standards enumerated in this Subchapter.

29 (3) "Health Care Provider" is as set forth in G.S. 97-2(20)

30 (4) "Health Care Provider Agent" is a person or entity that contracts with a health care provider  
31 establishing an agency relationship to process bills for services provided by the health care  
32 provider under the terms and conditions of a contract between the agent and health care provider.  
33 Such contracts may permit the agent to submit bills, request reconsideration, receive  
34 reimbursement, and seek medical dispute resolution for the health care provider services.

35 ([4] 5) "Implementation guide" is a published document for national electronic standard formats as  
36 defined in this Subchapter that specifies data requirements and data transaction sets.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13

(~~5~~ 6) "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~~ 7) "Payer" means the insurance carrier, third-party administrator, managed care organization, or employer responsible for paying the workers' compensation medical bills.

(~~7~~ 8) "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.



1 04 NCAC 10F .0103 is amended as published in 27:02 NCR 219 as follows:

2  
3 **4 NCAC 10F .0103 FORMATS FOR ELECTRONIC MEDICAL BILL PROCESSING**

4 ~~(a) In revising the medical fee schedule the Industrial Commission was guided by the three principles contained in~~  
5 ~~its statutory mandate: setting fees adequate to ensure:~~

6 ~~(1) that injured workers are provided the standard of services and care intended by the Workers' Compensation~~  
7 ~~Act;~~

8 ~~(2) that providers of medical services are reimbursed reasonable fees for providing these services, and~~

9 ~~(3) that medical costs are adequately contained. G.S. 97-26.~~

10 ~~(b) Benchmarking studies by the Workers' Compensation Research Institute of Cambridge, Massachusetts, have~~  
11 ~~shown that the North Carolina Workers' Compensation 1993 Medical Fee Schedule was the third highest in the~~  
12 ~~nation in 1993, and, in 1995, was the fifth highest among states having Workers' Compensation medical fee~~  
13 ~~schedules. Yet those same studies indicate that two adjoining states, South Carolina and Georgia, have Workers'~~  
14 ~~Compensation medical fee schedules 12 to 16% lower than North Carolina's; six states with similar costs of~~  
15 ~~producing medical services have schedules 13 to 27% lower than North Carolina's; two major private payers in~~  
16 ~~North Carolina have schedules that average 14% lower; and six states that have adopted Resource Based Relative~~  
17 ~~Value System fee schedules have schedules that are 27 to 34% lower.~~

18 ~~(c) The Medicare fee schedule presently in effect in North Carolina is a Resource Based Relative Value System~~  
19 ~~(RBRVS) fee schedule. Comparing the 1993 North Carolina Workers' compensation medical fee schedule to the~~  
20 ~~North Carolina Medicare fee schedule yields the following: Overall, the 1993 Fee Schedule is 91% greater than the~~  
21 ~~1995 Medicare schedule; general medicine is 58% greater; surgery is 124% greater; radiology is 145% greater and~~  
22 ~~physical medicine is 105% greater.~~

23 ~~(d) The Industrial Commission believes that basing the revised Workers' Compensation Medical Fee Schedule on~~  
24 ~~multipliers of the North Carolina Medicare fee schedule will yield the results sought. That is, such a fee schedule~~  
25 ~~will yield ready access to good medical care for North Carolina's injured workers and will result in a lower medical~~  
26 ~~cost and a lower overall cost while still getting injured workers well and back to work on a timely basis.~~

27 ~~(e) The Commission believes that the 1996 Fee Schedule will result in an overall lowering of medical fees by 11%,~~  
28 ~~which will place it in line generally with what is being paid by two major private payers in North Carolina and in~~  
29 ~~line generally with what is being paid in South Carolina and Georgia as well as in line generally with the six~~  
30 ~~RBRVS states and the six states with similar costs of providing medical services.~~

31 ~~(f) The multiplier of 1.58 for General Medicine leaves General Medicine at about the same level of fees under the~~  
32 ~~1996 Fee Schedule as under the 1993 Fee Schedule.~~

33 ~~(g) The multiplier of 1.30 for Physical Medicine would yield a slight reduction. The Commission had originally~~  
34 ~~proposed a multiplier of 1.60 which would have yielded rates higher than the 1993 Fee Schedule.~~

35 ~~(h) The multiplier of 2.06 for Surgery will yield an 8% reduction. The Commission had originally proposed a~~  
36 ~~multiplier of 2.02, which would have yielded a 10% reduction. The higher multiplier, and consequently the lower~~

1 ~~percentage reduction, gives recognition to the fact that the early intervention of good surgery is often what is needed~~  
2 ~~for good results in difficult workers' compensation injury situations.~~

3 ~~The 1.96 multiplier for Radiology will yield a 20% reduction in that schedule rather than the 34% reduction using a~~  
4 ~~multiplier of 1.60 that the Commission had originally proposed. The change from the 1.60 multiplier to the 1.96~~  
5 ~~multiplier was made by the Commission to give recognition to the fact that the Radiology schedule got "short~~  
6 ~~changed" by the Medicare RBRVS system when it was first set up and has not be rectified by the Medicare RBRVS~~  
7 ~~system in the intervening years.~~

8 ~~(i) No change was made in the chiropractic fee schedule and in the dental fee schedule for a number of reasons: the~~  
9 ~~overall amount paid under these schedules is small in comparison to all medical fees, and, the charges allowed under~~  
10 ~~the schedules are relatively low compared with what other licensed physicians and medical care providers are~~  
11 ~~allowed, among other reasons.~~

12 ~~(j) The Industrial Commission intends to monitor behavior resulting from changes to the medical fee schedule to~~  
13 ~~determine if the changes result in problems with access to quality medical care for injured workers and to determine~~  
14 ~~if savings result from the changes.~~

15 (a) Beginning March 1, 2014, electronic medical billing transactions shall be conducted using the electronic formats  
16 adopted under the Code of Federal Regulations, Title 45, part 162, subparts K, N, and P. Whenever a standard  
17 format is replaced with a newer standard, the most recent standard shall be used. The requirement to use a new  
18 version shall commence on the effective date of the new version as published in the Code of Federal Regulations.  
19 The Code of Federal Regulations, Title 45, part 162, subparts K, N, and P is hereby incorporated by reference and  
20 includes subsequent amendments and editions. A copy may be obtained at no charge from the Internal Revenue  
21 Service's website, <http://ecfr.gpoaccess.gov>, or upon request, at the offices of the Commission, located in the Dobbs  
22 Building, 430 North Salisbury Street, Raleigh, North Carolina, between the hours of 8:00 a.m. and 5:00 p.m.

23 (b) Nothing in this Subchapter shall prohibit payers and health care providers from using a direct data entry  
24 methodology for complying with these requirements, provided the methodology complies with the data content  
25 requirements of the adopted formats and these rules.

26  
27 *History Note:* Authority G.S. 97-26; 97-26(g1); 97-80;  
28 Eff. January 1, 1996  
29 Revised Eff. March 1, 2014.

1 04 NCAC 10F .0104 is adopted as published in 27:02 NCR 220 as follows:

2

3 **4 NCAC 10F .0104 BILLING CODE SETS**

4 Billing codes and modifier systems identified below are valid codes for the specified workers' compensation  
5 transactions, in addition to any code sets defined by the standards adopted in 4 NCAC 10F .0102:

6 (1) "CDT-4 Codes" that refers to the codes and nomenclature prescribed by the American Dental  
7 Association.

8 (2) "CPT-4 Codes" that refers to the procedural terminology and codes contained in the "Current  
9 Procedural Terminology, Fourth Edition," as published by the American Medical Association.

10 (3) "Diagnosis Related Group (DRG)" that refers to the inpatient classification scheme used by CMS  
11 for hospital inpatient reimbursement.

12 (4) "Healthcare Common Procedure Coding System" (HCPCS) that refers to a coding system which  
13 describes products, supplies, procedures, and health professional services and which includes  
14 CPT-4 codes, alphanumeric codes, and related modifiers.

15 (5) "ICD-9-CM Codes" that refers to diagnosis and procedure codes in the International Classification  
16 of Diseases, Ninth Revision, Clinical Modification published by the United States Department of  
17 Health and Human Services.

18 (6) "ICD-10-CM/PCS that refers to diagnosis and procedure codes in the International Classification  
19 of Diseases, Tenth Edition, Clinical Modification/Procedure Coding System.

20 (7) National Drug Codes (NDC) of the United States Food and Drug Administration.

21 (8) "Revenue Codes" that refers to the 4-digit coding system developed and maintained by the  
22 National Uniform Billing Committee for billing inpatient and outpatient hospital services, home  
23 health services, and hospice services.

24 (9) "National Uniform Billing Committee Codes" that refers to the code structure and instructions  
25 established for use by the National Uniform Billing Committee (NUBC).

26

27 *History Note:* Authority G.S. 97-26(g1); 97-80;

28 *Eff.* March 1, 2014.

04 NCAC 10F .0105 is adopted with changes as published in 27:02 NCR 220 as follows:

**4 NCAC 10F .0105 ELECTRONIC MEDICAL BILLING, REIMBURSEMENT, AND DOCUMENTATION**

(a) Applicability

(1) 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) Electronic Acknowledgment

(1) Interchange Acknowledgment (TA1) notifies the sender of the receipt of, and structural defects associated with, an incoming transaction.

- 1 (2) Implementation Acknowledgment (ASC X12 999) transaction is an electronic notification to the  
2 sender of the file that it has been received and has been:
- 3 (A) accepted as a complete and structurally correct file; or  
4 (B) rejected with a valid rejection code.
- 5 (3) Health Care Claim Status Response (ASC X12 277) or Acknowledgment transaction (detail  
6 acknowledgment) is an electronic notification to the sender of an electronic transaction  
7 (individual electronic bill) that the transaction has been received and has been:
- 8 (A) accepted as a complete, correct submission; or  
9 (B) rejected with a valid rejection code.
- 10 (4) A payer shall acknowledge receipt of an electronic medical bill by returning an Implementation  
11 Acknowledgment (ASC X12 999) within one business day of receipt of the electronic submission.
- 12 (A) Notification of a rejected bill shall be transmitted using the appropriate acknowledgment  
13 when an electronic medical bill does not meet the definition of a complete electronic  
14 medical bill as described in this Rule or does not meet the edits defined in the applicable  
15 implementation guide or guides.
- 16 (B) A health care provider or its agent may not submit a duplicate electronic medical bill  
17 earlier than 60 days from the date originally submitted if a payer has acknowledged  
18 acceptance of the original complete electronic medical bill. A health care provider or its  
19 agent may submit a corrected medical bill electronically to the payer after receiving  
20 notification of a rejection. The corrected medical bill shall be submitted as a new,  
21 original bill.
- 22 (5) A payer shall acknowledge receipt of an electronic medical bill by returning a Health Care Claim  
23 Status Response or Acknowledgment (ASC X12 277) transaction (detail acknowledgment) within  
24 two business days of receipt of the electronic submission.
- 25 (A) Notification of a rejected bill is transmitted in an ASC X12N 277 response or  
26 acknowledgment when an electronic medical bill does not meet the definition of a  
27 complete electronic medical bill or does not meet the edits defined in the applicable  
28 implementation guide or guides.
- 29 (B) A health care provider or its agent may not submit a duplicate electronic medical bill  
30 earlier than 60 days from the date originally submitted if a payer has acknowledged  
31 acceptance of the original complete electronic medical bill. A health care provider or its  
32 agent may submit a corrected medical bill electronically to the payer after receiving  
33 notification of a rejection. The corrected medical bill shall be submitted as a new, original  
34 bill.
- 35 (6) Acceptance of a complete medical bill is not an admission of liability by the payer. A payer may  
36 subsequently reject an accepted electronic medical bill if the employer or other responsible party  
37 named on the medical bill is not legally liable for its payment.

1 (A) The subsequent rejection shall occur no later than seven days from the date of receipt of  
2 the complete electronic medical bill.

3 (B) The rejection transaction shall indicate that the reason for the rejection is due to denial of  
4 liability.

5 (7) Acceptance of an incomplete medical bill does not satisfy the written notice of injury requirement  
6 from an employee or payer as required in G.S. 97-22.

7 (8) Acceptance of a complete or incomplete medical bill by a payer does not begin the time period by  
8 which a payer shall accept or deny liability for any alleged claim related to such medical treatment  
9 pursuant to G.S. 97-18 and 4 NCAC 10A 0601.

10 (9) Transmission of an Implementation Acknowledgment under Subsection (c)(2) of this Rule and  
11 acceptance of a complete, structurally correct file serves as proof of the received date for an  
12 electronic medical bill in this Rule.

13 (d) Electronic Documentation

14 (1) Electronic documentation, including but not limited to medical reports and records submitted  
15 electronically that support an electronic medical bill, may be required by the payer before payment  
16 may be remitted to the health care provider. Electronic documentation may be submitted  
17 simultaneously with the electronic medical bill.

18 (2) Electronic transmittal by electronic mail shall contain the following information:

19 (A) name of the injured employee;

20 (B) identification of the worker's employer, the employer's insurance carrier, or the third  
21 party administrator or its agent handling the workers' compensation claim;

22 (C) identification of the health care provider billing for services to the employee, and where  
23 applicable, its agent;

24 (D) date(s) of service; and

25 (E) workers' compensation claim number assigned by the payer, if known.

26 (e) Electronic remittance notification

27 (1) An electronic remittance notification is an explanation of benefits (EOB) or explanation of review  
28 (EOR), submitted electronically regarding payment or denial of a medical bill, recoupment  
29 request, or receipt of a refund.

30 (2) A payer shall provide an electronic remittance notification in accordance with G.S. 97-18.

31 (3) The electronic remittance notification shall contain the appropriate Group Claim Adjustment  
32 Reason Codes, Claim Adjustment Reason Codes (CARC) and associated Remittance Advice  
33 Remark Codes (RARC) as specified by ASC X12 835 implementation guide or, for pharmacy  
34 charges, the National Council for Prescription Drugs Program (NCPDP) Reject Codes, denoting  
35 the reason for payment, adjustment, or denial.

36 (4) The remittance notification shall be sent within two days of:

37 (A) the expected date of receipt by the medical provider of payment from the payer; or

1 (B) the date the bill was rejected by the payer. If a recoupment of funds is being requested,  
2 the notification shall contain the proper code described in Subparagraph (e)(3) of this  
3 Rule and a explanation for the amount and basis of the refund.

4 (f) A health care provider or its agent may not submit a duplicate paper medical bill earlier than 30 days from the  
5 date originally submitted unless the payer has returned the medical bill as incomplete in accordance with  
6 Subchapter. A health care provider or its clearinghouse or agent may submit a corrected paper medical bill to the  
7 payer after receiving notification of the return of an incomplete medical bill. The corrected medical bill shall be  
8 submitted as a new, original bill.

9 (g) A payer shall establish connectivity with any clearinghouse that requests the exchange of data in accordance  
10 with this Subchapter.

11 (h) A payer or its agent may not reject a standard transaction on the basis that it contains data elements not  
12 needed or used by the payer or its agent.

13 (i) A health care provider that does not send standard transactions shall use an internet-based direct data entry  
14 system offered by a payer if the payer does not charge a transaction fee. A health care provider using an  
15 Internet-based direct data entry system offered by a payer or other entity shall use the appropriate data content and  
16 data condition requirements of the standard transactions.

17  
18 *History Note:* Authority G.S. 97-26(g1); 97-80  
19 *Eff.* March 1, 2014.

1 04 NCAC 10F .0106 is adopted with changes as published in 27:02 NCR 222 as follows:

2  
3 **4 NCAC 10F .0106 EMPLOYER, INSURANCE CARRIER, MANAGED CARE ORGANIZATION,**  
4 **OR AGENTS' RECEIPT OF MEDICAL BILLS FROM HEALTH CARE**  
5 **PROVIDERS**

6 (a) Upon receipt of medical bills submitted in accordance with these Rules, a payer shall evaluate each bill's  
7 conformance with the criteria of a complete medical bill as follows:

8 (1) A payer shall not return to the health care provider medical bills that are complete, unless the bill  
9 is a duplicate bill.

10 (2) Within 21 days of receipt of an incomplete medical bill, a payer or its agent shall either:

11 (A) Complete the bill by adding missing health care provider identification or demographic  
12 information already known to the payer; or

13 (B) Return the bill to the sender, in accordance with this Paragraph.

14 (b) The received date of an electronic medical bill is the date all of the contents of a complete electronic bill are  
15 successfully received by the claims payer.

16 (c) The payer may contact the medical provider to obtain the information necessary to make the bill complete as  
17 follows:

18 (1) Any request by the payer or its agent for additional documentation to pay a medical bill shall:

19 (A) be made by telephone or electronic transmission unless the information cannot be sent by  
20 those media, in which case the sender shall send the information by mail or personal  
21 delivery;

22 (B) be specific to the bill or the bill's related episode of care;

23 (C) describe with specificity the clinical and other information to be included in the response;

24 (D) be relevant and necessary for the resolution of the bill;

25 (E) be for information that is contained in or is in the process of being incorporated into the  
26 injured employee's medical or billing record maintained by the health care provider; and

27 (F) indicate the reason for which the insurance carrier is requesting the information.

28 (2) If the payer or its agent obtains the missing information and completes the bill to the point it can  
29 be adjudicated for payment, the payer shall document the name and telephone number of the  
30 person who supplied the information.

31 (3) Health care providers and payers, or their agents, shall maintain, in a reproducible format,  
32 documentation of communications related to medical bill processing.

33 (d) A payer shall not return a medical bill except as provided in this Rule. When returning an electronic medical  
34 bill, the payer shall identify the reason(s) for returning the bill by utilizing the appropriate Reason and Rejection  
35 Code identified in the standards identified in this Subchapter.

36 (e) The proper return of an incomplete medical bill in accordance with this section fulfills the obligation of the  
37 payer to provide to the health care provider or its agent information related to the incompleteness of the bill.



1 (f) Payers shall timely reject bills or request additional information needed to reasonably determine the amount  
2 payable as follows:

3 (1) For bills submitted electronically, the rejection of all or part of the bill shall be sent to the  
4 submitter within two days of receipt.

5 (2) If bills are submitted in a batch transmission, only the specific bills failing edits shall be rejected.

6 (g) If a payer has reason to challenge the coverage or amount of a specific line item on a bill, but has no reasonable  
7 basis for objections to the remainder of the bill, the uncontested portion shall be paid timely, as required in this Rule.

8 (i) Payment of all uncontested portions of a complete medical bill shall be made within 30 days of receipt of the  
9 original bill, or receipt of additional information requested by the payer allowed under the law. After 60 days an  
10 amount equal to 10 percent shall be added to an unpaid bill.

11 (j) A payer shall not return a medical bill except as provided in this Rule. When returning a medical bill, the payer  
12 shall also communicate the reason(s) for returning the bill.

13

14 *History Note:* Authority G.S. 97-18(1); 97-26(g1); 97-80;

15 *Eff.* March 1, 2014.

1 04 NCAC 10F .0107 is adopted as published in 27:02 NCR 223 as follows:

2

3 **4 NCAC 10F .0107 COMMUNICATION BETWEEN HEALTH CARE PROVIDERS AND PAYERS**

4 (a) Any communication between the health care provider and the payer related to medical bill processing shall be of  
5 sufficient specific detail to allow the responder to easily identify the information required to resolve the issue or  
6 question related to the medical bill. Generic statements that simply state a conclusion such as "payer improperly  
7 reduced the bill" or "health care provider did not document" or other similar phrases with no further description of  
8 the factual basis for the sender's position do not satisfy the requirements of this Rule.

9 (b) When communicating with the healthcare provider, agent, or assignee, the payer may utilize the ASC X12  
10 Reason Codes, or as appropriate, the NCPDP Reject Codes, to communicate with the health care provider, agent, or  
11 assignee.

12 (c) Communication between the health care provider and payer related to medical bill processing shall be made by  
13 telephone or electronic transmission unless the information cannot be sent by those media, in which case the sender  
14 shall send the information by mail or personal delivery.

15

16 *History Note:* Authority G.S. 97-26(g1); 97-80(a);

17 *Eff.* March 1, 2014.

1 04 NCAC 10F .0108 is adopted as published in 27:02 NCR 223 as follows:

2

3 **4 NCAC 10F .0108 SANCTIONS**

4 The Commission may, on its own initiative or motion of a party, impose a sanction against a party, or attorney or  
5 both when the Commission determines that such party, or attorney, or both failed to comply with the Rules in this  
6 Subchapter. The Commission may impose sanctions of the type and in the manner prescribed by Rule 37 of the  
7 North Carolina Rules of Civil Procedure.

8

9 *History Note:* Authority G.S. 1A-1, Rule 37; 97-26(g1); 97-80;  
10 *Eff.* March 1, 2014.

1 04 NCAC 10F .0109 is adopted as published in 27:02 NCR 223 as follows:

2

3 **4 NCAC 10F .0109 EFFECTIVE DATE**

4 This Chapter applies to all medical services and products provided on or after March 1, 2014. For medical services  
5 and products provided prior to March 1, 2014, medical billing and processing shall be in accordance with the rules  
6 in effect at the time the health care was provided.

7

8 *History Note:* Authority G.S. 97-26(g1); 97-80

9 *Eff.* March 1, 2014.

1 4 NCAC 10G .0101 is amended with changes as published in 27:02 NCR 223 as follows:

2  
3 **SUBCHAPTER 10G – NORTH CAROLINA INDUSTRIAL COMMISSION RULES FOR MEDIATED**  
4 **SETTLEMENT AND NEUTRAL EVALUATION CONFERENCES**

5  
6 **SECTION .0100 – MEDIATION AND SETTLEMENT**

7  
8 **04 NCAC 10G .0101 ORDER FOR MEDIATED SETTLEMENT CONFERENCE**

9 (a) Mediation Upon Agreement of the Parties. If the parties to a workers' compensation claim or state tort claim  
10 agree to mediate ~~their the~~ claim, ~~they the parties~~ may schedule and proceed with mediation on their own, or ~~they the~~  
11 ~~parties~~ may submit a request for a mediation order pursuant to ~~Rule 4(d). Paragraph (d) of this Rule.~~ No order from  
12 the Commission is necessary if the parties mutually agree to ~~mediate, mediate the claim,~~ but the mediator shall file a  
13 report of mediation with the Commission as required by ~~Rule 6(b)(4). Paragraph (g) of Rule .0106 of this~~  
14 ~~Subchapter.~~ If the parties proceed with mediation in the absence of an order from the ~~Commission, Commission~~ and  
15 the Commission thereafter enters a mediation order, the parties shall ~~timely~~ notify the Commission that ~~they the~~  
16 ~~parties~~ have agreed upon the selection of a mediator or, if the ~~mediation-mediated settlement~~ conference has been  
17 completed, that ~~they the parties~~ request to be excused from any further mediation obligations pursuant to ~~Rule 4(g).~~  
18 ~~Paragraph (f) of this Rule.~~

19 (b) Referral Upon Receipt of a Form 33 ~~Request for Hearing. Request that Claim be Assigned for Hearing.~~ In any  
20 case in which the Commission receives a Form 33 ~~Request for Hearing. Request that Claim be Assigned for Hearing,~~  
21 the Commission shall order ~~that disputed the~~ case to a mediated settlement ~~conference. conference unless doing so~~  
22 ~~would be contrary to the [interest] interests of justice.~~

23 (c) By Order of the Commission. Commissioners, Deputy Commissioners, the Commission's Dispute Resolution  
24 Coordinator, and such other employees as the Commission Chair ~~may~~ ~~designates~~ ~~from time to time~~ may, by written  
25 order, require the parties and their representatives to attend a mediated settlement conference concerning a dispute  
26 within the ~~tort and~~ workers' compensation ~~and state tort claim~~ jurisdiction of the Commission. Requests to dispense  
27 with or defer a ~~mediation-mediated settlement~~ conference shall be addressed to the Dispute Resolution Coordinator.  
28 Unless the context otherwise requires, references to the "Commission" in ~~these the~~ Rules ~~in this Subchapter~~ shall  
29 mean the Dispute Resolution Coordinator.

30 (d) Mediation Upon Request of a Party. If a case is not otherwise ordered to a mediated settlement conference, a  
31 party may move the Commission to order ~~such~~ a conference. ~~Such The~~ motion shall be served on non-moving  
32 parties and shall state the reasons why the order should be entered. ~~allowed and, if the case is pending on the~~  
33 ~~hearing docket, whether the party prefers for the case to be set for hearing on the next docket, for it to not be heard~~  
34 ~~until further notice from the parties, or for it to not be set before a specified date. The motion shall be served on~~  
35 ~~non-moving parties.~~ Responses may be filed in writing with the Commission within 10 days after the date of the  
36 service of the motion. ~~The Commission may require that any~~ Any motion for a mediation order shall be submitted  
37 on a form provided by the Commission.

1 (e) Timing of the Order. The order requiring mediation may be issued whenever it appears that the parties have a  
2 dispute arising under the Workers' Compensation Act or the Tort Claims Act.

3 ~~(f) Content of Order. The Commission's order shall (1) require that the mediated settlement conference be held in  
4 the case, that pertinent documents be exchanged and that any specified discovery be completed prior to the  
5 conference; (2) establish a deadline for the pre-conference exchange of documents and other discovery, and for the  
6 completion of the conference; (3) provide a period within which the parties may select a mediator by mutual  
7 agreement (see Rule 2); (4) state the rate of compensation of the Commission-appointed mediator in the event that  
8 the parties do not exercise their right to select a mediator pursuant to Rule 2; (5) state that the parties shall be  
9 required to pay the mediator's fee at the conclusion of the settlement conference unless otherwise ordered by the  
10 Commission (see Rule 7); and, (6) may specify a date for an Industrial Commission hearing should the parties fail to  
11 reach a settlement.~~

12 ~~(g)(f)~~ Motion to Dispense with or Defer Mediated Settlement Conference. Mediation may be dispensed with ~~or~~  
13 ~~canceled~~ by the ~~Commission, but~~ Commission in the [interest] interests of justice or judicial economy. As used in  
14 this Rule, the term "dispensed with" means setting aside or rescinding the mediation order(s) entered in the case, or  
15 excusing the parties from their obligations under the applicable order(s) or the Rules in this Subchapter. Mediation  
16 may not be dispensed with ~~or canceled~~ by the parties or the mediator unless the parties have agreed, subject to  
17 Commission approval, on a full and complete resolution of all disputed issues set forth in the request for hearing  
18 filed in the case, and the parties have given notice of the settlement to the Dispute Resolution Coordinator. ~~As used~~  
19 ~~herein, the terms "dispensed with" and "canceled" shall mean and refer to setting aside or rescinding the mediation~~  
20 ~~order(s) entered in the case, or excusing the parties from their obligations under the order(s) or these rules.~~ Within  
21 55 days of the filing of a Form 33 ~~Request for Hearing, Request that Claim be Assigned for Hearing,~~ or otherwise  
22 within ~~the deadline set forth in~~ 21 days of the date of the Commission's order entered pursuant to ~~Rules 1(e) and~~  
23 ~~1(d), Paragraph (c) or Paragraph (d) of this Rule,~~ a party may move to dispense with or defer the mediated  
24 settlement conference. ~~Such~~ The motion shall state the reasons the relief is ~~sought, sought~~ and must be received by  
25 the Dispute Resolution Coordinator within the applicable ~~21 or 55 day~~ deadline. For good cause shown, the  
26 Commission may grant the motion. ~~However, failure to file a motion to dispense with mediated settlement~~  
27 ~~conference within the above stated 21 or 55 day deadline and after a mediator has been appointed may result in the~~  
28 ~~moving party or parties, or other responsible person, being required to pay an administrative fee of up to \$100.00 to~~  
29 ~~the Commission.~~

30 ~~(h)(g)~~ Exemption from Mediated Settlement Conference. ~~In order to provide for the most efficacious use of~~  
31 ~~mediation and neutral evaluation procedures, the Commission may specify, by type or kind, those cases to be~~  
32 ~~ordered into or excluded from mediation and neutral evaluation procedures.~~ The State shall not be compelled to  
33 participate in a mediation or neutral evaluation procedure with a prison inmate.

34 ~~(i)(h)~~ Motion to Authorize the Use of Neutral Evaluation Procedures. The parties may move the Commission to  
35 authorize the use of a neutral evaluation procedure contained in Rule .0109 of this Subchapter in lieu of a mediated  
36 settlement conference. ~~The Commission may require that such~~ The motion shall be filed on a form provided by the  
37 ~~Commission, and such motion shall be filed~~ Commission within 55 days of the filing of a Form 33 ~~Request for~~

1 ~~Hearing, Request that Claim be Assigned for Hearing,~~ or otherwise within ~~21 days of the order requiring a mediated~~  
2 ~~settlement conference—the deadline set forth in the Commission’s order~~ entered pursuant to ~~Rules 1(e) and 1(d),~~  
3 ~~Paragraph (c) or Paragraph (d) of this Rule,~~ and shall state:

- 4 (1) ~~that~~ all parties consent to the ~~motion—motion;~~
- 5 (2) ~~that~~ the neutral evaluator and the parties have agreed upon the selection and all terms of  
6 compensation of the neutral ~~selected.;~~selected; and
- 7 (3) the name, address, and telephone number of the neutral evaluator selected by the ~~parties;~~parties.
- 8 (4) ~~the names of all persons and entities the parties have agreed to excuse from attending the~~  
9 ~~proceeding; and~~
- 10 (5) ~~such other information as may be required by the Commission.~~

11 (i) If the parties are unable to agree to the ~~matters listed in Paragraph (h), selection of a neutral or the persons~~  
12 ~~excused from attending, then~~ the Commission shall deny the motion for authorization to use a neutral evaluation  
13 procedure, and the parties shall attend the mediated settlement conference as originally ordered by the Commission.  
14 If the parties are able to ~~timely~~ agree on the ~~above~~ matters listed in Paragraph (h), then the Commission ~~may shall~~  
15 order the use of a neutral evaluation ~~proceeding. Provided, proceeding; provided,~~ however, that the Commission  
16 ~~will shall~~ not order the use of a neutral evaluation proceeding in any case in which the plaintiff is not represented by  
17 counsel.

18 (j) Cases Involving Plaintiffs Not Represented by Counsel. Unless an unrepresented plaintiff requests that the  
19 plaintiff’s case be mediated, the Commission shall enter an order dispensing with mediation.

20  
21 *History Note:* Authority G.S. 97-80(a), (c); 143-296; 143-300; Rule 1 of Rules Implementing Statewide  
22 Mediated Settlement Conference in Superior Court Civil Actions;  
23 Eff. January 16, 1996;  
24 Amended Eff. October 1, 1998;  
25 Recodified from 4 NCAC 10A .0616;  
26 Amended Eff. January 1, 2013; January 1, 2011; June 1, 2000.

1 4 NCAC 10G .0102 is amended as published in 27:02 NCR 225 as follows:

2  
3 **04 NCAC 10G .0102 SELECTION OF MEDIATOR**

4 (a) By Agreement of ~~Parties—Parties~~. The parties ~~in a workers' compensation case or a state tort claims case~~ may,  
5 ~~by agreement, choose—select~~ a mediator certified by the North Carolina Dispute Resolution Commission ~~by~~  
6 ~~agreement—~~within 55 days of the filing of a Form 33 ~~Request for Hearing, Request that Claim be Assigned for~~  
7 ~~Hearing,~~ or otherwise within ~~the deadline set forth in~~21 days after the Commission's order entered pursuant to ~~Rules~~  
8 ~~1(e) Paragraph (c) and or 1(d), Paragraph (d) of Rule .0101 of this Subchapter, unless otherwise specified therein,~~  
9 subject to the Commission's authority to remove the mediator selected by the parties ~~for specific reasonable~~  
10 ~~cause due to a conflict of interest. Such—The~~ stipulation may be transmitted by either party, shall be dated as of the  
11 date it is transmitted to the Commission, and must be received by the Dispute Resolution Coordinator within 55 days  
12 of the filing of a Form 33 ~~Request for Hearing, Request that Claim be Assigned for Hearing,~~ or otherwise within ~~21~~  
13 ~~days of the mediation—the deadline set forth in the Commission's~~ order entered pursuant to ~~Rules 1(e) and~~  
14 ~~1(d), Paragraph (c) or Paragraph (d) of Rule .0101 of this Subchapter.~~ The scheduled date of the ~~mediation—mediated~~  
15 ~~settlement~~ conference shall be within 120 days of the mediation order. The stipulation shall include the date of the  
16 scheduled mediation, the name, address and telephone number of the mediator selected by agreement, and shall  
17 confirm that the mediator is certified by the Dispute Resolution Commission. The ~~21 or 55 day applicable~~ deadline  
18 ~~may shall~~ be extended by the Dispute Resolution Coordinator upon request of the parties. Any party may waive the  
19 ~~21 or 55 day periods applicable deadline~~ for the selection and suggestion of mediators and request that the  
20 Commission ~~immediately~~ appoint a mediator, ~~from the Commission's appointed list.~~

21 (b) Appointment by ~~Commission—Commission~~. If the parties fail to notify the Commission of ~~their—the parties'~~  
22 selection of a mediator within 55 days of the filing of a Form 33 ~~Request for Hearing, Request that Claim be~~  
23 ~~Assigned for Hearing,~~ or otherwise within ~~21 days of a mediation—the deadline set forth in the Commission's~~ order  
24 entered pursuant to ~~Rules 1(e) and 1(d), Paragraph (c) or Paragraph (d) of Rule .0101 of this Subchapter, as set forth~~  
25 ~~above,~~ the Commission shall appoint a mediator to hold a mediated settlement conference in ~~that—the~~ case. The  
26 Commission shall appoint ~~a mediator—mediators from a list of mediators eligible for appointment maintained by the~~  
27 ~~Commission which shall consist of those mediators~~ who ~~attain—meets~~ the ~~qualifications in Rule 8 and request~~  
28 ~~inclusion on such list, requirements in Paragraph (b) of Rule .0108 of this Subchapter.~~ In the absence of any  
29 suggestions by the parties with regard to the appointment of mediators, ~~the Commission—mediators~~ shall ~~generally be~~  
30 ~~selected—select the mediator~~ for ~~specific—the cases case~~ by random order, ~~or by a system which attempts to assign each~~  
31 ~~mediator to an equal number of cases over a period of time,~~ unless the Commission determines ~~in its discretion~~ that,  
32 because of unusual circumstances, a particular mediator should be ~~chosen—appointed~~ in a particular case. ~~If the~~  
33 ~~parties request the approval of a selected mediator after the appointment of another mediator by the Commission, the~~  
34 ~~Commission may require one or more of the parties, or other responsible person(s), to pay a substitution of mediator~~  
35 ~~fee to the Commission of up to \$100.00.~~

36 (c) ~~Mediator Lists—To assist parties in the selection of mediators by agreement, the Commission shall maintain a~~  
37 ~~list of mediators eligible for appointment by the Commission in compensation and tort cases, and a list of mediators~~



1 | ~~who are not eligible for appointment, but who may be selected by the parties and approved by the Commission. The~~  
2 | ~~Commission shall provide copies of these lists to parties on request, and may charge a reasonable fee for~~  
3 | ~~maintaining and distributing these lists.~~

4 | ~~(d)(c)~~ Disqualification of ~~Mediator—Mediator.~~ Any party may move the Commission for an order disqualifying a  
5 | mediator. For good cause, such order shall be entered. If the mediator is disqualified, an order shall be entered for  
6 | the selection of a replacement mediator pursuant to this Rule. 2. Nothing in this ~~provision~~ Paragraph shall preclude  
7 | mediators from disqualifying themselves.

8 |  
9 | *History Note:*                    *Authority* G.S. 97-80(a), (c); G.S. 143-296; 143-300; Rule 2 of Rules Implementing  
10 |    Statewide Mediated Settlement Conference in Superior Court Civil Actions;  
11 |    *Eff.* January 16, 1996;  
12 |    *Amended Eff.* October 1, 1998;  
13 |    *Recodified from* 4 NCAC 10A .0616;  
14 |    *Amended Eff.* January 1, 2013; January 1, 2011; June 1, 2000.

1 4 NCAC 10G .0103 is amended with changes as published in 27:02 NCR 225 as follows:

2  
3 **04 NCAC 10G .0103 THE MEDIATED SETTLEMENT CONFERENCE**

4 (a) Where Conference Is to Be ~~Held—Held~~. Unless all parties ~~in a workers' compensation case or a state tort claims~~  
5 ~~case~~ and the mediator otherwise agree, the mediated settlement conference shall be held in the county where the case  
6 is pending. The mediator shall ~~be responsible for reserving reserve~~ a place and ~~making make~~ arrangements for the  
7 conference and ~~for giving give~~ timely notice to all attorneys and unrepresented parties of the time and location of the  
8 conference.

9 (b) When Conference Is to Be ~~Held—Held~~. ~~Subject to the Commission's orders,~~ The conference shall be held at the  
10 time agreed to by the parties and the mediator, or if the parties do not agree, at the time specified by the mediator.

11 (c) Request to Extend Date of ~~Completion—Completion~~. ~~A party, or the mediator, may request that the Commission~~  
12 ~~In the [interest] interests of justice, the Commission may~~ extend the deadline for completion of the  
13 ~~conference-conference upon the Commission's own motion, a motion or stipulation of the parties or the suggestion~~  
14 ~~of the mediator. The Commission may grant the request and extend the completion deadline by written order.~~

15 (d) ~~Recesses—Recesses~~. The mediator may recess the conference at any time and may set times for reconvening.  
16 ~~No further notification is required for persons present at the recessed conference. If the time for reconvening is set~~  
17 ~~before the conference is recessed, no further notification is required for persons present at the recessed conference.~~

18 (e) The Mediated Settlement Conference Is Not to Delay Other ~~Proceedings—Proceedings~~. A mediated settlement  
19 conference ~~shall is~~ not ~~be~~ cause for ~~the~~ delay of other proceedings in the case, including the completion of  
20 ~~discovery, discovery~~ and the filing or hearing of motions, ~~except by order of the Commission, unless ordered by the~~  
21 ~~Commission in the [interest] interests of justice. However, No~~ depositions shall be taken following a Commission  
22 order requiring mediation until mediation is concluded, except by agreement of the parties or order of the  
23 ~~Commission. Commission in the interest of justice.~~

24 (f) Inadmissibility of Negotiations by Parties and Attorneys. Evidence of statements made and conduct occurring in  
25 a mediated settlement conference or other settlement proceeding conducted ~~under these rules, pursuant to the Rules~~  
26 ~~in this Subchapter~~, whether attributable to a party, the mediator, other neutral, or a neutral observer present at the  
27 settlement ~~conference or~~ proceeding, ~~shall are~~ not ~~be~~ subject to discovery and shall be inadmissible in any  
28 proceeding in the action or other actions on the same claim, except:

- 29 (1) ~~In~~ proceedings for sanctions for violations of the attendance or payment of mediation fee  
30 provisions ~~of Rules 4 and 7; contained in Rule .0104 and Rule .0107 of this Subchapter;~~
- 31 (2) ~~In~~ proceedings to enforce or rescind a settlement of the action;
- 32 (3) ~~In~~ disciplinary proceedings before the North Carolina State Bar or any agency enforcing standards  
33 of conduct for mediators or other neutrals, including the ~~Industrial~~ Commission; or
- 34 (4) ~~In~~ proceedings to enforce laws concerning juvenile or elder abuse. ~~As used in these rules, the term~~  
35 ~~"neutral observer" includes persons seeking mediator certification, persons studying dispute~~  
36 ~~resolution processes, and persons acting as interpreters. No settlement agreement to resolve any or~~  
37 ~~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 elder 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.~~

*History Note:* 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;  
Eff. January 16, 1996;  
Amended Eff. October 1, 1998  
Recodified from 4 NCAC 10A .0616;  
Amended Eff. January 1, 2013; January 1, 2011; June 1, 2000.

1 4 NCAC 10G .0104 is amended with changes as published in 27:02 NCR 226 as follows:

2  
3 **04 NCAC 10G .0104 DUTIES OF PARTIES, REPRESENTATIVES, AND ATTORNEYS**

4 (a) ~~Attendance~~—Attendance. The following persons shall physically attend ~~a~~the mediated settlement conference:

5 ~~(1) Parties.~~

6 ~~(A)(1) All~~all individual parties;

7 ~~(B)(2) Employers.~~ in a workers' compensation case, a representative of the employer at the time of  
8 injury ~~is required to attend only if: (1) the employer, instead of or in addition to the insurance~~  
9 ~~company or administrator, has decision-making authority with respect to settlement; or (2) the~~  
10 ~~employer is offering the claimant employment and the suitability of that employment is in issue;~~  
11 ~~or (3) the employer and the claimant have agreed to simultaneously mediate non-compensation~~  
12 ~~issues arising from the injury; or (4) the Commission orders the employer representative to attend~~  
13 ~~the mediation conference.~~

14 ~~(A) the employer, instead of or in addition to the insurance company or administrator, has~~  
15 ~~decision-making authority with respect to settlement;~~

16 ~~(B) the employer is offering the claimant employment and the suitability of that employment~~  
17 ~~is in issue;~~

18 ~~(C) the employer and the claimant have agreed to simultaneously mediate non-compensation~~  
19 ~~issues arising from the injury; or~~

20 ~~(D) the Commission orders the employer representative to attend the conference if the~~  
21 ~~representative's physical attendance is necessary to resolve matters in dispute in the~~  
22 ~~subject action;~~

23 ~~(E)(3) an officer, employee or agent of a~~ ny party that is not a natural person or a governmental entity  
24 ~~shall be represented at the conference by an officer, employee or agent~~ who is not such party's  
25 outside counsel and who has ~~been the~~authorized authority to decide on behalf of such party  
26 whether and on what terms to settle the action; ~~and~~

27 ~~(F)(4) in a workers' compensation case, an employee or agent of a~~ ny party that is a governmental entity  
28 ~~shall be represented at the conference by an employee or agent~~ who is not such party's outside  
29 counsel or Attorney General's counsel responsible for the case and who has the authority to decide  
30 on behalf of such party and on what terms to settle the ~~action;~~action. provided if under law,

31 (5) When the governing law prescribes that the terms of a proposed settlement ~~terms can may~~ be  
32 approved only by a Board, ~~the representative shall have an employee or agent who is not such~~  
33 ~~party's outside counsel or Attorney General's counsel responsible for the case and who has the~~  
34 authority to negotiate on behalf of ~~the party~~ and to make a recommendation to ~~that the~~ Board.  
35 Because G.S. 143-295 provides the Attorney General with settlement authority on behalf of  
36 governmental entities and agencies for state tort claims, an employee or agent of the named  
37 governmental entity or agency is not required to attend the mediated settlement conference; the

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 to negotiate 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 the conference~~ 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 mediation 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] interests~~ of justice upon motion of a party and notice to all parties and persons required to attend the conference.

1 (A) ~~— In the absence of an order by the Dispute Resolution Coordinator, only by agreement of~~  
 2 ~~all parties and persons required to attend and the mediator; or~~

3 (B) ~~— By order of the Dispute Resolution Coordinator, upon motion of a party and notice to all~~  
 4 ~~parties and persons required to attend and the mediator.~~

5 (c) Permissible modifications include allowing a party or person to participate in the conference without the party or  
 6 person being physically present at the conference.

7 ~~(2)(d) Appearance by Telephone: In appropriate cases The Dispute Resolution Coordinator the Commission or the~~  
 8 mediator, with the consent of the parties, may ~~in appropriate cases~~ allow a party or insurance carrier representative  
 9 who is required to physically attend a mediated settlement conference under ~~these rules~~this Rule to attend the  
 10 conference by telephone, conference call, ~~or speaker telephone, telephone or videoconferencing; at the discretion of~~  
 11 ~~the mediator~~, provided that, the party or person(s) representative so attending shall bear all costs of such telephone  
 12 ~~calls, calls or videoconferencing, that~~ the mediator may communicate directly with the insurance representative with  
 13 regard to ~~the~~ matters discussed in mediation, and ~~that~~ the mediator may set a subsequent mediated settlement  
 14 conference at which all persons parties and representatives shall be required to physically attend. The failure to  
 15 properly appear by telephone or videoconferencing in accordance with this ~~rule Paragraph~~may shall subject the  
 16 responsible party (ies) or representative(s) to sanctions pursuant to Rule ~~5.0105 of this Subchapter.~~

17 ~~(e)(e) Notice of Mediation Order—Order.~~ Within seven days after the receipt of an order for a mediated settlement  
 18 conference, the carrier or self-insured named in the order shall provide a copy of the order to the employer and all  
 19 other carriers ~~which who~~ may be obligated to pay all or part of any claim presented in the workers' compensation  
 20 case or any related third-party ~~tort feason tortfeasor~~ claims, and shall provide the mediator and the other parties in  
 21 the action with the name, address and telephone number of all such carriers.

22 ~~(4)(f) Finalizing Agreement—Agreement.~~ If an agreement is reached in the ~~mediation mediated settlement~~  
 23 conference, the parties shall reduce the agreement to writing, specifying all ~~the~~ terms of ~~their the~~ agreement  
 24 ~~that bearing bear~~ on the resolution of the dispute before the ~~Industrial~~ Commission, and shall sign it the agreement  
 25 along with their counsel. The parties may use IC Form MSC8, Mediated Settlement Agreement, or MSC9, Mediated  
 26 Settlement Agreement – Alternative Form, for this purpose. ~~The Execution~~ by counsel of a mediated settlement  
 27 agreement for an employer or carrier who does not physically attend the ~~mediation mediated settlement~~ conference  
 28 shall be deemed to be in compliance with this Rule and ~~Rule 502(3)(b) of the Workers' Compensation Rules of the~~  
 29 ~~North Carolina Industrial Commission.~~04 NCAC 10A .0502. By stipulation of the parties and at ~~their the~~  
 30 parties' expense, the agreement may be electronically or stenographically recorded. All agreements for payment of  
 31 compensation shall be submitted ~~in proper form for Industrial~~ Commission approval in accordance with 04 NCAC  
 32 10A .0501 and .0502., and shall be filed ~~with the Commission within 20 days of the conclusion of the mediation~~  
 33 conference.

34 ~~(e)(g) Payment of Mediator's Fee—Fee.~~ The mediator's fee shall be paid at the conclusion of the mediated  
 35 settlement conference, unless otherwise provided by Rule ~~7.0107 of this Subchapter~~, or by agreement with the  
 36 mediator. ~~Sanctions may be assessed if the mediator's fee is not paid in a timely fashion.~~

1 ~~(f)(h)~~ Related ~~Cases—Cases~~. Upon application by any party or person and upon notice to all parties, the  
2 Commission may, in the [interest] interests of justice, order ~~that~~ an attorney of record, party or representative of an  
3 insurance carrier ~~that who~~ may be liable for all or any part of a claim pending in ~~an Industrial-a~~ Commission case  
4 ~~shall, upon reasonable notice, to~~ attend a mediated settlement conference that may be convened in another pending  
5 case, regardless of the forum in which the other case may be pending, provided that all parties in the other pending  
6 case consent to the attendance ordered pursuant to this ~~rule-Paragraph~~. Any disputed issues concerning such an  
7 order shall be addressed to the Commission's Dispute Resolution Coordinator. Unless otherwise ordered, any  
8 attorney, party or carrier representative ~~that who properly~~ attends a mediated settlement conference pursuant to this  
9 ~~Paragraph~~rule shall not be required to pay any of the mediation fees or costs related to that ~~mediation~~-conference.  
10 Requests that a party, attorney of record, or insurance carrier representative in a related case attend a mediated  
11 settlement conference in ~~an Industrial-a~~ Commission case shall be addressed to the court or agency in which the  
12 related case is pending, provided that all parties in the ~~Industrial~~-Commission case consent to the requested  
13 attendance.

14  
15 *History Note:*

*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:

*Eff.* January 16, 1996;

*Amended Eff.* October 1, 1998;

*Recodified from* 4 NCAC 10A .0616;

*Amended Eff.* January 1, 2013; January 1, 2011; June 1, 2000.

1 4 NCAC 10G .0104A is amended as published in 27:02 NCR 228 as follows:

2  
3 **4 NCAC 10G .0104A FOREIGN LANGUAGE INTERPRETERS**

4 (a) ~~Services of Foreign Language Interpreters Required Unless Waived.~~ When a person who does not speak or  
5 understand the English language is required to attend a ~~mediation-mediated settlement~~ conference, the person shall  
6 be assisted by a qualified foreign language interpreter unless the right to an interpreter is waived by ~~both the~~ parties.

7 (b) ~~Qualifications of Interpreters.~~ To qualify as a foreign language interpreter, a person ~~must~~ shall possess  
8 sufficient experience and education, or a combination of experience and education, ~~speaking, speaking~~ and  
9 understanding English and the foreign language to be interpreted, to qualify as an expert witness pursuant to G.S.  
10 8C-1, Rule 702.

11 (c) ~~Notice to Industrial Commission and Opposing Party of Need for Interpreter.~~ Any party who is unable to speak  
12 or understand English shall so notify the ~~Industrial~~ Commission and the opposing ~~party, party(ies)~~ in writing, not less  
13 than 21 days prior to the date of the ~~mediation-mediated settlement~~ conference. The notice shall state ~~with~~  
14 ~~specificity~~ the language(s) that ~~must shall~~ be interpreted.

15 (d) ~~Designation of Interpreter.~~ Upon notice of the need for an interpreter, the employer or insurer shall retain a  
16 ~~qualified, disinterested~~ interpreter, who possesses the qualifications listed in Paragraph (b) of this Rule, either agreed  
17 upon by the parties or approved by the Industrial Commission, to assist at the ~~mediation-mediated settlement~~  
18 conference. The parties may select by agreement, or in the absence of an agreement, the Commission may appoint a  
19 disinterested interpreter possessing the qualifications listed in Paragraph (b) of this Rule.

20 (e) ~~Interpreter Fees.~~ The interpreter's fee ~~shall~~ constitutes a cost as contemplated by G.S. 97-80. A qualified  
21 interpreter who appears at a ~~mediation-mediated settlement~~ conference ~~shall be is~~ entitled to payment of the fee  
22 agreed upon by the interpreter and ~~the~~ employer or insurer that retained the interpreter. Except in cases where a  
23 claim for compensation has been prosecuted without reasonable ground, the fee agreed upon by the interpreter and  
24 employer or insurer shall be paid by the employer or insurer. Where ~~it is ultimately determined by~~ the Commission  
25 ultimately determines that the request for an interpreter was unfounded, attendant costs ~~may shall~~ be assessed  
26 against the movant.

27 (f) ~~Interpreter Ethics.~~ Foreign language interpreters shall abide by the ~~code of ethical conduct for court interpreters~~  
28 Code of Conduct and Ethics of Foreign Language Interpreters and Translators, contained in Part 4 of Policies and  
29 Best Practices for the Use of Foreign Language Interpreting and Translating Services in the North Carolina Court  
30 System and promulgated by the North Carolina Administrative Office of the Courts, and ~~adopted by the Industrial~~  
31 ~~Commission~~ shall interpret, as word for word as is practicable, without editing, commenting, or summarizing,  
32 testimony or other communications. The Code of Conduct and Ethics of Foreign Language Interpreters and  
33 Translators is hereby incorporated by reference and includes subsequent amendments and editions. A copy may be  
34 obtained at no charge from the North Carolina Administrative Office of the Court's website,  
35 <http://www.nccourts.org/Citizens/CPrograms/Foreign/Documents/guidelines.pdf>, or upon request, at the offices of  
36 the Commission, located in the Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, between the  
37 hours of 8:00 a.m. and 5:00 p.m.

38



1 *History Note:* *Authority G.S. 97-80(a), (c); 97-79(b); 143-296; 143-300;*  
2 *Eff. January 1, 2011;*  
3 *Amended Eff. January 1, 2013.*

1 4 NCAC 10G .0105 is amended with changes as published in 27:02 NCR 229 as follows:

2  
3 **04 NCAC 10G .0105 SANCTIONS**

4 If a person or party whose attendance at a mediated settlement conference is required by Rule ~~4~~ .0104 of this  
5 Subchapter fails to ~~attend~~ attend or cancels, without Commission approval in accordance with Paragraph (f) of Rule  
6 .0101 of this Subchapter, a duly ordered mediated settlement conference without good cause, or otherwise violates  
7 ~~these rules the Rules in this Subchapter~~ without good cause, the Commission may impose upon the party or his  
8 principal any lawful sanction, including ~~but not limited to requiring the party or his principal to the payment of pay~~  
9 attorneys' fees, mediator fees and expenses incurred by persons attending the conference, holding the party or his  
10 principal in contempt, ~~or any and~~ other sanctions authorized by 04 NCAC 10A .0802. by Rule 37(b) of the Rules of  
11 Civil Procedure. Any sanctions that ~~may be~~ are assessed against a party ~~under these rules~~ consistent with the Act  
12 and the Rules in this Subchapter, including, but not limited to, mediation including mediated settlement conference  
13 postponement fees and sanctions for the unauthorized cancellation or failure to appear at ~~a mediation the~~ conference,  
14 may be assessed against the party or the party's principal or attorney depending on whose conduct necessitated the  
15 assessment of sanctions.

16  
17 *History Note:* Authority G.S. 97-80(a), (c); 143-296; 143-300; Rule 5 of Rules Implementing Statewide  
18 Mediated Settlement Conference in Superior Court Civil Actions;  
19 Eff. January 16, 1996;  
20 Amended Eff. October 1, 1998;  
21 Recodified from 4 NCAC 10A .0616;  
22 Amended Eff. January 1, 2013; June 1, 2000.

1 4 NCAC 10G .0106 is amended with changes as published in 27:02 NCR 229 as follows:

2  
3 **04 NCAC 10G .0106 AUTHORITY AND DUTIES OF MEDIATORS**

4 ~~(a) Authority of Mediator.~~

5 ~~(1)(a)~~ Control of Conference. The mediator shall at all times be in control of the mediated settlement conference  
6 and the procedures to be followed. Except as otherwise set forth in ~~these rules~~ the Rules in this Subchapter with  
7 regard to the finalization of the parties' agreement, there shall be no audio, video, electronic or stenographic  
8 recording ~~made of the negotiations or discussions that occur at the mediated settlement conference of the mediation~~  
9 process by any participant.

10 ~~(2)(b)~~ Private Consultation. The mediator may meet and consult privately with any ~~party or parties or their counsel~~  
11 participant prior to or during the conference. The fact that private communications have occurred with a participant  
12 shall be disclosed to all other participants at the beginning of the conference.

13 ~~(3)(c)~~ Scheduling the Conference. The mediator shall make a good faith effort to schedule the conference at a time  
14 that is convenient with the parties, attorneys and mediator. In the absence of agreement, the mediator shall select the  
15 date for the conference.

16 ~~(b) Duties of Mediator.~~

17 ~~(1)(d)~~ Information to the Parties. The mediator shall define and describe the following to the parties at the  
18 beginning of the mediated settlement conference:

19 ~~(A)(1)~~ (1) the process of mediation;

20 ~~(B)(2)~~ (2) the differences between mediation and other forms of conflict resolution;

21 ~~(C)(3)~~ (3) the costs of the ~~mediated settlement~~ conference;

22 ~~(D)(4)~~ (4) the facts that the ~~mediated settlement~~ conference is not a trial or hearing, the mediator is not acting  
23 in the capacity of a Commissioner or Deputy ~~Commissioner, Commissioner and the mediator will~~  
24 shall not act in ~~the such~~ capacity ~~of a Commissioner or Deputy Commissioner~~ in the subject case  
25 at any time in the future, and the parties retain their right to a hearing if ~~they the parties~~ do not  
26 reach a settlement;

27 ~~(E)(5)~~ (5) the circumstances under which the mediator may meet alone with ~~either~~ any of the parties or with  
28 any other person;

29 ~~(F)(6)~~ (6) whether and under what conditions, communications with the mediator ~~will shall~~ be held in  
30 confidence during the conference;

31 ~~(G)(7)~~ (7) the inadmissibility of conduct and statements as provided by G.S. 8C-1, Rule 408 of the Evidence  
32 Code and Subparagraph 3(f) of this Rule; Paragraph (f) of Rule. 0103 of this Subchapter;

33 ~~(H)(8)~~ (8) the duties and responsibilities of the mediator and the parties; ~~and, and~~

34 ~~(I)(9)~~ (9) the fact that any agreement reached ~~will shall~~ be reached by mutual consent of the parties.

35 ~~(2)(e)~~ Disclosure. The mediator ~~has a duty to shall~~ be impartial and ~~to~~ advise all parties of any circumstances  
36 bearing on possible bias, prejudice or partiality.

1 ~~(3)(f)~~ Declaring Impasse. ~~It is the duty of~~ The mediator ~~to timely shall~~ determine when mediation is not viable, that  
2 an impasse exists, or that mediation should end.

3 ~~(4)(g)~~ Reporting Results of Conference. In all cases within the Commission's jurisdiction, whether mediated  
4 voluntarily or pursuant to an order of the Commission, the mediator shall report the results of the mediated  
5 settlement conference on a form provided by the Commission. If an agreement was reached, the report shall state  
6 whether the issue or matter under mediation ~~will shall~~ be resolved by ~~Industrial~~ Commission form agreement,  
7 compromise settlement agreement, other settlement agreement, voluntary dismissal or removal from the hearing  
8 docket, and shall identify the persons designated to file or submit for approval ~~such the~~ agreement, or dismissal.  
9 The mediator shall not attach a copy of the parties' memorandum of agreement to the mediator's report transmitted  
10 to the Commission and, except as ~~set forth above permitted under the Rules in this Subchapter, or as may be ordered~~  
11 unless deemed necessary in the [interest] interests of justice by the Commission, the mediator shall not disclose the  
12 terms of settlement in the mediator's report. The Commission may shall require the mediator to provide statistical  
13 data for evaluation of the mediated settlement conference program on forms provided by the Commission.

14 ~~(5)(h)~~ Scheduling and Holding the Conference. ~~It is the duty of~~ The mediator ~~to shall~~ schedule the mediated  
15 settlement conference, conference in consultation with the ~~parties, parties~~ and conduct ~~it the conference~~ prior to the  
16 ~~conference~~ completion deadline set out in the Commission's ~~order, and prior to the date of any hearing before a~~  
17 ~~Deputy Commissioner if the case is scheduled for hearing after the mediator is appointed. order.~~ Deadlines for  
18 completion of the conference shall be strictly observed by the mediator unless ~~said the~~ time limits are changed by  
19 the Commission.

20 ~~(6)(i)~~ Standards of Conduct. All mediators conducting ~~mediation mediated settlement~~ conferences pursuant to ~~these~~  
21 ~~rules the Rules in this Subchapter~~ shall adhere to the ~~Standards of Conduct for Mediators Standards of Professional~~  
22 ~~Conduct for Mediators~~ adopted by the ~~Supreme Court of North Carolina and enforced by the N.C. North Carolina~~  
23 Dispute Resolution Commission. The ~~Standards of Professional Conduct for Mediators is hereby incorporated by~~  
24 reference and includes subsequent amendments and editions. A copy may be obtained at no charge from the North  
25 Carolina Administrative Office of the Court's website,  
26 [http://www.nccourts.org/Courts/CRS/Councils/DRC/Documents/StandardsofConduct\\_1-1-12.pdf](http://www.nccourts.org/Courts/CRS/Councils/DRC/Documents/StandardsofConduct_1-1-12.pdf), or upon request,  
27 at the offices of the Commission, located in the Dobbs Building, 430 North Salisbury Street, Raleigh, North  
28 Carolina, between the hours of 8:00 a.m. and 5:00 p.m.

29  
30 *History Note:* Authority G.S. 97-80(a), (c); 143-296; 143-300; Rule 6 of Rules Implementing Statewide  
31 Mediated Settlement Conference in Superior Court Civil Actions;  
32 Eff. January 16, 1996;  
33 Amended Eff. October 1, 1998;  
34 Recodified from 4 NCAC 10A .0616;  
35 Amended Eff. January 1, 2013; June 1, 2000.

1 4 NCAC 10G .0107 is amended with changes as published in 27:02 NCR 230 as follows:

2  
3 **04 NCAC 10G .0107 COMPENSATION OF THE MEDIATOR**

4 (a) By ~~Agreement.~~Agreement. When the mediator is stipulated to by the parties, compensation shall be as agreed  
5 upon between the parties and the mediator.

6 (b) By Commission ~~Order.~~Order. When the mediator is appointed by the Commission, the mediator's  
7 compensation shall be as ~~follows.~~follows:

8 (1) Conference Fees. The mediator shall be paid by the parties at the rate of one hundred fifty  
9 dollars (\$150.00) per hour for mediation services provided at the mediated settlement conference.

10 (2) Administrative Fees. The parties shall pay to the mediator a one time, per case administrative fee  
11 of one hundred fifty dollars (\$150.00).~~\$150.00, unless otherwise ordered by the Commission.~~The  
12 mediator's administrative fee shall be paid in full unless, within 10 days after ~~the date that~~the  
13 mediator has been appointed, written notice is given to the mediator and to the Dispute Resolution  
14 Coordinator that the issues for which a request for hearing ~~had been was~~ filed have been fully  
15 resolved or that the hearing request has been withdrawn.

16 (3) Postponement Fees. As used herein in this Subchapter, the term "postpone" ~~shall~~means to  
17 reschedule or otherwise not proceed with a scheduled mediation-mediated settlement conference  
18 after ~~that the~~ conference has been scheduled to convene on a specific date. After a conference is  
19 scheduled to convene on a specific date, ~~it the conference~~ may not be postponed ~~without unless~~ the  
20 requesting party ~~first notifying notifies~~ all other parties ~~concerning~~ of the grounds for the  
21 requested ~~postponement, or without postponement and obtains~~ the consent and approval of the  
22 mediator or the Dispute Resolution ~~Coordinator.~~Coordinator that the postponement is for the  
23 benefit of the parties. If ~~a mediation the~~ conference is postponed without good cause, the mediator  
24 shall be paid a postponement fee, ~~unless, upon application of the party or parties charged with the~~  
25 ~~fee, the fee is waived by the Commission. Unless the Commission otherwise orders, The~~  
26 postponement fee shall be ~~two hundred twenty five dollars (\$225.00) three hundred dollars~~  
27 ~~(\$300.00)~~if the ~~mediation~~ conference is postponed within seven calendar days of the scheduled  
28 ~~conference, date, and one hundred twenty five dollars (\$125.00) one hundred fifty~~  
29 ~~dollars (\$150.00)~~ if the ~~mediation~~ conference is postponed more than seven calendar days prior to  
30 ~~a the~~ scheduled ~~conference date.~~ Unless otherwise ordered by the Commission in the  
31 [interest] interests of justice, postponement fees shall be allocated in equal shares to the party or  
32 parties requesting the postponement, ~~unless otherwise ordered by the Commission.~~

33 (4) The settlement of a case prior to the scheduled date ~~for of the mediation~~ mediated settlement  
34 conference shall be good cause for a postponement, provided that the mediator was notified of the  
35 settlement ~~immediately after it the settlement~~ was reached and that the mediator received notice of  
36 the settlement at least ~~fourteen (14)~~14 calendar days prior to the date scheduled for mediation.

1 (c) Payment by ~~Parties—Parties.~~ Payment ~~shall be is~~ due upon completion of the mediated settlement conference;  
 2 provided, that the State shall be billed at the conference and shall pay within 30 days of receipt of the ~~billing, bill,~~  
 3 and insurance companies or carriers whose written procedures do not provide for payment of the mediator at the  
 4 conference may pay within 15 days of the conference. Unless otherwise agreed to by the parties or ordered by the  
 5 ~~Commission, Commission due to a party or parties violating a Rule in this Subchapter, the~~ costs of the ~~mediated~~  
 6 ~~settlement~~ conference shall be allocated to the parties, as follows:

- 7       (1) one share by plaintiff(s);  
 8       (2) one share by the workers' compensation defendant-employer or its insurer, or if more than one  
 9 employer or carrier is involved, or if there is a dispute between employer(s) or carrier(s), one share  
 10 by each separately represented entity;  
 11       (3) one share by participating third-party tort defendants or their carrier, or if there are conflicting  
 12 interests among them, one share from each ~~such~~ defendant or group of defendants having shared  
 13 interests; ~~and, and~~  
 14       (4) one share by the defendant State agency in a ~~State~~-Tort Claims Act case. Parties obligated to pay a  
 15 share of the costs ~~shall be are~~ responsible for equal shares; provided, however, that in workers'  
 16 compensation claims the defendant shall pay the plaintiff's share of mediation, postponement, and  
 17 substitution fees, as well as ~~its own defendant's own share.~~

18 (d) Unless the Dispute Resolution Coordinator enters an order allocating such fees to a particular ~~party, party due to~~  
 19 ~~the party violating a Rule in this Subchapter,~~ the fees may be taxed as other costs by the Commission. After the case  
 20 is concluded, the defendant shall be reimbursed for the plaintiff's share of such fees ~~when the case is concluded~~  
 21 from benefits that may be determined to be due to the plaintiff, and the defendant may withhold funds from any  
 22 award for this purpose.

23  
 24 *History Note:*                    Authority G.S. 97-80(a), (c); 143-296; 143-300; Rule 1 of Rules Implementing Statewide  
 25 Mediated Settlement Conference in Superior Court Civil Actions;  
 26 Eff. January 16, 1996;  
 27 Amended Eff. October 1, 1998;  
 28 Recodified from 4 NCAC 10A .0616;  
 29 Amended Eff. January 1, 2013; January 1, 2011; June 1, 2000.

1 4 NCAC 10G .0108 is amended as published in 27:02 NCR 231 as follows:

2  
3 **04 NCAC 10G .0108 MEDIATOR CERTIFICATION AND DECERTIFICATION**

4 (a) Party ~~Selection~~—Selection. The parties may, by mutual consent, select any North Carolina Dispute Resolution  
5 Commission-certified mediator, with or without the qualifications in Paragraph (b) of this Rule, as ~~their—the~~  
6 parties' mediator; ~~by mutual consent, with or without the qualifications in (b);~~ provided, that the Commission  
7 ~~may~~shall, for good cause, bar any persons from holding ~~themselves—himself or herself~~ out as a mediator of cases  
8 within ~~its—the Commission's~~ jurisdiction or from receiving a fee for mediation of such cases.

9 (b) Appointment of ~~Mediators~~—Mediators. If the parties have agreed or been ordered to mediate, and cannot agree  
10 on the selection of a mediator, the Commission shall appoint a mediator, ~~from a list of persons~~ who holds current  
11 certification from the North Carolina Dispute Resolution Commission that ~~they—he or she~~are is qualified to carry out  
12 mandatory mediations in the Superior Courts of the ~~State, State of North Carolina~~ and who ~~have—has~~ filed a  
13 declaration with the Commission, on forms provided by ~~it—the Commission~~, stating ~~that: that the declarant agrees to~~  
14 accept and perform mediations of disputes before the Commission with reasonable frequency when called upon for  
15 the fees and at the rates of payment specified by the Commission. A mediator making this declaration shall notify  
16 the commission when any of the facts declared are no longer accurate.

17 (1) ~~— If an attorney, that declarant remains a member in good standing of the North Carolina State Bar;~~

18 (2) ~~— The declarant agrees to accept and perform mediations of disputes before the Commission with~~  
19 ~~reasonable frequency when called upon for the fees and at the rates of payment specified by the~~  
20 ~~Commission;~~

21 (3) ~~— If the declarant desires to be appointed by the Commission to mediate workers' compensation~~  
22 ~~cases, that he or she has completed N.C. State Bar approved continuing legal education course(s)~~  
23 ~~on workers' compensation law during the previous two years totaling not less than six hours.~~

24 ~~A mediator making such declaration shall immediately notify the Commission when any of the~~  
25 ~~facts declared are no longer accurate. The Commission may require a new declaration on a~~  
26 ~~periodic or intermittent basis. The Commission shall delete from such lists any mediator whose~~  
27 ~~certification from the Dispute Resolution Commission has expired or been revoked. The~~  
28 ~~Commission may charge an administrative fee to defray the costs of maintaining lists and referring~~  
29 ~~cases to mediators.~~

30 (e) ~~Mediator Lists~~—~~The Commission may maintain and provide to parties separate lists of mediators who have~~  
31 ~~successfully completed mediation training certified by the Dispute Resolution Commission, and who desire to hold~~  
32 ~~mediations in disputes arising under the Workers' Compensation Act and the State Tort Claims Act.~~

33 (d)(c) ~~Failure of Mediator to Appear at Conference.~~ Conference—~~In the event that~~ If a mediator fails to appear at a  
34 scheduled ~~mediation—mediated settlement~~ conference without good cause, the mediator ~~shall—~~is not be entitled to the  
35 administrative fee for the case, ~~and may be deleted from the Commission's list of mediators qualified for~~  
36 ~~appointments for a period of six months.~~

37

1 *History Note:* Authority G.S. 97-80(a), (c); 143-296; 143-300; Rule 8 of Rules Implementing Statewide  
2 Mediated Settlement Conference in Superior Court Civil Actions;  
3 *Eff.* January 16, 1996;  
4 *Amended Eff.* October 1, 1998;  
5 *Recodified from* 4 NCAC 10A .0616;  
6 *Amended Eff.* January 1, 2013; January 1, 2011; June 1, 2000.  
7 |  
8



1 4 NCAC 10G .0109 is amended with changes as published in 27:02 NCR 232 as follows:

2  
3 **04 NCAC 10G .0109 NEUTRAL EVALUATION**

4 (a) Nature of Neutral ~~Evaluation—Evaluation.~~ As used in this Subchapter, n neutral evaluation is an ~~informal,~~  
5 abbreviated presentation of facts and issues by the parties to ~~an a neutral~~ evaluator at an early stage of the case. The  
6 neutral evaluator is responsible for evaluating the strengths and weaknesses of the case, and for providing a candid  
7 assessment of liability, settlement value, and a dollar value or range of potential awards if the case proceeds to a  
8 hearing. The neutral evaluator is also responsible for identifying areas of agreement and disagreement and  
9 suggesting necessary and appropriate discovery.

10 (b) When Conference Is to Be ~~Held. Held—~~The provisions applicable to the scheduling of ~~mediation-mediated~~  
11 ~~settlement~~ conferences set forth in Rule ~~3(b) .0103 of this Subchapter~~ shall also ~~be applicable-apply~~ to neutral  
12 evaluation proceedings.

13 (c) Pre-conference ~~Submissions.Submissions—~~ No later than ~~15 20~~ days prior to the date established for the neutral  
14 evaluation conference to begin, each party may, but is not required to, furnish the evaluator with written information  
15 about the case, and shall at the same time certify to the evaluator that ~~they~~the party has served a copy of such  
16 summary on all other parties ~~to-in~~ the case. The information provided to the neutral evaluator and the other parties  
17 ~~hereunder-under this Rule~~ shall be a summary of the ~~significant~~ facts and issues in the ~~party's~~ case, shall not be more  
18 than 10 pages in length, and shall ~~have attached to it-include as attachments~~ copies of any documents supporting the  
19 ~~parties' party's~~ summary. Information provided to the neutral evaluator and to the other parties pursuant to this  
20 Paragraph shall not be filed with the Commission.

21 (d) Replies to Pre-conference ~~Submissions.Submissions—~~ No later than five days prior to the date established for  
22 the neutral evaluation conference to begin, any party may, but is not required to, send additional written information  
23 ~~not exceeding 5 pages in length~~ to the ~~neutrals~~evaluator, evaluator responding to the submission of an opposing party.  
24 The ~~party's~~ response shall ~~not exceed five pages in length, be served on all other parties~~ and the party sending ~~such~~  
25 ~~the~~ response shall certify ~~such service~~ to the ~~neutrals~~evaluator, evaluator that the party has served a copy of the  
26 ~~response on all other parties in the case, but such~~The response shall not be filed with the Commission.

27 (e) Conference ~~Procedure.Procedure—~~ Prior to a neutral evaluation conference, the neutral evaluator may, if he or  
28 she deems it necessary, ~~may~~ request additional written information from any party. At the conference, the neutral  
29 evaluator may address questions to the parties and give ~~them~~the parties an opportunity to complete their summaries  
30 with a brief oral statement.

31 (f) Modification of ~~Procedure.Procedure—~~ Subject to the approval of the neutral evaluator, the parties may agree to  
32 modify the procedures for neutral evaluation required by ~~these rules-the Rules~~for neutral evaluation, in this  
33 Subchapter, or ~~such-the~~ procedures may be modified by order of the ~~Commission-Commission in the~~  
34 ~~[interest]~~ interests of justice. The modified procedures may include the presentation of submissions in writing or by  
35 telephone in lieu of ~~the~~ physical appearance at a neutral evaluation conference, and may also include revisions to the  
36 time periods and page limitations concerning the parties' submissions.

37 ~~(g) Evaluator's Duties.~~

1 ~~(+)(g)~~ Evaluator's Opening Statement. At the beginning of the neutral evaluation conference, the neutral evaluator  
2 shall define and describe the following points to the parties:

3 ~~(A)(1)~~ the facts that the neutral evaluation:

4 (A) the conference is not a hearing,

5 (B) the neutral evaluator is not acting in the capacity of a Commissioner or  
6 Deputy ~~Commissioner, Commissioner and the neutral will~~ shall not act in ~~the such~~  
7 capacity ~~of a Commissioner or Deputy Commissioner~~ in the subject case at any time in  
8 the future,

9 (C) the neutral evaluator's opinions are not binding on any party, and

10 (D) the parties retain their right to a hearing if ~~they the parties~~ do not reach a ~~settlement.~~  
11 settlement:

12 ~~(B)(2)~~ the fact that any settlement reached will be only by mutual consent of the parties. ~~parties:~~

13 ~~(C)(3)~~ the process of the proceeding;

14 ~~(D)(4)~~ the differences between the proceeding and other forms of conflict resolution;

15 ~~(E)(5)~~ the costs of the proceeding;

16 ~~(F)(6)~~ the inadmissibility of conduct and statements as provided by G.S. 8C-1, Rule 408 of the Evidence  
17 Code and Paragraph (f) of Rule .0103 in this Subchapter; Rule 3(f) above of the Rules; and

18 ~~(G)(7)~~ the duties and responsibilities of the neutral evaluator and the participants.

19 ~~(+)(h)~~ Oral Report to Parties by Evaluator. In addition to the written report to the Commission required under ~~these~~  
20 ~~rules, the Rules in this Subchapter,~~ at the conclusion of the neutral evaluation conference, the neutral evaluator shall  
21 issue an oral report to the parties advising ~~them the parties~~ of ~~his or her the neutral evaluator's opinions~~ opinion of  
22 the case. ~~Such The~~ opinion shall include a candid assessment of liability, estimated settlement values and options,  
23 and the strengths and ~~weaknesses weaknesses~~ of the parties' claims and defenses if the case proceeds to a hearing.  
24 The oral report shall also contain a suggested settlement or disposition of the case and the reasons therefor. The  
25 neutral evaluator shall not reduce his or her oral report to ~~writing, writing~~ and shall not inform the Commission  
26 thereof.

27 ~~(+)(i)~~ Report of Evaluator to Commission. Within 10 days after the completion of the neutral evaluation  
28 conference, the neutral evaluator:

29 (1) shall submit to the Dispute Resolution Coordinator a written report using a form prepared and  
30 distributed by the Commission, stating:

31 (A) when and where the conference was held,

32 (B) the names of those persons who attended the conference,

33 (C) whether or not an agreement was reached by the parties, and

34 (D) whether the issue or matter will be resolved by ~~Industrial~~ Commission form agreement,  
35 compromise settlement agreement, other settlement agreement, voluntary dismissal or  
36 removal from the hearing ~~docket, docket and~~

37 (2) shall identify the persons designated to file or submit for approval such agreement, or dismissal.

(3) ~~The Commission may require~~ the neutral ~~evaluator~~ shall provide statistical data for evaluation of the settlement conference programs on forms provided by the Commission.

~~(j)~~ Evaluators' 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.

~~(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.

~~(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.~~

~~(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.

~~(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.

*History Note:* Authority G.S. 97-80(a), (c); 143-296; 143-300; Rule 11 of Rules Implementing Statewide

Mediated Settlement Conference in Superior Court Civil Actions;

*Eff.* January 16, 1996;

*Amended Eff.* October 1, 1998;

*Recodified from* 4 NCAC 10A .0616;

*Amended Eff.* January 1, 2013; January 1, 2011; June 1, 2000.

1 4 NCAC 10G .01101 is amended with changes as published in 27:02 NCR 233 as follows:

2

3 **4 NCAC 10G .0110**        **SUSPENSION OF RULES**

4 ~~In the interest of justice, or to comply with the law from time to time as it may be amended or declared, the~~  
5 ~~Commission may waive any requirement of these rules.~~

6 In the interests of justice or to promote judicial economy ~~{To prevent manifest injustice party, or to expedite a~~  
7 ~~decision in the public interest}~~, the Commission may, except as provided by the Rules in this Subchapter, suspend or  
8 vary the requirements or provisions of any of the Rules in this Subchapter in a case pending before the Commission  
9 upon application of a party or upon its own initiative, and may order proceedings in accordance with its directions.

10

11 *History Note:*                    *Authority* G.S. 97-80(a), (c); 143-296; 143-300;  
12    *Eff.* January 16, 1996;  
13    *Amended Eff.* October 1, 1998;  
14    *Recodified from* 4 NCAC 10A .0616;  
15    *Amended Eff.* January 1, 2013; June 1, 2000.

1 4 NCAC 10G .0111 is amended with changes as published in 27:02 NCR 233 as follows:

2  
3 **04 NCAC 10G .0111 MOTIONS**

4 Unless otherwise ~~indicated,~~ indicated by the Rules in this Subchapter or an applicable order by the Commission in  
5 the [interest] interests of justice or judicial economy, motions pursuant to ~~these rules~~ the Rules in this Subchapter  
6 shall be addressed to the Commission's Dispute Resolution Coordinator ~~(unless the applicable order provides~~  
7 ~~otherwise)~~ and served on all parties to the claim and the settlement procedure. Responses may be filed with the  
8 Commission within 10 days after the date of receipt of the motion. Notwithstanding the above, ~~for good cause~~ the  
9 Commission may, in the [interest] interests of justice, act upon oral motions, or act upon motions prior to the  
10 expiration of the 10-day response period. Motions ~~will~~ shall be decided without oral argument unless otherwise  
11 ~~ordered,~~ ordered in the [interest] interests of justice. Any appeals from orders issued pursuant to a motion under  
12 ~~these rules~~ the Rules in this Subchapter shall be addressed to the attention of the Commission Chair or the  
13 ~~Chairman's~~ Chair's designee for appropriate action.

14  
15 *History Note:* Authority G.S. 97-80(a), (c); G.S. 143-296; G.S. 143-300;  
16 Eff. January 16, 1996;  
17 Amended Eff. October 1, 1998;  
18 Recodified from 4 NCAC 10A .0616;  
19 Amended Eff. January 1, 2013; January 1, 2011; June 1, 2000.

1 4 NCAC 10G .0112 is amended as published in 27:02 NCR 233 as follows:

2

3 **04 NCAC 10G .0112 MISCELLANEOUS**

4 Throughout ~~these rules~~ the Rules in this Subchapter any reference to the number of days within which any act may  
5 be performed shall mean and refer to calendar days, and shall include Saturdays, Sundays and ~~legal~~  
6 ~~holidays.~~ holidays established by the State Personnel Commission. Provided, however, that if the last day (a) to file  
7 a motion, (b) to give notice of the selection of a mediator, or (c) for a pro se plaintiff to give notice that the plaintiff  
8 requests mediation is a Saturday, Sunday or ~~legal holiday,~~ holiday established by the State Personnel Commission,  
9 the motion or notice may be filed or given on the next day that is not a Saturday, Sunday or ~~legal holiday.~~ holiday  
10 established by the State Personnel Commission.

11

12 *History Note: Authority G.S. 97-80(a), (c); G.S. 143-296; G.S. 143-300;*

13 *Eff. January 16, 1996;*

14 *Amended Eff. October 1, 1998;*

15 *Recodified from 4 NCAC 10A .0616;*

16 *Amended Eff. January 1, 2013; June 1, 2000.*

1 4 NCAC 10H .0101 is amended as published in 27:02 NCR 234 as follows:

2  
3 **SUBCHAPTER 10H – RULES OF THE INDUSTRIAL COMMISSION RELATING TO THE LAW-**  
4 **ENFORCEMENT OFFICERS’, FIREMEN’S, RESCUE SQUAD WORKERS’ AND CIVIL AIR PATROL**  
5 **MEMBERS’ DEATH BENEFITS ACT**  
6

7 **RULE 1.04 NCAC 10H .0101 LOCATION OF OFFICES AND HOURS OF BUSINESS**

8 For purposes of this Subsection, the ~~The~~ offices of the North Carolina Industrial Commission are located in the  
9 Dobbs Building, 430 North Salisbury Street, ~~in~~Raleigh, North Carolina. ~~The same office hours as are or may be~~  
10 ~~observed by other State offices in Raleigh will be observed by the Industrial Commission.~~ Documents that are not  
11 being filed electronically may be filed between the hours of 8:00 a.m. and 5:00 p.m. only. Documents permitted to  
12 be filed electronically may be filed until 11:59 p.m. on the required filing date.  
13

14 History Note: Authority G.S. 143-166.4

15 *Amended Eff.* January 1, 2013

1 4 NCAC 10H .0201 is amended as published in 27:02 NCR 234 as follows:

2  
3 **SECTION .0200 - RULES OF COMMISSION**

4  
5 **RULE III.04 NCAC 10H .0201 DETERMINATION OF CLAIMS BY THE COMMISSION**

6 ~~1.(a)~~ Upon application ~~or request to the Industrial Commission~~ for an award under the provisions of the Law-  
7 Enforcement Officers', Firemen's, Rescue Squad Workers' and Civil Air Patrol Members' Death Benefits Act, the  
8 ~~Full~~ Commission ~~will shall~~ determine whether sufficient ~~information or~~ evidence is contained in the Commission's  
9 workers' compensation or other files upon which to base an ~~Order order~~ for the payment of benefits. If the ~~Full~~  
10 Commission is satisfied that such an ~~Order order~~ should be issued, it ~~will, shall,~~ without conducting a ~~formal~~  
11 hearing, file an ~~appropriate Award award~~ directing the payment of benefits.

12 ~~The Full Commission, on joint request of the interested parties or for good cause shown, may in its discretion The~~  
13 ~~Full Commission, order or approve a settlement for less than the maximum amount set forth in G.S. §143-166.3.~~

14 ~~2.(b)~~ If the ~~Full~~ Commission is of the opinion that ~~it the Commission's workers' compensation or other files~~ has  
15 insufficient ~~information or~~ evidence ~~before it~~ upon which ~~to base~~ basis an award for the payment of benefits, ~~should~~  
16 ~~be issued,~~ the ~~Full~~ Commission ~~will shall~~ place the case upon the Commission's hearing ~~docketdocket, in the county~~  
17 ~~where the incident giving rise to the death is alleged to have occurred. The case will thereafter be set for hearing~~  
18 ~~before a Hearing Commissioner or Hearing Deputy Commissioner in such county or in such other county as the Full~~  
19 ~~Commission may direct, due notice of the hearing being given to all parties and to the Attorney General of the State~~  
20 ~~of North Carolina who may appear as amicus curiae.~~

21 ~~3. The Hearing Commissioner or Hearing Deputy Commissioner before whom the case is set for hearing, in his~~  
22 ~~discretion, may order the parties to appear at a reasonable time and place for a pre trial hearing to determine such~~  
23 ~~matters as he deems necessary. The Hearing Commissioner or Deputy Commissioner will, having received all~~  
24 ~~evidence pertinent to the case, thereafter proceed to file a Decision and Award in the case in which benefits are~~  
25 ~~awarded or denied. Such Decision will be sent to all parties.~~

26 ~~4. The Commission may, of its own motion, order a rehearing of any case.~~

27 ~~5. The Commission will give reasonable notice of hearing in every case. Postponement or continuance of a~~  
28 ~~scheduled hearing will rest entirely in the discretion of the Commission.~~

29 ~~6. In all cases where it is suitable that infants or incompetents sue by their guardian ad litem, the Commission will~~  
30 ~~appoint such guardian ad litem upon the written application of a reputable disinterested person closely connected~~  
31 ~~with such infant or incompetent. But, if such person will not apply, then, upon the like application of some~~  
32 ~~reputable citizen; and the Commission will make such appointment only after due inquiry as to the fitness of the~~  
33 ~~person to be appointed.~~

34 ~~7. Any claimant who gives to the opposing party or an agent of that party a written or recorded statement of the~~  
35 ~~facts and circumstances surrounding his claim shall be furnished by the opposing party a copy of such statement~~  
36 ~~within ten days upon request. Further, any claimant who has given such a statement shall, without request, be~~  
37 ~~furnished by the opposing party a copy thereof immediately following a denial of his claim or no less than ten days~~  
38 ~~prior to a pending hearing.~~



1 ~~Such copy shall be furnished at the expense of the party to whom the statement was given.~~  
2 ~~If any party fails to comply with this rule, then an Order may be entered by the hearing officer prohibiting that party~~  
3 ~~from introducing designated matters into evidence.~~  
4 ~~8. In the absence of written notice of appeal from the Decision and Award filed in such a case by the Hearing~~  
5 ~~Commissioner or Hearing Deputy Commissioner within fifteen days from receipt of such award, the award as filed~~  
6 ~~will be binding on the parties.~~

7

8 History Note: Authority G.S. 143-166.4;  
9 Amended Eff. January 1, 2013

1 4 NCAC 10H .0202 is amended with changes as published in 27:02 NCR 234 as follows:

2  
3 **4 NCAC 10H .0202 HEARINGS BEFORE THE COMMISSION**

4 ~~3-~~ (a) The ~~Hearing Commissioner or Hearing~~ Commissioner or Deputy Commissioner before whom the case  
5 regarding the Law-Enforcement Officers', Firemen's, Rescue Squad Workers' and Civil Air Patrol Members' Death  
6 Benefits Act is ~~is~~ set for hearing, shall order the parties to participate in a pre-trial conference. This conference shall  
7 be conducted at such place and by such method as the Commissioner or Deputy Commissioner deems appropriate,  
8 including conference telephone calls. ~~in his discretion, may order the parties to appear at a reasonable time and place~~  
9 ~~for a pre trial hearing to determine such matters as he deems necessary. The Hearing Commissioner or Deputy~~  
10 ~~Commissioner will, having received all evidence pertinent to the case, thereafter proceed to file a Decision and~~  
11 ~~Award in the case in which benefits are awarded or denied. Such Decision will be sent to all parties.~~

12 4- (b) The Commission may, on its own motion, order a hearing or rehearing of any case in dispute. The  
13 Commission shall set a contested case for hearing in a location deemed convenient to witnesses and the Commission.

14 ~~5- (c)~~ The Commission ~~will shall~~ give ~~reasonable~~ notice of hearing in every case. Postponement or continuance of a  
15 scheduled hearing ~~will shall~~ be granted ~~[to prevent manifest injustice]~~ in the interests of justice ~~or to promote judicial~~  
16 ~~economy. rest entirely in the discretion of the Commission.~~

17 (d) Notice of the hearing shall be given to the Attorney General of the State of North Carolina, who may appear as  
18 amicus curiae.

19  
20 History Note: Authority G.S. 143-166.4;  
21 *Amended Eff.* January 1, 2013

1 4 NCAC 10H .0203 is amended with changes as published in 27:02 NCR 235 as follows:

2

3 **4 NCAC 10H .0203** **APPOINTMENT OF GUARDIAN AD LITEM**

4 (a) Infants or incompetents may bring an action under this Subchapter only through their guardian *ad litem*. The  
5 Commission shall appoint a person as guardian *ad litem* if the Commission determines it to be in the best interest of  
6 the infant or incompetent. The Commission shall appoint a guardian *ad litem* only after due inquiry as to the fitness  
7 of the person to be appointed.

8 (b) No compensation due or owed to the infant or incompetent shall be paid directly to the guardian *ad litem*.

9 (c) [Consistent with G.S. 1A-1, Rule 17(b)(2), the] The Commission may assess a fee to be paid to an attorney who  
10 serves as a guardian *ad litem* for actual services rendered upon receipt of an affidavit of actual time spent in  
11 representation of the infant or incompetent.

12

13 History Note: Authority G.S. 1A-1 Rule 17(b)(2); 143-166.4;

14 Amended Eff. January 1, 2013.

1 4 NCAC 10H .0204 is amended as published in 27:02 NCR 235 as follows:

2

3 **04 NCAC 10H .0204 WRITTEN OR RECORDED STATEMENT**

4 (a) Upon the request of the employer or his agent to take a written or a recorded statement, the employer or his  
5 agent shall advise any person eligible for payments that the statement may be used to determine whether the claim  
6 will be paid or denied. Any person eligible for payments who gives the employer, its carrier, or any agent either a  
7 written or recorded statement of the facts and circumstances surrounding the decedent's injury shall be furnished a  
8 copy of such statement within 45 days after request. Any person eligible for payments shall immediately be  
9 furnished with a copy of the written or recorded statement following a denial of the claim. A copy shall be  
10 furnished at the expense of the party to whom the statement was given.

11 (b) If any party fails to comply with this Rule, a Commissioner or Deputy Commissioner shall enter an order  
12 prohibiting that party from introducing the statement into evidence or using any part of the statement.

13

14 History Note: Authority G.S. 143-166.4;

15 Amended Eff. January 1, 2013

1 4 NCAC 10H .0205 is amended with changes as published in 27:02 NCR 235 as follows:

2  
3 ~~IV. APPEAL TO THE FULL COMMISSION~~04 NCAC 10H .0205 REVIEW BY THE FULL  
4 COMMISSION

5 ~~1.(a) In any case in which Decision is filed by Hearing Commissioner or Hearing Deputy Commissioner, appeal~~  
6 ~~may be made to the Full Commission by giving written notice of appeal to the Commission within fifteen days from~~  
7 ~~receipt of the Decision, with written statement of service of copy by mail or in person on opposing party or parties.~~

8 A party may request a review of an award filed by a Deputy Commissioner by filing a letter expressing a request for  
9 review to the Full Commission within 15 days of receipt of the award. The award is binding on the parties if not  
10 appealed.

11 ~~2.(b) Upon~~ After receipt of notice of appeal review, the Commission ~~will~~ shall supply to the appellant and to the  
12 appellee a transcript of the record upon which ~~is based~~ the ~~Decision and the Award~~ award is based and from which  
13 ~~appeal a review~~ is being taken to the Full Commission. The appellant shall, within ten days of receipt of transcript  
14 of the record, file with the Commission a written statement of the particular grounds for the appeal, with ~~written~~  
15 ~~statement of service of copy by mail or in person~~ on all opposing ~~party or~~ parties.

16 ~~(c) Particular grounds~~ Grounds for appeal review not set forth ~~will be~~ are deemed to be abandoned and argument  
17 thereon ~~will~~ shall not be heard before the Full Commission.

18 ~~A nonappealing party is not required to file conditional assignments of error in order to preserve his rights for~~  
19 ~~possible further appeals.~~

20 ~~3.(d) When an appeal a review~~ is made to the Full Commission, appellant's brief, if any, in support of his ground  
21 for appeal shall be filed ~~in triplicate~~ with the Commission, with ~~written statement of service of copy by mail or in~~  
22 ~~person on appellee all opposing parties~~ no less than ~~fifteen~~ 15 days prior to the hearing on ~~appeal~~ review. Appellee  
23 shall have five days in which to file a reply brief, if any deemed necessary, ~~in triplicate~~ with the Commission, with  
24 ~~written statement of service of copy by mail or in person~~ on all opposing ~~party or~~ parties.

25 ~~(e) Any motions by either party shall be filed in triplicate~~ with the Full Commission, with ~~written statement of~~  
26 ~~service of copy by mail or in person~~ on all opposing ~~party or~~ parties.

27 ~~4. No new evidence will be presented to or heard by the Full Commission.~~

28 ~~5. Ruling on a motion for a new hearing to take additional evidence will be governed by the general law of the State~~  
29 ~~for the granting of new trials on the grounds of newly discovered evidence. Such motion must be written, supported~~  
30 ~~by affidavit, and maybe argued before the Full Commission at the time of the hearing on appeal.~~

31 ~~6.(f) The parties, or either of them, may waive oral argument before the Full Commission. Upon the request of a~~  
32 ~~party, or its own motion, the Commission may waive oral arguments~~ [to prevent manifest injustice, ]in the interests  
33 of justice or to promote judicial economy, [or to expedite a decision in the public interest]. In the event of such  
34 waiver, ~~a Decision~~ the Full Commission shall file an award based on the ~~record, exceptions, record and~~ briefs.  
35 briefs, if any, will be given by the Full Commission.

36  
37 History Note: Authority G.S. 143-166.4;

Amended Eff. January 1, 2013







1 4 NCAC 10I .0101 is amended as published in 27:02 NCR 236 as follows:

2  
3 **SUBCHAPTER 10I - CHILDHOOD VACCINE-RELATED INJURY RULES**

4 **OF THE NORTH CAROLINA INDUSTRIAL COMMISSION**

5 **~~ARTICLE I~~ SECTION .0100 –ADMINISTRATION**

6  
7 **~~RULE 10I. LOCATIONS OF OFFICES AND HOURS OF BUSINESS. 04 NCAC 10I .0101~~ LOCATIONS**  
8 **OF OFFICES AND HOURS OF BUSINESS**

9 For purposes of this Subsection, the offices of the North Carolina Industrial Commission are located in the Dobbs  
10 Building, 430 North Salisbury Street, in Raleigh, North Carolina, 27611. ~~The same office hours as are or may be~~  
11 ~~observed by other State offices in Raleigh will be observed by the Industrial Commission. Documents pertaining to~~  
12 ~~the Childhood Vaccine-Related Injury claims that are not being filed electronically may be filed between the hours~~  
13 ~~of 8:00 a.m. and 5:00 p.m. only. Documents permitted to be filed electronically may be filed until 11:59 p.m. on the~~  
14 ~~required filing date.~~

15 *History Note:* Authority G.S. 130A-424; 130A-425(d);

16 Amended Eff. January 1, 2013.  
17

1 4 NCAC 10I .0102 is amended as published in 27:02 NCR 236 as follows:

2  
3 ~~RULE 103. OFFICIAL FORMS.~~ 4 NCAC 10I .0102      **OFFICIAL FORMS**

4 The use of any printed forms related to Childhood Vaccine-Related Injury claims, other than those ~~approved and~~  
5 ~~adopted provided~~ by ~~this~~ the Commission is prohibited, except that. ~~Approved forms may be obtained from the~~  
6 ~~Commission. Insurance~~ insurance carriers, ~~and~~ self-insurers, attorneys and other parties may reproduce prepare  
7 forms for their own use, provided: ~~(1) that the color of the paper upon which the form is printed shall be~~  
8 ~~substantially identical to that used on the approved Commission's form, (2) no statement, question, or information~~  
9 ~~blank contained on the approved Commission's form is omitted from the substituted form, and (3) such substituted~~  
10 ~~form is substantially identical in size and format with the approved Commission's form.~~

11        (1) no statement, question, or information blank contained on the Commission form is omitted from  
12        the substituted form; and

13        (2) the substituted form is identical in size and format with the Commission form.

14  
15 *History Note:*                      *Authority* G.S. 130A-424; 130A-425(d);  
16    *Amended Eff.* January 1, 2013.

1 4 NCAC 10I .0201 is amended as published in 27:02 NCR 236 as follows:

2

3

**ARTICLE H. SECTION .0200 - RULES OF COMMISSION**

4

5 **04 NCAC 10I.0201**      **RULES OF CIVIL PROCEDURE**

6 The Rules of Civil Procedure ~~apply in cases involving a purported~~ as provided in G.S. 130A-17 apply in Childhood  
7 Vaccine-Related Injury ~~claims, to the extent that such Rules are not inconsistent so long as such rules are consistent~~  
8 with Article 17 of Chapter 130A of the North Carolina General Statutes. Statutes, except as hereinafter specifically  
9 ~~provided. In the event of such inconsistency, the Childhood Vaccine-Related Injury Compensation Program Act and~~  
10 the Rules of this Subchapter control.

11

12 *History Note:*                      *Authority* G.S. 130A-425(d);  
13    *Amended Eff.* January 1, 2013







1 4 NCAC 10I .0205 is adopted as published in 27:02 NCR 237 as follows:

2

3 **04 NCAC 10I .0205 SANCTIONS**

4 (a) The Commission may, on its own initiative or motion of a party, impose a sanction against a party or attorney or  
5 both when the Commission determines that such party, or attorney, or both failed to comply with the Rules in this  
6 Subchapter. The Commission may impose sanctions of the type and in the manner prescribed by Rule 37 of the  
7 North Carolina Rules of Civil Procedure.

8 (b) Failure to timely file forms as required by either the Rules in this Subchapter or pursuant to the Childhood  
9 Vaccine-Related Injury Compensation Program may result in fines or other sanctions.

10

11 *History Note:* Authority G.S. 130A-425(d);

12 *Eff.* January 1, 2013

1 4 NCAC 10J.0101 is amended as published in 27:02 NCR 237 as follows:  
2

3 **SUBCHAPTER 10J – FEES FOR MEDICAL COMPENSATION**  
4

5 **SECTION 0100 – FEES FOR MEDICAL COMPENSATION**  
6

7 **04 NCAC 10J .0101 FEES FOR MEDICAL COMPENSATION**

8 (a) The Commission has adopted and published a Medical Fee Schedule, pursuant to the provisions of G.S. 97-  
9 26(a), setting maximum amounts, except for hospital fees pursuant to G.S. 97-26(b), that may be paid for medical,  
10 surgical, nursing, dental, and rehabilitative services, and medicines, sick travel, and other treatment, including  
11 medical and surgical supplies, original artificial members as may reasonably be necessary at the end of the healing  
12 period and the replacement of such artificial members when reasonably necessitated by ordinary use or medical  
13 circumstances. The amounts prescribed in the applicable published Fee Schedule shall govern and apply according  
14 to G.S. 97-26(c). [However, in other hardship cases where] Where sufficient reason is demonstrated to the  
15 Commission, amounts in excess of those so published may be allowed.(b) The Commission's Medical Fee Schedule  
16 contains maximum allowed amounts for medical services provided pursuant to Chapter 97 of the General Statutes.  
17 The Medical Fee Schedule utilizes 1995 through the present, Current Procedural Terminology (CPT) codes adopted  
18 by the American Medical Association, Healthcare Common Procedure Coding Systems (HCPCS) codes, and  
19 jurisdiction-specific codes. A listing of the maximum allowable amount for each code is available on the  
20 Commission's website at <http://www.ic.nc.gov/ncic/pages/feesched.asp> and in hardcopy at 430 N. Salisbury Street,  
21 Raleigh, North Carolina.

22 (c) The following methodology provides the basis for the Commission's Medical Fee Schedule:

- 23 (1) CPT codes for General Medicine are based on North Carolina Medicare values multiplied by 1.58.  
24 (2) CPT codes for Physical Medicine are based on North Carolina Medicare values multiplied by  
25 1.30.  
26 (3) CPT codes for Radiology are based on North Carolina Medicare values multiplied by 1.96.  
27 (4) CPT codes for Surgery are based on North Carolina Medicare values multiplied by 2.06.

28 (d) The Commission's Hospital Fee Schedule, adopted pursuant to G.S. 97-26(b), provides for payment as follows:

- 29 (1) Inpatient hospital fees: Inpatient services are reimbursed based on a Diagnostic Related  
30 Groupings (DRG) methodology. The Hospital Fee Schedule utilizes the 2001 Diagnostic Related  
31 Groupings adopted by the State Health Plan. Each DRG amount is based on the amount that the  
32 State Health Plan had in effect for the same DRG on June 30, 2001.  
33 DRG amounts are further subject to the following payment band that establishes maximum and  
34 minimum payment amounts:  
35 (A) The maximum payment is 100 percent of the hospital's itemized charges.  
36 (B) For hospitals other than critical access hospitals, the minimum payment is 75 percent of  
37 the hospital's itemized charges.



1           (C) For critical access hospitals, the minimum payment is 77.07 percent of the hospital's  
2           itemized charges.

3           (2) Outpatient hospital fees: Outpatient services are reimbursed based on the hospital's actual charges  
4           as billed on the UB-04 claim form, subject to the following percentage discounts:

5           (A) For hospitals other than critical access hospitals, the payment shall be 79 percent of the  
6           hospital's billed charges.

7           (B) For critical access hospitals, the payment shall be 87 percent of the hospital's billed  
8           charges. For purposes of the hospital fee schedule, critical access hospitals are those  
9           hospitals designated as such pursuant to federal law (42 CFR 485.601 et seq.)

10          (3) Ambulatory surgery fees: Ambulatory surgery center services are reimbursed at 79 percent of  
11          billed charges.

12          (4) Other rates: If a provider has agreed under contract with the insurer or managed care organization  
13          to accept a different amount or reimbursement methodology, that amount or methodology  
14          establishes the applicable fee.

15 (e) A provider of medical compensation shall submit its statement for services within 75 days of the rendition of the  
16 service, or if treatment is longer, within 30 days after the end of the month during which multiple treatments were  
17 provided. However, in cases where liability is initially denied but subsequently admitted or determined by the  
18 Commission, the time for submission of medical bills shall run from the time the health care provider received  
19 notice of the admission or determination of liability. Within 30 days of receipt of the statement, the employer,  
20 carrier, or managed care organization, or administrator on its behalf, shall pay or submit the statement to the  
21 Commission for approval or send the provider written objections to the statement. If an employer, carrier,  
22 administrator, or managed care organization disputes a portion of the provider's bill, the employer, carrier,  
23 administrator, or managed care organization, shall pay the uncontested portion of the bill and shall resolve disputes  
24 regarding the balance of the charges through its contractual arrangement or through the Commission.

25 (f) Pursuant to G.S. 97-18(i), when the 10 percent addition to the bill is uncontested, payment shall be made to the  
26 provider without notifying or seeking approval from the Commission. When the 10 percent addition to the bill is  
27 contested, any party may request a hearing by the Commission pursuant to G.S. 97-83 and G.S. 97-84.

28 (g) When the responsible party seeks an audit of hospital charges, and has paid the hospital charges in full, the  
29 payee hospital, upon request, shall provide reasonable access and copies of appropriate records, without charge or  
30 fee, to the person(s) chosen by the payor to review and audit the records.

31 (h) The responsible employer, carrier, managed care organization, or administrator shall pay the statements of  
32 medical compensation providers to whom the employee has been referred by the treating physician authorized by  
33 the insurance carrier for the compensable injury or body part, unless the physician has been requested to obtain  
34 authorization for referrals or tests; provided that compliance with the request shall not unreasonably delay the  
35 treatment or service to be rendered to the employee.

36 (i) Employees are entitled to reimbursement for sick travel when the travel is medically necessary and the mileage  
37 is 20 or more miles, round trip, at the business standard mileage rate set by the Internal Revenue Service per mile of

1 travel and the actual cost of tolls paid. Employees are entitled to lodging and meal expenses, at a rate to be  
2 established for state employees by the North Carolina Director of Budget, when it is medically necessary that the  
3 employee stay overnight at a location away from the employee's usual place of residence Employees are entitled to  
4 reimbursement for the costs of parking or a vehicle for hire, when the costs are medically necessary, at the actual  
5 costs of the expenses.

6 (j) Any employer, carrier or administrator denying a claim in which medical care has previously been authorized is  
7 responsible for all costs incurred prior to the date notice of denial is provided to each health care provider to whom  
8 authorization has been previously given.

9  
10 *Authority G.S. 97-18(i); 97-25; 97-25.6; 97-26; 97-80(a); 138-6.*

11  
12  
13