

NORTH CAROLINA REGISTER

VOLUME 27 • ISSUE 02 • Pages 162 - 290

July 16, 2012

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Contact List for Rulemaking Questions or Concerns

For questions or concerns regarding the Administrative Procedure Act or any of its components, consult with the agencies below. The bolded headings are typical issues which the given agency can address, but are not inclusive.

Rule Notices, Filings, Register, Deadlines, Copies of Proposed Rules, etc.

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Office of State Budget and Management
116 West Jones Street (919) 807-4700
Raleigh, North Carolina 27603-8005 (919) 733-0640 FAX
Contact: Anca Grozav, Economic Analyst osbmruleanalysis@osbm.nc.gov (919) 807-4740

NC Association of County Commissioners
215 North Dawson Street (919) 715-2893
Raleigh, North Carolina 27603
contact: Amy Bason amy.bason@ncacc.org

NC League of Municipalities (919) 715-4000
215 North Dawson Street
Raleigh, North Carolina 27603
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Legislative Process Concerning Rule-making

Joint Legislative Administrative Procedure Oversight Committee
545 Legislative Office Building
300 North Salisbury Street (919) 733-2578
Raleigh, North Carolina 27611 (919) 715-5460 FAX

contact: Karen Cochrane-Brown, Staff Attorney Karen.cochrane-brown@ncleg.net
Jeff Hudson, Staff Attorney Jeffrey.hudson@ncleg.net

NORTH CAROLINA REGISTER
Publication Schedule for January 2012 – December 2012

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment period	Deadline to submit to RRC for review at next meeting	Earliest Eff. Date of Permanent Rule	Delayed Eff. Date of Permanent Rule 31st legislative day of the session beginning:	270 th day from publication in the Register
26:13	01/03/12	12/08/11	01/18/12	03/05/12	03/20/12	05/01/12	05/16/12	09/29/12
26:14	01/17/12	12/21/11	02/01/12	03/19/12	03/20/12	05/01/12	05/16/12	10/13/12
26:15	02/01/12	01/10/12	02/16/12	04/02/12	04/20/12	06/01/12	01/30/13	10/28/12
26:16	02/15/12	01/25/12	03/01/12	04/16/12	04/20/12	06/01/12	01/30/13	11/11/12
26:17	03/01/12	02/09/12	03/16/12	04/30/12	05/21/12	07/01/12	01/30/13	11/26/12
26:18	03/15/12	02/23/12	03/30/12	05/14/12	05/21/12	07/01/12	01/30/13	12/10/12
26:19	04/02/12	03/12/12	04/17/12	06/01/12	06/20/12	08/01/12	01/30/13	12/28/12
26:20	04/16/12	03/23/12	05/01/12	06/15/12	06/20/12	08/01/12	01/30/13	01/11/13
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26:22	05/15/12	04/24/12	05/30/12	07/16/12	07/20/12	09/01/12	01/30/13	02/09/13
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27:02	07/16/12	06/22/12	07/31/12	09/14/12	09/20/12	11/01/12	01/30/13	04/12/13
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27:08	10/15/12	09/24/12	10/30/12	12/14/12	12/20/12	02/01/13	05/2014	07/12/13
27:09	11/01/12	10/11/12	11/16/12	12/31/12	01/22/13	03/01/13	05/2014	07/29/13
27:10	11/15/12	10/24/12	11/30/12	01/14/13	01/22/13	03/01/13	05/2014	08/12/13
27:11	12/03/12	11/07/12	12/18/12	02/01/13	02/20/13	04/01/13	05/2014	08/30/13
27:12	12/17/12	11/26/12	01/01/13	02/15/13	02/20/13	04/01/13	05/2014	09/13/13

EXPLANATION OF THE PUBLICATION SCHEDULE

This Publication Schedule is prepared by the Office of Administrative Hearings as a public service and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2C .0302 and the Rules of Civil Procedure, Rule 6.

GENERAL

The North Carolina Register shall be published twice a month and contains the following information submitted for publication by a state agency:

- (1) temporary rules;
- (2) notices of rule-making proceedings;
- (3) text of proposed rules;
- (4) text of permanent rules approved by the Rules Review Commission;
- (5) notices of receipt of a petition for municipal incorporation, as required by G.S. 120-165;
- (6) Executive Orders of the Governor;
- (7) final decision letters from the U.S. Attorney General concerning changes in laws affecting voting in a jurisdiction subject of Section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H;
- (8) orders of the Tax Review Board issued under G.S. 105-241.2; and
- (9) other information the Codifier of Rules determines to be helpful to the public.

COMPUTING TIME: In computing time in the schedule, the day of publication of the North Carolina Register is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday, or State holiday.

FILING DEADLINES

ISSUE DATE: The Register is published on the first and fifteen of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month after the first or fifteenth that is not a Saturday, Sunday, or holiday for State employees.

LAST DAY FOR FILING: The last day for filing for any issue is 15 days before the issue date excluding Saturdays, Sundays, and holidays for State employees.

NOTICE OF TEXT

EARLIEST DATE FOR PUBLIC HEARING: The hearing date shall be at least 15 days after the date a notice of the hearing is published.

END OF REQUIRED COMMENT PERIOD
An agency shall accept comments on the text of a proposed rule for at least 60 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.

DEADLINE TO SUBMIT TO THE RULES REVIEW COMMISSION: The Commission shall review a rule submitted to it on or before the twentieth of a month by the last day of the next month.

FIRST LEGISLATIVE DAY OF THE NEXT REGULAR SESSION OF THE GENERAL ASSEMBLY: This date is the first legislative day of the next regular session of the General Assembly following approval of the rule by the Rules Review Commission. See G.S. 150B-21.3, Effective date of rules.

**PUBLIC NOTICE
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
DIVISION OF WATER QUALITY**

The Division of Water Quality has received a petition to establish an interim maximum allowable concentration in groundwater for propylene glycol. This interim concentration will aid the petitioner and DENR programs in assessing conditions and setting health protective groundwater levels at regulated sites. In accordance with 15A NCAC 02L .0202 (c), the data supporting the request has been reviewed, as have staff recommendations from the Division of Waste Management and the Division of Public Health. Therefore, the following interim maximum allowable concentration is hereby established for Class GA and GSA groundwaters effective July 16, 2012.


Substance

Propylene glycol

Established IMAC

140,000 ug/L

Action to adopt a permanent standard for this substance will be initiated during the upcoming Groundwater Standards Triennial Review. For more information or questions, please contact Sandra Moore at Sandra.moore@ncdenr.gov or 919-807-6417 or visit our web site at <http://portal.ncdenr.org/web/wq/ps/csu/gwstandards>.



Charles Wakild
Director, Division of Water Quality



U.S. Department of Justice
Civil Rights Division

TCH:RSB:LB:AAO:par
DJ 166-012-3
2012-2413

Voting Section - NWB
950 Pennsylvania Avenue, NW
Washington, DC 20530

FILED

June 7, 2012

OFFICE OF
ADMINISTRATIVE HEARINGS

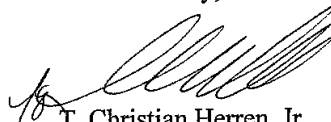
David A. Holec, Esq.
City Attorney
P.O. Box 7207
Greenville, North Carolina 27835-7207

Dear Mr. Holec:

This refers to the annexation (Ordinance No. 12-012 (2012)) and its designation to District 1 of the City of Greenville in Pitt County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. We received your submission on April 16, 2012.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 28 C.F.R. 51.41.

Sincerely,


T. Christian Herren, Jr.
Chief, Voting Section

Note from the Codifier: The notices published in this Section of the NC Register include the text of proposed rules. The agency must accept comments on the proposed rule(s) for at least 60 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. If the agency adopts a rule that differs substantially from a prior published notice, the agency must publish the text of the proposed different rule and accept comment on the proposed different rule for 60 days.

Statutory reference: G.S. 150B-21.2.

TITLE 04 – DEPARTMENT OF COMMERCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Alcoholic Beverage Control Commission intends to amend the rules cited as 04 NCAC 02S .0525, .0708, .0901, .1011; 02T .0104, .0714-.0715.

Link to agency website pursuant to G.S. 150B-19.1(c):
http://abc.nc.gov/legal/statutes_regulations.aspx

Proposed Effective Date: November 1, 2012

Public Hearing:

Date: August 15, 2012

Time: 10:00 a.m.

Location: NC ABC Commission's Office, 400 East Tryon Road, Raleigh, NC 27610

Reason for Proposed Action:

04 NCAC 02S .0525 – 04 NCAC 02S .0512(f)(1) and (2) no longer exists. This rule change removes the requirement to maintain inventory records that were previously required by .0512(f)(1) and (2).

04 NCAC 02S .0708 – The proposed rule change would amend the rule to state that the trigger for needing to obtain a Special Occasion Permit when a commercial facility or establishment allows a private function to occur on their premises is eight liters of fortified wine or spirituous liquor instead of five liters.

04 NCAC 02S .0901 – The rule change is necessary to remove confusion that all tastings held on a retailer's premises require a tasting permit.

04 NCAC 02S .1011 – The rule change is necessary because it is in direct conflict with 04 NCAC 02S .1008(a)(1) and 04 NCAC 02T .0712(8)(a).

04 NCAC 02T .0104 – The purpose of this rule is to confirm the manner in which French Bordeaux wine is marketed and distributed into the United States.

04 NCAC 02T .0714, .0715 – These rule changes are necessary to relax the regulations governing advertising.

Procedure by which a person can object to the agency on a proposed rule: Interested persons may present oral or written comments at the Rule-Making Hearing. In addition, the record will be open for receipt of written comments from July 16, 2012 to September 14, 2012. Written comments not presented at the hearing should be directed to Robert Hamilton. The proposed rules are available for public inspection and copies may be obtained at the Commission's office at: 400 East Tryon Road, Raleigh, NC 27610.

Comments may be submitted to: Robert A. Hamilton, 4307 Mail Service Center, Raleigh, NC 27699-4307; (919) 779-0700 x436; fax (919) 661-6165; email bob@adminrule.com

Comment period ends: September 14, 2012

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

Fiscal impact (check all that apply).

- ☐ State funds affected
- ☐ Environmental permitting of DOT affected
- ☐ Analysis submitted to Board of Transportation
- ☐ Local funds affected
- ☐ Date submitted to OSBM:
- ☒ Substantial economic impact (≥\$500,000) Only 04 NCAC 02T .0714 and 04 NCAC 02T .0715 and as approved by OSBM, it is unclear with these two.
- ☒ Approved by OSBM
- ☐ No fiscal note required

CHAPTER 02 - ALCOHOLIC BEVERAGE CONTROL COMMISSION

SUBCHAPTER 02S - RETAIL BEER: WINE: MIXED BEVERAGES: BROWNBAGGING: ADVERTISING: SPECIAL PERMITS

SECTION .0500 - ADDITIONAL REQUIREMENTS FOR MIXED BEVERAGES PERMITTEES

04 NCAC 02S .0525 GUEST ROOM CABINETS; INVENTORY AND RECORDS

A guest room cabinet permittee shall maintain on the premises complete and accurate inventory and sales records of all liquor purchased for resale in cabinets in accordance with the following requirements:

- (1) ~~During the first year of operation with a Guest Room Cabinet permit, inventory records for guest room cabinet liquor shall be maintained as required by Rule .0512(f)(1) and (2) of this Section.~~
- (2)(1) Sales records of guest room cabinet liquor shall be kept on a monthly basis in accordance with the requirements of Rule .0520 of this ~~Section.~~ Section; and
- (3)(2) Purchase-transportation permits for liquor to be sold from guest room cabinets shall be maintained by the permittee on the premises for a period of three years.

Authority G.S. 18B-100; 18B-207; 18B-1001(13).

SECTION .0700 - SPECIAL OCCASIONS PERMITS

04 NCAC 02S .0708 TYPES OF PERMITS REQUIRED

The owner or operator of any commercial facility or commercial establishment renting or furnishing the premises thereof for a private function where the host of the function will possess more than ~~five~~ eight liters of fortified wine or spirituous liquor, or ~~five~~ eight liters of the two combined, shall either:

- (1) apply for and obtain a Special Occasion Permit, as required by G.S. 18B-1001(8) and G.S. 18B-902; or
- (2) require the person in charge of the private function to apply for and obtain a Limited Special Occasion Permit under the provisions of G.S. 18B-1001(9) and 18B-902.

Authority G.S. 18B-100; 18B-207; 18B-301(b),(c); 18B-1001(8),(9).

SECTION .0900 - WINE AND BEER TASTINGS

04 NCAC 02S .0901 TASTINGS HELD BY RETAILERS FOR CONSUMERS

(a) General. A retail wine or malt beverage permittee may conduct tastings of wine or malt beverages for consumers. A tasting held on the retailer's premises requires ~~a tasting permit.~~ the appropriate permit. Any retailer conducting a wine or malt beverage tasting shall:

- (1) Provide training to its employees conducting and supervising any tasting, including:
 - (A) identification of potential underage customers;
 - (B) recognition of fictitious identification;
 - (C) identification of potentially intoxicated customers; and
 - (D) service of correct sample sizes; and
- (2) Prominently display in the area where the tasting is being conducted a sign informing customers that they must be 21 years of age to participate in the tasting.

(b) Tastings Assisted by Industry Member. For the purposes of this Rule, "industry member" means any manufacturer, bottler, importer, vendor, representative or wholesaler of alcoholic beverages. An industry member may assist with wine or malt beverage tastings for consumers in conjunction with, or on the licensed premises of, a retailer provided that:

- (1) The wine or malt beverage is taken directly from the retailer's existing inventory;
- (2) The industry member makes no payment to or on behalf of the retailer for promoting or advertising the tasting;
- (3) The retailer provides instruction to any participating industry member outlining how the tasting will be conducted prior to the tasting;
- (4) The retailer designates one of its employees to supervise the tasting. The retail supervisor shall:
 - (A) be physically present, actively supervise and be readily available to any participating industry member at all times during the tasting;
 - (B) wear visible identification;
 - (C) physically check-in with any participating industry member at each tasting station at least once per hour;
 - (D) make a final determination on the eligibility of a consumer to participate in a tasting in the event such a question arises;
 - (E) maintain an accurate accounting of all wine or malt beverages purchased for and consumed at the tasting; and
 - (F) dispose of any opened wine or malt beverage containers remaining after the tasting, unless the remaining wine is retained by a wine shop permittee.

(c) Unlawful Inducements Prohibited. No industry member shall require a retailer, and no retailer shall require an industry member, to conduct a wine or malt beverage tasting.

Authority G.S. 18B-100; 18B-207; 18B-1001(15); 18B-1001(18).

SECTION .1000 - ADVERTISING

04 NCAC 02S .1011 ADVERTISING OF SPIRITUOUS LIQUORS

(a) ABC Stores. An ABC store may have one or more outside signs located on the premises for the purpose of identifying the outlet if the sign is not prohibited by local ordinance and it has been approved by the Commission. During the approval process the Commission shall consider the following factors:

- (1) the proximity of the ABC store to schools and churches;
- (2) the number and size of the signs requested;
- (3) the text and graphics on the sign;
- (4) the materials that make up the sign; and

(5) the public concern in matters of the public's welfare.

(b) Aerial Displays. No distiller, importer, or rectifier of spirituous liquor, or representative thereof, nor any retail permittee, shall advertise by means of an aerial display or inflatable the brand name or availability of spirituous liquor.

(c) Billboards; Media. Industry members may advertise spirituous liquor on outdoor billboards, by radio, television, newspaper, magazine or internet, and by other similar means. Outdoor billboards or signs shall not be displayed on the premises of any retail permittee's establishment nor in areas where sale of that product is unlawful.

(d) Point-of-Sale. Point-of-sale and advertising specialties for spirituous liquor may be used in ABC stores ~~but not in retail establishments holding permits issued by the Commission stores.~~ Advertising used in ABC stores shall conform to the provisions of Rule .1005 of this Section, and in addition shall not:

- (1) incorporate the use of any present or former athlete or athletic team; or
- (2) refer to the availability of or offer any alcoholic beverages by mail.

All point-of-sale advertising material, advertising specialties, and recipes, booklets or brochures intended for use and display in ABC stores shall first be submitted to the Commission prior to their display in an ABC store.

(e) Local ABC Boards. Local ABC boards may advertise on their web site or social networking page the following information:

- (1) general information such as the history of the ABC board, locations, hours of operation, contact information, employment opportunities, alcohol enforcement, alcohol education, underage drinking education and other local government information; and
- (2) liquor products and prices, as long as:
 - (A) no logos are shown;
 - (B) when a product is listed, all products that are offered are listed;
 - (C) when a product's regular price is listed, all products' regular prices offered by the board are listed; and
 - (D) when a special price is listed for a product, all products with special prices offered by the board are listed.

(f) Local boards may join local chambers of commerce or visitor's bureaus and may provide them general board information which includes store locations and hours to be distributed through the chambers of commerces' or visitor's bureaus' media information.

Authority G.S. 18B-100; 18B-105; 18B-207; 18B-801.

**SUBCHAPTER 02T - INDUSTRY MEMBERS:
RETAIL/INDUSTRY MEMBER RELATIONSHIPS: SHIP
CHANDLERS: AIR CARRIERS: FUEL ALCOHOL**

**SECTION .0100 - DEFINITIONS: APPLICATION
PROCEDURES**

04 NCAC 02T .0104 WINE PRODUCT BRAND

(a) Determination of a product's brand shall be made by the Commission at the time the product is approved for sale in North Carolina and shall not be affected by later changes in the manufacturer's advertising strategy or labeling. Differences in packaging, such as different style, type or sized of container, do not establish different brands.

(b) For purposes of Bordeaux Chateau wine brought into North Carolina under the French negociant system only, "brand" as defined in 04 NCAC 02T .0101(1) shall be determined based on the nonresident wine vendor or importer's name as reflected on the back of the product label. For purposes of Bordeaux Chateau wines only, wines manufactured and marketed under a common identifying trade name such as "Chateau Domaine", but which may be imported into the United States through multiple channels based on written authorizations from French negociants, would not be considered to be the same brand; e.g., the "Chateau Domaine" brought into the United States by Importer A would be considered to be a different brand than the "Chateau Domaine" brought into the United States by Importer B. Such written authorization(s) must be provided to the Commission upon request prior to product approval or brand registration on a form provided by the Commission.

Authority G.S. 18B-100; 18B-207; 18B-1203.

**SECTION .0700 - ALCOHOLIC BEVERAGES:
RETAILER/INDUSTRY MEMBER RELATIONSHIP:
TRADE PRACTICES**

**04 NCAC 02T .0714 TRANSACTIONS WITH
GOVERNMENT AND SPECIAL ONE-TIME
PERMITTEES**

(a) Permitted Activities. Notwithstanding the restrictions contained in 04 NCAC 02T .0711, the following activities by alcoholic beverage (which includes malt beverages, wines and spirituous liquors) industry members are allowed, as described in this Rule, in transactions with cities, counties, the state, or in transactions with nonprofit or political organizations that have obtained a Special One-Time permit under the provisions of G.S. 18B-1002(a)(2) or (5), or nonprofit organizations that do not hold an ABC permit:

- (1) sponsorships of festivals, concerts, fundraisers or special events cosponsored by the local government, the state or nonprofit or political organizations, including payments of advertising fees;
- (2) loaning or renting portable equipment to a local government, the state or a nonprofit or political organization so long as the equipment loaned or rented is for a single event of limited duration;
- (3) contracts to provide payment for permanent advertising on signs or scoreboards when the industry member has submitted a request for and received an exemption pursuant to G.S. 18B-1116(b);
- (4) providing labor or employees to assist in the setting up or changing of draft beer kegs and

equipment which has been loaned or rented pursuant to Subparagraph (a)(2) of this Rule;

- (5) loaning or renting previously approved aerial displays or outdoor inflatables for the duration of a special ~~event, unless the event is held on the premises of a retailer; event;~~
- (6) loaning or allowing the use of refrigerated ~~vehicles, unless the event is held in conjunction with or on the premises of a cosponsoring retailer; vehicles;~~
- (7) providing novelties, prizes or prize money to nonprofit organizations that have obtained a Special One-Time Permit;
- (8) providing cash contributions, product donations and other consumer goods, provided that any donated product remaining after the event is not supplied by the Special One-Time Permittee to a regular retail permittee;
- (9) participation with a local government or the state in the advertising of events cosponsored by the local government or state; and
- (10) accepting the return of alcoholic beverages not sold, for cash or credit, after the event is over.

(b) Sponsorship/Advertising Agreements Restricted. No sponsorship agreement or advertising contract between an industry member and a city, county, the state, or a Special One-Time permittee shall contain any agreement, either express or implied, that the industry member's products will be sold to the exclusion, in whole or in part, of other brands of alcoholic beverages offered by competitors.

(c) Cosponsorship with Retail Permittee. In any promotion by an industry member with a local government, the state, or a nonprofit organization in which there is cosponsorship by a retailer other than the local government or the state, the industry member shall obtain prior written approval from the Commission as provided in 04 NCAC 02T .0717.

Authority G.S. 18B-100; 18B-207; 18B-1116(b).

04 NCAC 02T .0715 TOURNAMENTS

(a) General. Sponsorship by an industry member of a regional, statewide or national sports tournament, when the tournament is held on the property or premises of a retail permittee, is permissible only if all of the following conditions are met:

- (1) The tournament is promoted or sanctioned by the official governing body of the sport, or is promoted and sponsored by a bona fide nonprofit organization for the purpose of raising funds for a civic, scientific, charitable or educational cause;
- ~~(2) No brand identified outdoor signs, banners, aerial displays or inflatables are displayed on the exterior of the retailer's premises;~~
- ~~(3)(2)~~ No money, novelty items or other prohibited services or things of value are given, rented or loaned by an industry member to the retailer; and
- ~~(4)(3)~~ All sponsorship money or fees and other things of value from the industry member are

given to the official governing body of the sport or the nonprofit organization.

(b) Advertising. An industry member may advertise via mass media or pay for the advertising of a tournament when the primary theme of the advertisement is the tournament and its purpose. The naming of the retailer's premises as the location of a tournament shall not be construed to be cooperative advertising in violation of 04 NCAC 02S .1007 of this Chapter when the retailer's tradename is stated in substantially smaller typeface.

(c) Sponsorship/Advertising Agreements Restricted. No industry member agreeing to sponsor a tournament shall enter into any agreement or contract, either express or implied, that a retailer or special one-time permittee will sell that industry member's products to the exclusion, in whole or in part, of other brands of alcoholic beverages offered by competitors.

(d) Joint Sponsorships. An industry member shall not agree to cosponsor any tournament with any retail permittee unless the proceeds from the tournament are paid to a nonprofit civic, scientific, charitable or educational organization.

(e) Prohibited Sponsorships. An industry member shall not sponsor or aid a retailer in the promotion of any tournament held primarily to benefit the retailer, its employees, members or guests.

Authority G.S. 18B-100; 18B-207; 18B-1116(b).

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

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

Proposed Effective Date: January 1, 2013

Public Hearing:

Date: August 6, 2012

Time: 9:00 a.m.

Location: Dobbs Building, Second floor, Room 2173, 430 North Salisbury St., Raleigh, NC 27603

Reason for Proposed Action: *These rules are being amended in accordance with S.L. 2011-287, which newly subjects the Industrial Commission to the Administrative Procedure Act*

(APA) rule-making requirements in Chapter 150B of the General Statutes.

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

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

Comment period ends: September 14, 2012

Procedure for Subjecting a Proposed Rule to Legislative Review:

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

Fiscal impact (check all that apply).

- ☐ State funds affected
- ☐ Environmental permitting of DOT affected Analysis submitted to Board of Transportation
- ☐ Local funds affected
- ☐ Date submitted to OSBM:
- ☒ Substantial economic impact (≥\$500,000)
04 NCAC 10F
- ☒ Approved by OSBM
- ☐ No fiscal note required

CHAPTER 10 - INDUSTRIAL COMMISSION

SUBCHAPTER 10A - WORKERS' COMPENSATION RULES

SECTION .0100 - ADMINISTRATION

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

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

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

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

04 NCAC 10A .0102 OFFICIAL FORMS

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

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

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

- (1) no statement, question, or information blank contained on the Commission form is omitted from the substituted form, and
- (2) the substituted form is identical in size and format with the Commission form.

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

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

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

- ~~Form 17 Workers' Compensation Notice~~
- ~~Form 18 Notice of Accident to Employer and Claim of Employee or His Personal Representative or Dependents (N.C.G.S. 97-24)~~
- ~~Form 18B Claim by Employee or His Personal Representative or Dependents for Workers' Compensation Benefits for Lung Damage, Including Asbestosis, Silicosis, and Byssinosis (N.C.G.S. 97-53)~~
- ~~Form 18M Employee's Claim for Additional Medical Compensation~~
- ~~Form 19 Employer's Report of Employee's Injury to the Industrial Commission~~
- ~~Form 21 Agreement for Compensation for Disability Pursuant to N.C.G.S. 97-82~~
- ~~Form 22 Statement of Days Worked and Earnings of Injured Employee (Wage Chart)~~
- ~~Form 24 Application to Terminate or Suspend Payment of Compensation Pursuant to N.C.G.S. 97-18.1~~
- ~~Form 25C Authorization for Rehabilitation Professional to Obtain Medical Records of Current Treatment~~
- ~~Form 25D Dentist's Itemized Statement of Charges for Treatment and Certification of Treatment Disability~~
- ~~Form 25M Physician's Itemized Statement of Charges for Treatment and Certification of Treatment of Disability~~
- ~~Form 25N Notice to the Industrial Commission of Assignment of Rehabilitation Professional~~
- ~~Form 25R Evaluation for Permanent Impairment~~

Form 25T—Itemized Statement of Charges for Travel
 Form 25P—Itemized Statement of Charges for Drugs
 Form UB-92—Hospital Bill
 Form 26—Supplemental Agreement as to Payment of Compensation Pursuant to N.C.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)
 Form 31—Application for Lump Sum Award
 Form 33—Request that Claim be Assigned for Hearing
 Form 33R—Response to Request that Claim be Assigned for Hearing
 Form 36—Subpoena for Witness and Subpoena to Produce Items or Documents
 Form 42—Application for Appointment of Guardian Ad Litem
 Form 44—Application for Review
 Form 50—Itemized Statement of Charge for Nursing
 Form 51—Consolidated Fiscal Annual Report of "Medical Only" and "Lost Time" Cases
 Form 60—Employer's Admission of Employee's Right to Compensation Pursuant to N.C.G.S. 97-18(b)
 Form 61—Denial of Workers' Compensation Claim Pursuant to N.C.G.S. 97-18(c) and (d)
 Form 62—Notice of Reinstatement of Compensation Pursuant to N.C.G.S. 97-32.1 and N.C.G.S. 97-18(b)
 Form 63—Notice to Employee of Payment of Compensation Without Prejudice to Later Deny the Claim Pursuant to N.C.G.S. 97-18(d)
 Form 90—Report of Earnings
 Form IZ-510—Medical Bill Analysis Used for Approval and Reduction of Medical Bills
 Form MCS2—Petition for Order Referring Case to Mediated Settlement Conference
 Form MCS4—Designation of Mediator
 Form MCS5—Report of Mediator
 Form MCS6—Mediator's Declaration of Interest and Qualifications
 Form MCS7—Report of Evaluator
 Form MSC8—Mediated Settlement Agreement

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

(b) The use of any printed forms other than those approved and adopted by the Industrial Commission is prohibited. Insurance

carriers, self insureds, attorneys and other parties may reproduce approved forms for their own use, provided:

- (1) No statement, question, or information blank contained on the approved Industrial Commission's form is omitted from the substituted form.
- (2) Such substituted form is substantially identical in size and format with the approved Industrial Commission's form.

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

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

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

To give notice of an accident or occupational disease and to make a workers' compensation claim, an employee may complete a Form 18 Notice of Accident to Employer and Claim of Employee, Representative, or Dependent and file it electronically with Claims Administration, or by mail to North Carolina Industrial Commission, 4335 Mail Service Center, Raleigh, NC 27699-4335.

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

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

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

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

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

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

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

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

04 NCAC 10A .0105 ELECTRONIC PAYMENT OF COSTS

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

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

04 NCAC 10A .0106 FILING OF ANNUAL REPORT REQUIREMENT

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

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

04 NCAC 10A .0107 COMPUTATION OF TIME

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

proceedings within a prescribed period after the service of any document, three days shall be added to the prescribed period.

Authority G.S. 97-80.

SECTION .0200 – NOTICE OF ACT

04 NCAC 10A .0201 POSTING REQUIREMENT FOR EMPLOYERS

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

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

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

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

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

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

SECTION .0300 - INSURANCE

04 NCAC 10A .0301 PROOF OF INSURANCE COVERAGE

(a) Every employer subject to the provisions of the Workers' Compensation Act shall file with the Industrial Commission proof that it has obtained workers' compensation insurance 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 indicating the employer has qualified as a self-insured employer for workers' compensation purposes;
- (3) submitting a copy of the Form 18WC Application for Membership indicating the employer is a member of a self-insurance group or fund;
- (4) submitting a copy of a declaration of coverage page from an insurance policy procured in another state that indicates North Carolina is a covered jurisdiction under the workers' compensation policy;
- (5) submitting the names of the general contractor, subcontractor, professional employer organization or other entity that has provided workers' compensation coverage for the employer; provided however, that coverage shall be verified by the Commission in order to be removed from the non-insured docket; or
- (6) submitting other documentation or information relevant to the workers' compensation claim upon request of the Commission.

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

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

04 NCAC 10A .0302 REQUIRED CONTACT INFORMATION FROM CARRIERS

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

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

SECTION .0400 – DISABILITY, COMPENSATION, FEES

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

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

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

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

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

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

04 NCAC 10A .0402 SUBMISSION OF EARNINGS STATEMENT REQUIRED

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

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

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

04 NCAC 10A .0403 MANNER OF PAYMENT OF COMPENSATION

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

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

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

04 NCAC 10A .0404 TERMINATION AND SUSPENSION OF COMPENSATION

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

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

- (1) date of injury of accident and date disability began;
- (2) nature and extent of injury;

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

(c) The employer, or carrier/administrator carrier, or administrator shall specify the legal grounds and the alleged facts supporting the application, and shall complete the blank space in the "Important Notice to Employee" portion of Form 24 Application to Terminate or Suspend Payment of Compensation by inserting a date 17 days from the date the employer, or carrier/administrator carrier, or administrator deposits the completed Form 24 in the mail to the employee and the employee's attorney of record, if any. The original of the Form 24 and the attached documents shall be sent to the Industrial Commission at the same time and by the same method by which a copy of the Form 24 and attached documents are sent to the employee and the employee's attorney of record, if any. serves the completed Form 24 Application to Terminate or Suspend Payment of Compensation on the employee's attorney of record or the employee, if not represented, by e-mail, facsimile or U.S. Mail. The Form 24 Application to Terminate or Suspend Payment of Compensation and attached documents shall be sent to the Commission via upload to the Electronic Document Fee Portal, and shall be contemporaneously served on plaintiff's counsel by e-mail or facsimile, or on plaintiff, if unrepresented, by U.S. Mail. If the Form 24 Application to Terminate or Suspend Payment of Compensation is served by U.S. Mail, a copy shall also be uploaded to the Electronic Document Fee Portal.

(d) The Form 24 Application to Terminate or Suspend Payment of Compensation shall specify the number of pages of documents attached which are to be considered by the Industrial Commission. Failure to specify the number of pages may shall result in the refusal of the Industrial Commission to accept the same for filing. If the employee or the employee's attorney of record, if any, record objects by the date inserted on the employer's Form 24, 24 Application to Terminate or Suspend Payment of Compensation, or within such additional reasonable time as the Industrial Commission may allow, the Industrial Commission shall set the case for an informal hearing, unless waived by the parties in favor of a formal hearing. The objection shall be accompanied by all currently available

supporting documentation. A copy of any objection shall be sent, with any supporting documents, contemporaneously served on to the employer, carrier, or administrator. The Form 24 *Application to Terminate or Suspend Payment of Compensation* or objection may be supplemented with any additional relevant documentation received after the initial filing. The term "carrier/administrator" "carrier" or "administrator" also includes any successor in interest. interest in the pending claim.

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

(d)(f) If the employee timely objects to the Form 24, *Application to Terminate or Suspend Payment of Compensation*, the Industrial Commission shall conduct an informal hearing within 25 days of the receipt by the Industrial Commission of the Form 24, unless the time is extended for good cause shown. *24 Application to Terminate or Suspend Payment of Compensation*. The informal hearing may be by telephone conference between the Industrial Commission and the parties or their attorneys of record, record, if any. When good cause is shown, the The informal hearing may be conducted with the parties or their attorneys of record, if any, record personally present with the Industrial Commission Commission, in Raleigh or such other location as is selected by the Industrial Commission. The Industrial Commission shall make arrangements for the informal hearing with a view towards conducting the hearing in the most expeditious manner manner, under the circumstances. Except for good cause shown, the The informal hearing shall be no more than 30 minutes, with each side given 10 minutes to present its case and five minutes for rebuttal. Notwithstanding the above, the employer, or carrier/administrator carrier, or administrator may waive the right to an informal hearing, and proceed to a formal hearing by filing a request for hearing on a Form 33. *33 Request that Claim be Assigned for Hearing*. A decision on the application shall be made within five days after the completion of the informal hearing.

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

notwithstanding any appeal or application for review to the Full Commission under G.S. § 97-85. G.S. 97-85.

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

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

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

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

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

04 NCAC 10A .0404A TRIAL RETURN TO WORK

(a) Except as provided in subparagraph (7), Paragraph (g) of this Rule, when compensation for total disability being paid pursuant to G.S. § 97-29 G.S. 97-29 is terminated because the employee has returned to work for the same or a different employer, such the termination is subject to the trial return to work provisions of G.S. § 97-32.1. G.S. 97-32.1 (trial return to work). When compensation is terminated under these circumstances, the employer employer, or carrier/administrator carrier, or administrator shall, within 16 days of the termination of compensation, file a Form 28T *Notice of Termination of Compensation by Reason of Trial Return to Work* with the Industrial Commission and provide a copy of it to the employee

and the employee's attorney of ~~record, if any, record or the~~ employee, if unrepresented.

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

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

(d) The reinstated compensation shall be due and payable and subject to the provisions of ~~G.S. § 97-18(e)~~ G.S. 97-18(g) on the date and for the period commencing on the date the ~~employer~~ employer, or carrier/administrator carrier, or administrator receives a ~~properly~~ completed Form 28U Employee's Request that Compensation be Reinstated after Unsuccessful Trial

Return to Work certifying an unsuccessful return to work. Such resumption of compensation ~~shall does not~~ preclude the employee's right to seek, nor the ~~employer~~ employer's, or carrier's/administrator's carrier's, or administrator's right to contest, the payment of compensation for the period prior or subsequent to ~~such the~~ reinstatement. If it is thereafter determined by the Commission that any temporary total or temporary partial compensation, including the reinstated compensation, was not due and payable, a credit shall be given against any other compensation determined to be owed.

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

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

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

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

commenced at the time of the employee's initial return to work;

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

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

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

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

04 NCAC 10A .0405 REINSTATEMENT OF COMPENSATION

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

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

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

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

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

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

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

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

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

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

Request that Claim be Assigned for Hearing or notify the Commission that a formal hearing is not currently necessary.

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

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

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

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

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

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

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

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

04 NCAC 10A .0407 FEES FOR MEDICAL COMPENSATION

~~(a) Subject to the provisions of G.S. 97-25.3, Preauthorization, the Industrial Commission shall adopt and publish a Fee Schedule, pursuant to the provisions of G.S. 97-26(a), fixing maximum fees, except for hospital fees pursuant to G.S. 97-26(b), which may be charged for medical, surgical, nursing, dental, and rehabilitative services, and medicines, sick travel, and other treatment, including medical and surgical supplies, original artificial members as may reasonably be necessary at the end of the healing period and the replacement of such artificial members when reasonably necessitated by ordinary use or medical circumstances. The fees prescribed in the applicable published Fee Schedule shall govern and apply in all cases. However, in special hardship cases where sufficient reason is demonstrated to the Industrial Commission, fees in excess of those so published may be allowed. Persons who disagree with the allowance of such fees in any case may make application for and obtain a full review of the matter before the Industrial Commission as in all other cases provided. Copies of this published Fee Schedule may be obtained from the Industrial Commission's authorized vendor.~~

~~(b) A provider of medical compensation shall submit its statement for services within 75 days of the rendition of the service or if treatment is longer, within 30 days after the end of the month during which multiple treatments were provided, or within such other reasonable period of time as allowed by the Industrial Commission. However, in cases where liability is initially denied but subsequently admitted or determined by the Industrial Commission, the time for submission of medical bills shall run from the time the health care provider received notice of the admission or determination of liability. Within 30 days of receipt of the statement, the employer, carrier, or managed care organization, or administrator on its behalf, shall pay or submit the statement to the Industrial Commission for approval or send the provider written objections to the statement. If an employer, carrier/administrator or managed care organization disputes a portion of the provider's bill, it shall pay the uncontested portion of the bill and shall resolve disputes regarding the balance of the charges through its contractual arrangement or through the Industrial Commission. If any bill for medical compensation services is not paid within 60 days after it has been approved by the Industrial Commission and returned to the responsible party, or, when the employee is receiving treatment through a managed care organization, within 60 days after the bill has been properly submitted to an insurer or managed care organization, there shall be added to such unpaid bill an amount equal to 10 percent, which shall be paid at the same time as, but in addition to, such bill, unless late payment is excused by the Industrial Commission. When the 10 percent addition to the bill is uncontested, payment shall be made to the provider without notifying or seeking approval from the Industrial Commission. When the percent addition to the bill is contested, any party may request a hearing by the Industrial Commission pursuant to G.S. 97-83, and G.S. 97-84.~~

~~(c) When the responsible party seeks an audit of hospital charges, and has paid the hospital charges in full, the payee hospital, upon request, shall provide all reasonable access and~~

copies of appropriate records, without charge or fee, to the person(s) chosen by the payor to review and audit the records.

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

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

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

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

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

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

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

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

~~copy must be provided to the employer or carrier/administrator, and one copy must be provided to the attorney of record, if any.~~

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

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

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

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

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

04 NCAC 10A .0409 CLAIMS FOR DEATH BENEFITS

~~(a) Report of Fatalities~~

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

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

~~(b) Identifying Beneficiaries~~

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

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

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

(e) Liability Accepted by Employer

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

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

(d) Liability Denied by Employer

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

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

(e) Payment of Death Benefits

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

(A)(j) ~~Subject to the discretion of the Industrial Commission, any Any~~ benefits due to a minor pursuant to G.S. § 97-38 G.S. 97-38 may shall be paid directly to the parent as natural guardian of the minor for the use and benefit of the minor if the minor remains in the physical custody of the parent as natural guardian.

If the minor is not in the physical custody of the parent as natural guardian, ~~the Industrial Commission may order that payment shall be made through some other proper person appointed by a court of competent jurisdiction. jurisdiction or to such other person under such terms as the Commission finds is in the best interests of the parties. When a beneficiary reaches the age of 18, any remaining benefits shall be paid directly to the beneficiary.~~

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

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

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

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

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

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

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

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

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

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

04 NCAC 10A .0410 COMMUNICATION FOR MEDICAL INFORMATION

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

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

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

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

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

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

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

SECTION .0500 – AGREEMENTS

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

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

~~(b) No agreement for permanent disability will shall be approved until the material relevant medical and vocational records known to exist in the case have been filed with the Industrial Commission. When requested by the Industrial~~

Commission, the parties shall file any additional documentation necessary to determine whether the employee is receiving the disability compensation to which he or she is entitled and that an employee qualifying for disability compensation under G.S. 97-29 or ~~G.S. 97-30~~ G.S. 97-30, and G.S. 97-31 has the benefit of the more favorable remedy.

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

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

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

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

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

04 NCAC 10A .0502 COMPROMISE SETTLEMENT AGREEMENTS

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

~~(b)(a) No compromise agreement will be approved The Commission shall not approve a compromise settlement~~

agreement unless it contains the following language or its equivalent information:

- ~~(1)~~ Where liability is admitted, that the employer or carrier/administrator undertakes to pay all medical expenses to the date of the agreement.
- ~~(2)~~ Where liability is denied, that the employer or carrier/administrator undertakes to pay all unpaid medical expenses to the date of the agreement. However, this requirement may be waived in the discretion of the Industrial Commission. When submitting an agreement for approval, the employee or employee's attorney, if any, shall advise the Commission in writing of the amount of the unpaid medical expenses.
- ~~(3)~~(1) That the The employee knowingly and intentionally waives the right to further benefits under the Workers' Compensation Act for the injury which is the subject of this agreement.
- ~~(4)~~(2) That the The employer employer, or carrier/administrator will carrier or administrator shall pay all costs incurred.
- ~~(5)~~(3) That No rights other than those arising under the provisions of the Workers' Compensation Act are compromised or released. released by this agreement.
- ~~(6)~~(4) That the The employee has, or has not, returned to a job or position at the same or a greater average weekly wage as was being earned prior to the injury or occupational disease.
- ~~(7)~~(5) Where the employee has not returned to a job or position at the same or a greater wage as was being earned prior to the injury or occupational disease, ~~that~~ the employee has, or has not, returned to some other job or position, and, if so, the description of the particular job or position, the name of the employer, and the average weekly wage earned. This Paragraph Subparagraph of the Rule shall does not apply where the employee is represented by counsel or, even if the employee is not represented by counsel, where the employee or counsel certifies that partial wage loss due to an injury or occupational disease is not being claimed.
- ~~(8)~~(6) Where the employee has not returned to a job or position at the same or a greater average weekly wage as was being earned prior to the injury or occupational disease, ~~the agreement shall summarize~~ a summary of the employee's age, educational level, past vocational training, past work experience, and any impairment, emotional, mental or physical, which predates the current injury or occupational disease. This Subparagraph does not apply upon a showing of: The parties will be relieved of this duty only upon a showing that providing such information creates an

- ~~(A)~~ unreasonable burden upon ~~them~~ the parties; ~~This subsection of the Rule shall not apply where~~
- ~~(B)~~ the employee is represented by counsel; or,
- ~~(C)~~ even if the employee is not represented by counsel, where the employee or counsel certifies that total wage loss due to an injury or occupational disease is not being claimed.

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

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

insurer has not agreed to pay all medical expenses of the employee related to the injury up to the date of the settlement agreement.

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

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

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

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

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

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

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

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

employee's attorney of record, if any, record or the employee, if unrepresented.

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

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

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

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

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

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

SECTION .0600 – CLAIMS ADMINISTRATION AND PROCEDURES

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

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

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

- (1) Notify File a Form 60 *Employer's Admission of Employee's Right to Compensation* to notify the Commission and the employee in writing that it the employer is admitting the employee's right to compensation and, if applicable, satisfy the requirements for payment of compensation under G.S. 97-18(b).
- (2) Notify File a Form 61 *Denial of Workers' Compensation Claim* to notify the Commission and the employee that it the employer denies the employee's right to compensation consistent with G.S. 97-18(c).

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

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

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

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

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

04 NCAC 10A .0602 REQUEST FOR HEARING

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

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

(b) A Form 33, Request for Hearing, 33 Request that Claim be Assigned for Hearing, completed in full, shall constitute compliance with this Rule. The request for a hearing shall be filed with the Docket Section of the Commission. A copy of the

~~Request for Hearing shall be forwarded to the self-insured employer or insurance carrier if not represented, or to the defendant's attorney, if one has been retained. attorneys for all opposing parties, or to the opposing parties themselves, if unrepresented.~~

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

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

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

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

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

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

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

04 NCAC 10A .0604 APPOINTMENT OF GUARDIAN AD LITEM

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

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

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

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

04 NCAC 10A .0605 DISCOVERY

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

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

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

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

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

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

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

- (3)(7) Additional methods of discovery as provided by the North Carolina Rules of Civil Procedure may be used only upon motion ~~and approval by the Industrial Commission~~ or by agreement of the parties. The Commission shall approve the motion to prevent manifest injustice, promote judicial economy, or expedite a decision in the public interest.
- (4) ~~Notices of depositions, discovery requests and responses pertinent to a pending motion, responses to discovery following a motion or order to compel, and responses shall be filed with the Commission, as well as served on the opposing party. Otherwise, discovery requests and responses, including interrogatories and requests for production of documents shall not be filed with the Commission.~~
- (8) Discovery requests and responses, including interrogatories and requests for production of documents, shall not be filed with the Commission, except in the following circumstances:
- (a) notices of depositions;
 - (b) discovery requests and responses pertinent to a pending motion;
 - (c) responses to discovery following a motion or order to compel; and
 - (d) post-hearing discovery requests and responses.
- The above listed documents shall be filed with the Commission, as well as served on the opposing party.
- (5)(9) Sanctions may shall be imposed under this Rule for failure to comply with a Commission order compelling discovery. A motion by a party or its attorney to compel discovery under this Rule and 4 NCAC 10A .607 Rule .0607 of this Subchapter shall represent that informal means of resolving the discovery dispute have been attempted in good faith and state briefly the opposing parties' position or that there has been a reasonable attempt to contact the opposing party and ascertain its position. The parties shall not submit motions to compel production of information otherwise obtainable under G.S. 97-25.6.

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

04 NCAC 10A .0606 DISCOVERY - POST HEARING

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

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

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

04 NCAC 10A .0607 DISCOVERY OF RECORDS AND REPORTS

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

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

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

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

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

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

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

04 NCAC 10A .0609 MOTIONS PRACTICE IN CONTESTED CASES

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

- (1) All motions in cases which are currently calendared for hearing before a the Full

~~Commissioner 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.

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

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

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

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

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

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

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

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

~~(h)~~ Except as otherwise expressly provided by statute, rule, or by order of the Commission, in computing any period of time prescribed or allowed by the Commission Rules, by order of the Commission, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so

computed is to be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation. Whenever a party has the right to do some act or take some proceedings within a prescribed period after the service of any document, three days shall be added to the prescribed period.

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

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

(a) Expedited Medical Motions:

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

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

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

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

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

(c) A Deputy Commissioner shall conduct a Pre-Trial Conference as soon as possible to clarify the issues. Parties may consent to a review of the contested issues by electronic mail submission of only relevant medical records and opinion letters. Depositions deemed necessary by the Deputy Commissioner shall be set on an expedited schedule at the expense of defendants. Requests for independent medical examinations

shall be denied unless there is a demonstrated need for the evaluation. The parties shall provide the deposition transcript to the Deputy Commissioner as soon as possible. Written arguments and briefs shall be filed within five days after the record is closed.

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

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

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

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

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

(b) Emergency Medical Motions:

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

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

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

- ~~(C)(3)~~ A a statement of the time-sensitive nature of the request, with specificity, request;
- ~~(D)(4)~~ Detailed dates and times related to the issue raised and to the date a ruling is requested, requested;
- ~~(E)(5)~~ Documentation documentation in support of the request, including the most recent medical records, records; and
- ~~(F)(6)~~ A a representation that informal means of resolving the issue have been attempted in good faith, and the opposing party's position, if known.

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

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

- ~~(A)(1)~~ Emergency Medical Motions and responses thereto if filed with the Executive Secretary's Office Office, shall be submitted to medicalmotions@ic.nc.gov, medicalmotions@ic.nc.gov;
- ~~(B)(2)~~ Emergency Medical Motions if filed with the Chief Deputy Commissioner, shall be submitted electronically directly to the Chief Deputy Commissioner and his/her his or her legal assistant, assistant; or
- ~~(C)(3)~~ Emergency Medical Motions if filed with the Chair of the Commission shall be submitted electronically to the Chair, his/her his or her legal assistant, and his/her his or her law clerk.

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

04 NCAC 10A .0610 PRE-TRIAL AGREEMENT

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

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

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

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

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

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

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

04 NCAC 10A .0611 HEARINGS BEFORE THE COMMISSION

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

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

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

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

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

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

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

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

04 NCAC 10A .0612 DEPOSITIONS AND ADDITIONAL HEARINGS

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

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

~~(b)(c) In cases where a party, or an attorney for either party, refuses to stipulate medical reports and the case must be is reset or depositions ordered for testimony of medical witnesses, a~~

Commissioner or Deputy Commissioner may in his discretion assess the costs of such hearing or depositions, including reasonable attorney fees, against the party who refused the stipulation. stipulation, pursuant to G.S. 97-88 and G.S. 97-88.1. ~~(e)(d) Except under unusual circumstances, all All lay evidence and witnesses other than those tendered as an expert witness must shall be offered at the initial hearing. hearing before the Deputy Commissioner. Lay Non-expert evidence can only may be offered after the initial hearing before the Deputy Commissioner by order of a Commissioner or Deputy Commissioner. The costs of obtaining lay non-expert testimony by deposition shall be borne by the party making the request unless otherwise ordered by the Commission. Commission as required to prevent manifest injustice and to promote judicial economy.~~

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

04 NCAC 10A .0613 EXPERT WITNESSES AND FEES

~~(a) Dismissals:~~

- ~~(1) No claim filed under the Workers' Compensation Act shall be dismissed without prejudice at plaintiff's instance except upon order of the Industrial Commission and upon such terms and conditions as justice requires; provided, however, that no voluntary dismissal shall be granted after the record in a case is closed.~~
- ~~(2) Unless otherwise ordered by the Industrial Commission, a plaintiff shall have one year from the date of the Order of Voluntary Dismissal to refile his claim.~~
- ~~(3) Upon proper notice and an opportunity to be heard, any claim may be dismissed with or without prejudice by the Industrial Commission on its own motion or by motion of any party for failure to prosecute or to comply with these Rules or any Order of the Commission.~~

~~(b) Removals:~~

- ~~(1) A claim may be removed from the hearing docket by motion of the party requesting the hearing or by the Industrial Commission upon its own motion.~~
- ~~(2) Upon settlement of a case or approval of a form agreement, the parties shall submit a request for removal and/or a dismissal and proposed Order.~~
- ~~(3) A removed case may be reinstated by motion of either party; provided that cases wherein the issues have materially changed since the Order of Removal or where the motion to reinstate is filed more than one year after the Order of Removal, a Form 33 Request for Hearing will be required.~~
- ~~(4) When a plaintiff has not requested a hearing within two years of the filing of an Order of Removal requested by the plaintiff or necessitated by the plaintiff's conduct, and not~~

~~pursued the claim, upon proper notice and an opportunity to be heard, any claim may be dismissed with prejudice by the Industrial Commission, in its discretion, on its own motion or by motion of any party.~~

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

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

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

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

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

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

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

04 NCAC 10A .0614 MEDICAL PROVIDER FEE DISPUTE PROCEDURE

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

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

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

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

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

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

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

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

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

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

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

- (1) the Commission file number, if known;
- (2) the employee's name, address, and last four digits of his or her social security number;
- (3) the date of injury and a description of the workplace injury, including the body parts known to be affected;
- (4) an itemized list of the medical fees in dispute, including CPT codes relating specific charges to the Workers' Compensation Medical Fee Schedule, and explanations directly relating each charge to the employee's workplace injury;
- (5) a copy of the Form 26I *Medical Provider Dispute Resolution Questionnaire* submitted by the Medical Provider, including all accompanying materials, and any response received back by the Medical Provider from the employer or carrier contacted;
- (6) a copy of the written request for assistance submitted to the Medical Fees Section;
- (7) a copy of the written summary by the Medical Fees Section of the informal resolution process and outcome;

- (8) a sworn affidavit by the Medical Provider that states:
- (A) the Medical Provider has treated the employee;
 - (B) the medical fees itemized by the Medical Provider are current and unpaid; and
 - (C) the Medical Provider reasonably believes that the employer or carrier named on the Form 26I Medical Provider Dispute Resolution Questionnaire is obligated to pay the fees under the Workers' Compensation Act; and
- (9) a certification of service upon both the employee and the employer or carrier named on the Form 26I Medical Provider Dispute Resolution Questionnaire.
- (g) A medical provider who has been denied intervention may request a review by the Commission by filing a written request with the Docket Section of the Industrial Commission within 10 days of receipt of the order denying intervention.
- (h) The request for review by the Commission shall be served on all parties to the workers' compensation claim and include:
- (1) a statement of facts necessary to an understanding of the issue(s);
 - (2) a statement of the relief sought;
 - (3) a copy of the motion to intervene, including all attachments required by Paragraph (f) of this Rule; and
 - (4) a copy of the order denying intervention.
- (i) Within 10 days after service of a request for review by the Commission, any party to the workers' compensation claim may file a response, including supporting affidavits or documentation not previously file with the Commission.
- (j) The Commission's determination shall be made on the basis of the request for review and any response(s), including supporting documentation. No briefs or oral argument are allowed by the Commission.
- (k) In accordance with the G.S. 97-90.1(b), when a medical provider is allowed to intervene by the Commission, the intervention is limited to the medical fee dispute.
- (l) Following intervention, a medical provider may request and obtain information from the Commission related to the medical fee. The request for information must be in writing, include a copy of the order allowing the medical provider to intervene, and be directed to the Claims Section of the Commission.
- (m) Discovery by a medical provider shall be allowed following a Commission order allowing intervention but is limited to matters related to the medical fee dispute.
- (n) A medical provider who has intervened in a workers' compensation claim may obtain a hearing before the Commission on a medical fee dispute by filing an Industrial Commission Form 33I *Intervenor's Request that Claim be Assigned for Hearing* and paying a filing fee.
- (o) Upon resolution of a medical fee dispute, costs shall be determined and assessed by the Commission and the medical provider shall be dismissed from the claim. The medical

provider shall retain standing to request review of an order from the Commission.

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

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

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

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

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

04 NCAC 10A .0616 DISMISSALS

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

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

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

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

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

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

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

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

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

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

04 NCAC 10A .0617 ATTORNEYS RETAINED FOR PROCEEDINGS

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

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

(b) Any attorney who wishes to withdraw from representation in a proceeding before the Commission shall file with the Commission, in writing a Motion to Withdraw that contains a statement of reasons for the request and that the request has been served on the client. The attorney shall make reasonable efforts

to ascertain the last known address of the client and shall include this information in the motion. A Motion to Withdraw before an award is made shall state whether the withdrawing attorney requests an attorney's fee from the represented party once an award of compensation is made or approved.

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

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

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

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

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

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

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

04 NCAC 10A .0619 FOREIGN LANGUAGE INTERPRETERS

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

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

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

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

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

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

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

SECTION .0700 – APPEALS

04 NCAC 10A .0701 REVIEW BY THE FULL COMMISSION

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

(b) After receipt of ~~notice of appeal~~, a request for review, the Industrial Commission ~~will~~ shall supply to the appellant a Form 44 *Application for Review* upon which appellant ~~must~~ shall state the grounds for the ~~appeal~~ review. The grounds ~~must~~ shall be stated with particularity, including the ~~specific~~ errors allegedly committed by the Commissioner or Deputy Commissioner and, when applicable, the pages in the transcript on which the alleged errors are recorded. Failure to state with particularity the grounds for ~~appeal~~ review shall result in abandonment of such grounds, as provided in Paragraph (3). (d). Appellant's completed Form 44 *Application for Review* and brief ~~must~~ shall be filed and served within 25 days of appellant's receipt of the transcript or receipt of notice that there will be no

~~transcript~~ transcript, unless the Industrial Commission, in its discretion, waives the use of the Form 44. The time for filing a notice of appeal from the decision of a Deputy Commissioner under these rules shall be tolled until a timely motion to reconsider or to amend the decision has been ruled upon by the Deputy Commissioner.

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

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

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

~~(e)(f)~~ After ~~notice of appeal~~ request for review has been given to the Full Commission, any motions related to the issues ~~for review~~ before the Full Commission shall be filed ~~in triplicate~~ with the Full Commission, with service on the other parties. Motions related to the issues for review including motions for new trial, to amend the record, or to take additional evidence, filed during the pendency of a request for review to the Full Commission shall be argued before the Full Commission at the time of the hearing of the request for review.

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

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

(h) ~~The Industrial Commission or any one of the parties with permission of the Industrial Commission may waive oral argument before the Full Commission.~~ Upon the request of a party or on its own motion, the Commission may waive oral

argument to prevent manifest injustice, promote judicial economy, or expedite a decision in the public interest. In the event of such waiver, the Full Commission ~~will~~ shall file a decision, an award, based on the record, assignments of error record and briefs.

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

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

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

04 NCAC 10A .0702 REVIEW OF ADMINISTRATIVE DECISIONS

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

~~(b) If the parties cannot agree on the record on appeal, appellant shall furnish the Chair of the Industrial Commission, or his~~

~~designee, one copy of the proposed record on appeal, objections and/or proposed alternative record on appeal along with a timely request to settle the record on appeal. The hearing to settle the record on appeal shall be held at the offices of the Industrial Commission or by telephone conference. The record on appeal shall be settled in accordance with the provisions of Rule 18(d) of the North Carolina Rules of Appellate Procedure.~~

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

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

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

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

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

- (1) filing a Motion for Reconsideration addressed to the Commissioner who filed the order; or
- (2) requesting a review to a Full Commission panel by requesting a hearing within 15 days of receipt of the order or receipt of the ruling on a Motion for Reconsideration.

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

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

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

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

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

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

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

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

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

within 15 days of receipt of the Order or receipt of the ruling on a Motion for Reconsideration.

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

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

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

04 NCAC 10A .0704 REMAND FROM THE APPELLATE COURTS

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

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

SECTION .0800 – RULES OF THE COMMISSION

04 NCAC 10A .0801 SUSPENSION OF RULES

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

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

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

04 NCAC 10A .0802 SANCTIONS

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

manner prescribed by Rule 37 of the North Carolina Rules of Civil Procedure.

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

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

04 NCAC 10A .0803 RULEMAKING

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

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

SECTION .0900 – REPORT OF EARNINGS

04 NCAC 10A .0901 CHECK ENDORSEMENT

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

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

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

04 NCAC 10A .0902 NOTICE

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

NOTICE TO EMPLOYEE RECEIVING WORKERS' COMPENSATION BENEFITS

This NOTICE is intended to advise you of important information you ~~need to~~ must know

if you are receiving workers' compensation benefits.

Please TAKE NOTICE of the following:

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

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

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

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

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

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

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

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

(c) The employee shall complete and return the Form 90 *Report of Earnings* within 15 days after receipt of a Form ~~90-~~ 90 Report

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

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

SECTION .1000 – PREAUTHORIZATION FOR MEDICAL TREATMENT

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

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

(b) As used in this Section:

- (1) "insurer" means an insurance carrier, self-insured administrator, managed care organization, employer, or any other entity that conducts preauthorization review;
- (2) "preauthorization" means the determination by an insurer that proposed surgical or inpatient treatment is medically necessary; and
- (3) "preauthorization review" means a prospective review process conducted by an insurer to determine whether a proposed surgical or inpatient treatment is medically necessary.

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

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

(e) Insurers shall, on an annual basis, electronically submit an electronic copy or link for any medical practice guidelines the insurer utilizes in the preauthorization review process to the

Commission at the following electronic site (<ftp://ftp.ic.nc.gov>) by July 1 of each year.

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

(g) The preauthorization review policy shall include:

- (1) procedures for requesting preauthorization, responding to and approving requests for preauthorization, and appealing a denial of preauthorization;
- (2) procedures via telephone, fax and email for communicating with the preauthorization agent with decision making powers on a pending request for preauthorization (including Peer Review Physicians) on a continuous basis on every business day (which excludes weekends and holidays) between the hours of 8:00 a.m. and 8:00 p.m. eastern standard time;
- (3) Delivery of a request for preauthorization to the claims adjuster or other designated Preauthorization Agent at the place (email address, fax number, telephone number) provided by the insurer shall constitute receipt of the preauthorization request by the claims adjuster;
- (4) methods by which the insurer shall respond to requests for preauthorization and methods by which a health care provider, claimant, person, or entity requesting preauthorization may respond to inquiries or determinations by the insurer;
- (5) Upon receipt of a request for preauthorization, the insurer shall provide to the health care provider or person making the request the name, telephone number, fax number and email address of the Preauthorization Agent. The Preauthorization Agent must be available on a continuous basis, every business day (which excludes weekends and holidays) from 8:00 a.m. to 8:00 p.m. Eastern Standard Time to facilitate responses to insurer communications or determinations;
- (6) a statement that the insurer shall provide a statement with supporting documentation of the substantive clinical justification for a denial of preauthorization, including the relevant clinical criteria upon which the denial is based. Denials based upon lack of information shall specify what information is needed to make a determination;
- (7) an outline of the appeal rights and procedures with instructions on how to submit appeals by mail, email or fax;
- (8) a statement that advises the appealing party of the right to seek authorization for any denied treatment from the Commission; and

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

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

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

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

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

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

- (1) an extension of time, not to exceed seven business days, is agreed upon by the insurer and the medical provider requesting preauthorization (or the claimant's attorney or unrepresented claimant, if no medical provider has requested preauthorization); or
- (2) an additional extension of time is granted by the Commission pursuant to G.S. 97-25.3(a)(3).

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

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

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

SUBCHAPTER 10B – TORT CLAIMS RULES

SECTION .0100 – ADMINISTRATION

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

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

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

04 NCAC 10B .0102 OFFICIAL FORMS

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

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

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

- (1) No statement, question, or information blank contained on the Commission form is omitted from the substituted form.
- (2) The substituted form is identical in size and format with the Commission form.

Authority G.S. 143-300.

04 NCAC 10B .0103 FILING FEES

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

- (1) Form T 1, Claim for Damages Under Tort Claims Act, N.C. Gen. Stat. § 143-297.
- (2) Form T 3, Release of Tort Claim Under N.C. Gen. Stat. § 143-297, et seq.
- (3) Form T44, Application for Review. N.C.G.S. 143-292
- (4) Such other forms relating to Tort Claims which, from time to time, may be promulgated by the Industrial Commission.

(b) The use of any printed forms other than those approved and adopted by the Industrial Commission is prohibited. However, a

~~claim for damages under the Tort Claims Act, and an answer or other responsive pleading by a defendant, may be filed by way of an original typed claim or answer and other responsive pleading which is similar in format to a civil pleading in the General Courts of Justice, and which is verified.~~

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

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

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

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

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

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

04 NCAC 10B .0104 FILING BY FACSIMILE TRANSMISSION

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

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

SECTION .0200 - CLAIMS PROCEDURES

04 NCAC 10B .0201 RULES OF CIVIL PROCEDURE

~~(a) The Rules of Civil Procedure as provided in N.C.G.S. G.S. 1A-1 shall apply in tort claims before the Industrial~~

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

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

- ~~(1) An informal recorded telephonic hearing or other similar method of informal hearing as determined appropriate by the Industrial Commission is held before a Deputy Commissioner for the purpose of determining~~
 - ~~(A) whether a claim for medical malpractice has been stated;~~
 - ~~(B) whether expert testimony is necessary for the plaintiff to prevail; and~~
 - ~~(C) if expert testimony is deemed necessary, whether the plaintiff will be able to produce such testimony on the applicable standard of care.~~

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

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

Authority G.S. 143-300.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Authority G.S. 143-300.

04 NCAC 10B .0203 INFANTS AND INCOMPETENTS

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

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

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

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

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

04 NCAC 10B .0204 MOTIONS

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

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

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

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

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

(e) Motions to continue or remove a case from the hearing docket shall be made as much in advance as possible of the

scheduled hearing and shall be made in writing. The moving party shall state that the other parties have been advised of the motion and relate the position of the other parties regarding the motion. Oral motions are permitted in emergency situations.

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

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

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

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

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

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

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

04 NCAC 10B .0205 MEDIATION

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

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

submitted with all motions. Service shall be made on all other parties.

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

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

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

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

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

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

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

(a) The parties to tort claims, by agreement or Order of the Commission, shall participate in mediation. Any party participating in mediation is bound by the Rules for Mediated Settlement and Neutral Evaluation Conferences of the Commission found in 04 NCAC 10G, except to the extent the same conflict with the Tort Claims Act or the rules in this Subchapter, in which case the Tort Claims Act and the rules in this Subchapter apply.

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

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

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

04 NCAC 10B .0206 HEARINGS

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

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

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

- (1) ~~In the prison unit where plaintiff is incarcerated or in some other prison facility or secure facility agreed upon by the Industrial Commission and the Attorney General's office; or~~
- (2) ~~By videoteleconference according to procedures adopted by the Industrial Commission; or~~
- (3) ~~By telephone conference according to procedures adopted by the Industrial Commission.~~

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

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

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

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

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

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

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

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

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

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

- (1) in the prison unit where plaintiff is incarcerated or in some other prison facility or secure facility; or
- (2) by videoteleconference;
- (3) by telephone conference.

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

(c) Witnesses incarcerated by the North Carolina Division of Adult Corrections may be subpoenaed by a writ of habeas corpus ad testificandum. Plaintiff shall file an Application and Writ of Habeas Corpus Ad Testificandum, with a copy to the defendant, for review and approval by the Deputy Commissioner before whom the matter is calendared for an evidentiary hearing consistent with the Workers' Compensation Act.

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

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

04 NCAC 10B .0208 HEARING COSTS

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

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

SECTION .0300 - APPEALS TO FULL COMMISSION

04 NCAC 10B .0301 SCOPE

A letter or other document expressing an intent to appeal, which is filed within 15 days of receipt of the Decision and Order of the Industrial Commission, and which clearly sets forth the Decision and Order from which appeal is taken, shall be

~~considered notice of appeal to the Full Commission within the meaning of N.C.G.S. 143-292. Such notice shall include a written statement confirming service of a copy of the notice by mail or in person on the opposing party or parties. The Rules in this Section are the applicable Rules for appeals of cases brought pursuant to Article 31 of Chapter 143 of the General Statutes to the Full Commission.~~

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

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

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

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

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

04 NCAC 10B .0303 PROPOSED ISSUES ON APPEAL

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

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

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

04 NCAC 10B .0304 DISMISSALS OF APPEALS

~~Failure to file assignments of error may result in the dismissal of the appeal either upon the Motion of the non-appealing party or upon the Full Commission's own Motion.~~

Authority G.S. 143-300.

04 NCAC 10B .0305 BRIEFS TO THE FULL COMMISSION

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

~~(b) Thereafter, appellee's brief shall be filed with the Industrial Commission in triplicate no later than 25 days after the service of appellant's brief. When an appellant fails to file a brief, appellee shall file his brief within 25 days after appellant's time~~

~~for filing a brief has expired. If both parties appeal, they shall each file an appellant's and appellee's brief on the schedule set forth herein. The parties may file with the Docket Director a written stipulation to a single extension of time for each party, not to exceed 30 days, if the matter has not been calendared for hearing.~~

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

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

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

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

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

(d) Briefs to the Full Commission shall not exceed 35 pages, excluding attachments. No page limit applies to the length of attachments. Briefs shall be prepared using a 12 point type, shall be double spaced, and shall be prepared with non-justified right margins. Each page of the brief shall be numbered at the bottom right of the page. When a party quotes or paraphrases testimony or other evidence from a transcript of the evidence or from an exhibit in the party's brief, the party shall include, at the end of the sentence in the brief that quotes or paraphrases the testimony or other evidence, a parenthetical entry that designates the source of the quoted or paraphrased material and the page number location within the applicable source. The party shall use "T"

for transcript, "Ex" for exhibit, and "p" for page number. For example, (1) if a party quotes or paraphrases material located in the transcript on page 11, the party shall use the following format "(T p 11)" and (2) if a party quotes or paraphrases material located in exhibit three on page 12, the party shall use the following format "(Ex 3 p 12)". When a party quotes or paraphrases testimony or other evidence in the transcript of a deposition in the party's brief, the party shall include, at the end of the sentence in the brief that quotes or paraphrases the testimony or other evidence from the deposition, a parenthetical entry that contains the name of the person deposed and the page number location within the transcript of the deposition. For example, if a party quotes or paraphrases the testimony of John Smith, located on page 11 of the transcript of the deposition, the party shall use the following format "(Smith p 11)".

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

04 NCAC 10B .0306 MOTION FOR NEW HEARING

~~A Motion for a New Hearing must be filed in writing, and supported by Affidavit. Such Motions filed during the pendency of an appeal to the Full Commission shall be argued before the Full Commission at the time of the hearing of the appeal.~~

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

04 NCAC 10B .0307 MOTIONS BEFORE THE FULL COMMISSION

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

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

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

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

04 NCAC 10B .0308 STAYS

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

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

04 NCAC 10B .0309 NEW EVIDENCE

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

Authority G.S. 143-300.

04 NCAC 10B .0310 WAIVER OF ORAL ARGUMENT

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

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

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

SECTION .0400 - APPEALS TO THE COURT OF APPEALS

04 NCAC 10B .0401 SCOPE

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

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

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

04 NCAC 10B .0402 STAYS

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

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

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

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

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

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

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

04 NCAC 10B .0404 REMAND FROM APPELLATE COURTS

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

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

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

SECTION .0500 – RULES OF THE COMMISSION

04 NCAC 10B .0501 SUSPENSION OF RULES

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

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

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

04 NCAC 10B .0502 RULEMAKING

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

Authority G.S. 143-300.

04 NCAC 10B .0503 SANCTIONS

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

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

Authority G.S. 1A-1, Rule 37; 143-291; 143-296; 143-300.

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

SECTION .0100 – ADMINISTRATION

04 NCAC 10C .0101 APPLICABILITY OF THE RULES

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

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

(b) Any ~~RP-rehabilitation professional~~ RP-rehabilitation professional who is not assigned under the Workers' Compensation Act and approved by the Commission pursuant to Rule .0105 of this Subchapter must disclose his or her role to (4) the medical provider at the time of the initial contact and (2) any other person from whom the non-approved ~~RP-rehabilitation professional~~ RP-rehabilitation professional seeks information about the case.

Authority G.S. 97-18(d); 97-25.4; 97-25.5; 97-32.2; 97-80.

04 NCAC 10C .0102 PURPOSE OF THE RULES

(a) ~~The purpose of these Rules is to foster professionalism in the provision of rehabilitation services in Industrial Commission cases, such that in all cases the primary concern and commitment of the RP is to the medical and vocational rehabilitation of the injured worker rather than to the personal or pecuniary interests of the parties.~~

(b) ~~To this end, these Rules are to be interpreted to promote frank and open cooperation among parties in the rehabilitation process, and to discourage the pursuit of plans or purposes which impede or conflict with the parties' progress toward that goal.~~

Authority G.S. 97-25.4.

04 NCAC 10C .0103 DEFINITIONS

As used in this Subchapter:

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

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

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

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

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

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

(c) ~~evaluation of treatment results;~~

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

(e) ~~referral for further vocational rehabilitation services.~~

(e)(3) "~~Vocational Rehabilitation~~" "Vocational rehabilitation" ~~refers to~~ means the delivery and coordination of services under an individualized written plan, with the goal of assisting the injured workers—worker to return to suitable employment—employment, as defined by Item (5) of this Rule or applicable statute, and to substantially increase the employee's wage-earning capacity.

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

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

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

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

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

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

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

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

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

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

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

(g)(5) "~~Suitable employment~~" For claims arising before June 24, 2011, "suitable employment" means employment in the local labor market or self-employment which is reasonably

attainable and which offers an opportunity to restore the worker as soon as possible and as nearly as practicable to pre-injury wage, while giving due consideration to the worker's qualifications (age, education, work experience, physical and mental capacities), impairment, vocational interests, and aptitudes. No one factor shall be considered solely in determining suitable employment. For claims arising on or after June 24, 2011, the statutory definition of "suitable employment," G.S. 97-2(22), applies.

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

Authority G.S. 97-2(22); 97-25.4; 97-25.5; 97-32.2; 97-80.

04 NCAC 10C .0105 QUALIFICATIONS REQUIRED

(a) 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) 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) Rehabilitation professionals who are Licensed Professional Counselors are subject to the requirements of the North Carolina Licensed Professional Counselor's Act.

(d) 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.

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

- (1) Requirements for Qualified Rehabilitation Professionals (QRPs):
 (A) Two years of full time work experience, or its equivalent, in workers' compensation case management, where a minimum of 30 percent of the time was spent in managing medical and/or vocational rehabilitation services to persons with disabling conditions or diseases. This

experience should have been within the past 15 years; AND one of the following credentials, or a similar credential determined by the Industrial Commission as a substantial equivalent thereto:

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

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

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

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

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

- (i) CRC, CRRN, CDMS, CVE, COHN, ONC or CCM without the workers' compensation case management experience required;
- (ii) A post baccalaureate degree in a health related field from an accredited institution, plus one year of experience in the provision of rehabilitation services to persons with disabling conditions or diseases;
- (iii) A baccalaureate degree in a health related field from an accredited institution, plus two years experience in the provision of rehabilitation services to individuals with disabling conditions or diseases; or

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

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

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

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

(1) possess one of the following certifications:

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

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

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

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

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

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

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

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

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

(e) A qualified rehabilitation professional must also:

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

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

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

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

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

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

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

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

(2) individuals with a post-baccalaureate degree in a health-related field from an institution accredited by an agency recognized by the United States Department of Education and

one year of experience providing rehabilitation services to persons with disabling conditions or diseases;

- (3) individuals with a baccalaureate degree in a health-related field from an institution accredited by an agency recognized by the United States Department of Education and two years of experience providing rehabilitation services to individuals with disabling conditions or diseases; and
- (4) individuals with current North Carolina licensure as a registered nurse and three years of experience in clinical nursing providing care for adults with disabling conditions and diseases.

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

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

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

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

Authority G.S. 97-25.4; 97-32.2; 97-25.5; 97-80.

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

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

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

compensation and the carrier's or employer's ownership of or affiliation with the ~~RP~~ rehabilitation professional.

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

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

- (1) for Certified Rehabilitation Counselors and Certified Vocational Evaluators, the Commission on Rehabilitation Counselor Certification Code of Professional Ethics;
- (2) for Certified Registered Rehabilitation Nurses and Orthopaedic Nurse Certifieds, the Code of Ethics for Nurses;
- (3) for Certified Disability Management Specialists, the Certification of Disability Management Specialists Commission Code of Professional Conduct;
- (4) for Certified Occupational Health Nurses and Certified Occupational Health Nurse-Specialists, the American Association of Occupational Health Nurses, Inc. Code of Ethics; and
- (5) for Certified Case Managers, the Code of Professional Conduct for Case Managers.

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

- (1) for Certified Rehabilitation Counselors and Certified Vocational Evaluators, the Commission on Rehabilitation Counselor Certification Code of Professional Ethics), <http://www.crc certification.com/filebin/pdf/CRCCodeOfEthics.pdf>;
- (2) for Certified Registered Rehabilitation Nurses and Orthopaedic Nurse Certifieds, the Code of Ethics for Nurses, <http://www.nursingworld.org/MainMenuCategories/EthicsStandards/CodeofEthicsforNurses/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>; and
- (5) for Certified Case Managers, the Code of Professional Conduct for Case Managers http://www.ccmcertification.org/sites/default/files/downloads/2012/CCMC_Code of Conduct%202-22-12.pdf.

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

~~(f) Prohibited Conduct:~~

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

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

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

Authority G.S. 97-25.4; 97-32.2; 97-25.5; 97-80.

04 NCAC 10C .0107 COMMUNICATION

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

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

~~(b) RPs shall timely inform injured workers that the RP Rehabilitation Professional will share relevant and material information with the employer and insurance carrier and that the~~

~~RP may be compelled to testify regarding any information obtained.~~

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

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

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

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

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

~~(g)(f) The RP—rehabilitation professional shall make periodic written reports documenting accurately and completely the substance of all significant activity in the case, including the rehabilitation activity activity, defined above, which reports shall be provided to all parties at the same time. A worker not represented by counsel shall be furnished The rehabilitation professional shall furnish a worker who is unrepresented by counsel with a copy of each periodic report, or, in the alternative, the RP rehabilitation professional shall advise the worker either orally or in writing (at least as often as reports are produced) as to the plan for and progress of the case, and shall advise the worker that he or she—the worker has the right to request a copy of the reports under Industrial Commission Rule 04 NCAC 10A .0607.~~

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

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

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

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

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

Authority G.S. 97-25.4; 97-25.5; 97-32.2; 97-2(19); 97-80.

04 NCAC 10C .0108 INTERACTION WITH PHYSICIANS

(a) At the initial visit with a physician the ~~RP-rehabilitation professional~~ shall provide ~~professional~~ identification and ~~shall~~ explain the ~~RP's rehabilitation professional's~~ role in the case.

(b) In all cases, the ~~RP-rehabilitation professional~~ shall advise the worker that ~~he or she the worker~~ has the right to a private examination by the medical provider outside of the presence of the ~~RP-rehabilitation professional~~. If the worker prefers, he or she may request that the ~~RP-rehabilitation professional~~ accompany him or her during the examination. However, if the worker or the worker's attorney notifies the ~~RP-rehabilitation professional~~ in writing that the worker desires a private examination, no subsequent waiver of that right shall be effective unless the waiver is ~~revoked-made~~ in writing by the worker or, if represented, by the worker's attorney.

(c) If the ~~RP-rehabilitation professional~~ ~~wishes~~ needs to have a ~~an~~ personal-in-person conference with the physician following an examination, the ~~RP-rehabilitation professional~~ ~~should~~ shall reserve with the physician sufficient appointment time for ~~a-the~~ conference. The worker ~~must-shall~~ be offered the opportunity to attend ~~this-the~~ conference with the physician. If the worker or the physician does not consent to a joint conference, or if in the physician's opinion it is medically contraindicated for the worker to participate in the conference, the ~~RP-rehabilitation professional~~ ~~will-shall~~ note this in his or her report, ~~and-may in~~ such case communicate directly with the physician, and shall report the substance of the communication.

(d) When the ~~RP-rehabilitation professional~~ determines that it is necessary to communicate with a physician other than at a joint meeting, the ~~RP-rehabilitation professional~~ shall first notify the injured worker, or ~~his/her his or her~~ attorney if represented, of the ~~RP's rehabilitation professional's~~ intent to communicate and the reasons therefore. The ~~RP-rehabilitation professional~~ ~~need is~~ is not required to obtain the injured worker's or his or her attorney's prior consent ~~for the following types of communication, if:~~

- (1) The communication is limited to scheduling issues or requests for time-sensitive medical records;

- (2) A medical emergency is involved;
- (3) The injured worker's health or medical treatment would either be adversely affected by a delay or benefited by immediate action;
- (4) The communication is limited to advising the physician of the employer or carrier approval for recommended testing or treatment;
- (5) The injured worker or attorney has consented to ~~such-the communications~~ communications; ~~through a valid, current authorization;~~
- (6) The communication is initiated by the physician; or
- (7) The injured worker failed to show up for a scheduled appointment or arrived at a time other than the scheduled appointment time.

~~Whenever an RP~~ When a rehabilitation professional communicates with a physician without the prior consent or presence of the injured worker, the RP-rehabilitation professional must promptly document the reasons for and the substance of the communication and promptly report such-the reasons and substance to the injured worker or his or her attorney, if represented, pursuant to Rule VI-.0106 of this Subchapter.

~~(e) The RP may assist in scheduling second opinions requested by the treating physician, as well as supporting treatment. In such case, the worker shall receive at least 10 calendar days notice of an appointment for a second opinion unless otherwise agreed by the parties or required by statute.~~

~~(f) The RP may assist in obtaining from the treating physician an opinion as to the degree of permanent partial impairment retained by the worker at maximum medical improvement. The decision to obtain a second physician's opinion on the degree of impairment is not within the practice of rehabilitation. However, if requested by the party who desires a second opinion, the RP may assemble information, schedule, coordinate, and, with the worker's consent, attend the appointment with that physician.~~

~~(g) If a party requests a second opinion or an independent medical examination, the RP's involvement is limited to assembling and forwarding medical records and information, and scheduling, coordinating, and, with the worker's consent, attending the appointment with that physician.~~

(e) The following guidelines apply to interactions regarding impairment ratings, independent medical examinations, second opinions or consults:

- (1) Rehabilitation professionals shall not initiate a request for impairment ratings, second opinions or independent medical examinations. Rehabilitation professionals may communicate the requests to medical providers, injured workers and carriers, and shall clearly communicate the source of the requests.
- (2) When a party or medical provider requests a consult, second opinion or independent medical examination, the rehabilitation professional may assemble and forward medical records and information, schedule and coordinate an appointment, and, if the worker consents, have a joint meeting with the

medical provider and the worker after a private exam, if requested.

- (3) When any such exam is requested by the carrier, the worker shall receive at least 10 calendar days' notice of the appointment unless the parties agree otherwise or unless otherwise required by statute.

~~(h)(f)~~ The RP-rehabilitation professional shall simultaneously send ~~copies~~ to the parties copies of all written communications ~~to with medical care providers, providers~~ and shall accurately and completely record and report all oral communications.

Authority G.S. 97-25.4; 97-25.5; 97-32.2; 97-80.

04 NCAC 10C .0109 VOCATIONAL REHABILITATION SERVICES AND RETURN TO WORK

(a) When performing the vocational assessment and formulating and drafting the individualized written rehabilitation plan for the employee required by G.S. 97-32.2(c), the vocational rehabilitation professional shall follow G.S. 97-32.2.

(b) Job placement activities may not be commenced until after a vocational assessment and an individualized written rehabilitation plan for vocational rehabilitation services specifying the goals and the priority for return-to-work options have been completed in the case in accordance with G.S. 97-32.2. Job placement activities shall be directed only toward prospective employers offering the opportunity for suitable employment, as defined by Item (5) of Rule .0103 of this Subchapter or by applicable statute.

(c) Return-to-work options shall be considered in the following order of priority:

- (1) current job, current employer;
- (2) new job, current employer;
- (3) on-the-job training, current employer;
- (4) new job, new employer;
- (5) on-the-job training, new employer;
- (6) formal education or vocational training to prepare worker for job with current or new employer; and
- (7) self-employment, only when its feasibility is documented with reference to the employee's aptitudes and training, adequate capitalization, and market conditions.

(d) When an employee requests retraining or education as permitted in G.S. 97-32.2(a), the vocational rehabilitation professional shall provide a written assessment of the employee's request, which includes an evaluation of:

- (1) the retraining or education requested;
- (2) the availability, location, cost, and identity of providers of the requested retraining or education;
- (3) the likely duration until completion of the requested retraining or education and the likely class schedules, class attendance requirements, and out-of-class time required for homework and study;
- (4) the current or projected availability of employment upon completion; and

- (5) the anticipated pay range for employment upon completion.

~~(a)(e)~~ The RP-rehabilitation professional shall obtain from the medical provider work restrictions ~~which that fairly~~ address the demands of any proposed employment. If ordered by a physician, the RP-rehabilitation professional ~~should shall obtain~~ schedule an appointment with a third party provider to evaluate an injured worker's functional capacity valuation (FCE) or physical 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 ~~hereinby~~ Item (5) of Rule .0103 of this Subchapter ~~or by~~ applicable statute.

~~(c)(g)~~ If the RP-rehabilitation professional intends to utilize written or videotaped job descriptions in the return-to-work process, the RP-rehabilitation professional shall provide a copy of the description to all parties for review before the job description is provided to the doctor. The worker or the worker's attorney shall have seven business days from the mailing of the description, description to notify the RP-rehabilitation professional, all parties, and the physician of any objections or amendments ~~to the job description thereto~~. The job description and the objections or amendments, if any, shall be submitted to the physician simultaneously. This process ~~may shall~~ be expedited ~~on occasions~~ when job availability is critical. This waiting period does not apply if the worker or the worker's attorney has pre-approved the job description.

~~(d)(h)~~ In preparing written job descriptions, the RP rehabilitation professional shall utilize ~~recognized standards which may include but not be limited to the~~ Dictionary of Occupational Titles ~~and/or and~~ the Handbook for Analyzing Jobs published by the U.S. ~~United States~~ Department of Labor, ~~which are recognized as national standard references for use in vocational rehabilitation.~~

~~(e)(i)~~ In identifying proposed employment for the injured worker, the RP-rehabilitation professional ~~should shall~~ consider the worker's transportation requirements.

~~(f)(j)~~ The rehabilitation professional may conduct follow-up after job placement ~~may be carried out~~ to verify the appropriateness of the job placement.

~~(g)(k)~~ The RP-rehabilitation professional shall not initiate or continue placement activities ~~which that~~ do not appear reasonably likely to result in placement of the injured worker in suitable employment. The RP-rehabilitation professional shall report to the parties when efforts to place the worker in suitable employment do not appear reasonably likely to result in placement of the injured worker in suitable employment.

Authority G.S. 97-25.4; 97-25.5; 97-32.2; 97-2(22).

04 NCAC 10C .0110 CHANGE OF REHABILITATION PROFESSIONAL

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

~~(a)(b)~~ An RP-A rehabilitation professional may be removed from a case upon motion by either party for good cause shown or by the Industrial Commission in its own discretion to prevent

manifest injustice. The motion shall be filed with the Executive Secretary's Office and served upon all parties and the ~~RP-rehabilitation professional.~~ Any party or the ~~RP~~ rehabilitation professional may file a response to the motion within 10 days. ~~The Industrial Commission shall then determine whether to remove the RP from the case. The parties are referred to Industrial Commission Rule 4 NCAC 10A .0609.~~

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

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

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

Authority G.S. 97-25.4; 97-25.5; 97-32.2; 97-80; 97-83; 97-84.

SECTION .0200 - RULES OF THE COMMISSION

04 NCAC 10C .0201 SUSPENSION OF RULES

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

Authority G.S. 97-25.4; 97-80.

04 NCAC 10C .0202 SANCTIONS

(a) For ineffective delivery of rehabilitation services, failure to comply with applicable laws, rules or regulations, or failure to respond to lawful orders of the Commission or other regulatory authorities, the Commission shall prohibit or restrict a rehabilitation professional, or group of rehabilitation professionals, further participation by particular workers, employers, or health care providers, groups or classes of them, or all of them.

(b) As provided in 4 NCAC 10A .0802, the Commission shall impose appropriate sanctions for violation of the Rules in this Subchapter.

Authority G.S. 97-25.4; 97-25.5; 97-32.2; 97-80; 97-84.

SUBCHAPTER 10D – WORKERS’ COMPENSATION RULES FOR MANAGED CARE ORGANIZATIONS

SECTION .0100 – RULES

04 NCAC 10D .0101 PURPOSE

~~These The Rules in this Subchapter~~ are intended to facilitate the timely and cost-effective delivery of appropriate medical compensation services to fulfill the employer's duty to provide such services as are ~~reasonably~~-necessary to effect a cure, give relief, or shorten the period of disability resulting from compensable injuries through the use of Managed Care Organizations (MCOs). ~~These The Rules in this Subchapter~~ do not affect ~~existing~~, informal lists or "employer networks" of providers assembled by employers or insurers for their own referrals.

Authority G.S. 97-2(19); 97-2(20); 97-2(21); 97-25; 97-25.2; 97-25.3(e); 97-25.4(a); 97-26(b); 97-26(c).

04 NCAC 10D .0102 DEFINITIONS

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

- ~~(1) Managed Care Organization (MCO). A preferred provider organization (PPO) or a health maintenance organization (HMO) regulated under G.S. 58.~~
- ~~(2) Health Care Provider (Provider). Any medical doctor, chiropractor, other physician, hospital, pharmacy, nurse, dentist, podiatrist, physical therapist, rehabilitation specialist, psychologist and any other person or firm providing medical care pursuant to the Workers' Compensation Act. Payment for services rendered for a workers' compensation patient shall be controlled by contract between the provider and MCO, or if none, by the Commission's Medical Fee Schedules.~~
- ~~(3)(1) Employer. Any person, firm, corporation, or governmental entity. "Employer" means an employer as defined by G.S. 97-2(3) who is obligated by the Workers' Compensation Act to pay or provide indemnity or medical compensation, including any insurance carrier, self-insurance fund, third party administrator or other person, firm or corporation undertaking to pay or adjust claims on behalf of the employer's employees.~~
- ~~(4) Commission. The North Carolina Industrial Commission and its employees acting on its behalf.~~
- ~~(5)(2) Workers' Compensation Act. "Act" means The the North Carolina Workers' Compensation Act, G.S. Chapter 97, Article 1 (G.S. 97-1 – 97-101), as interpreted and applied by the rules and decisions of the Commission and the courts of North Carolina and the United States. (G.S. 97-1 – G.S. 97-101.1).~~
- ~~(6)(3) Employer Network. As used in Rule I, "Employer network" means any group of providers assembled by or for an entity liable for medical compensation that agrees to accept~~

the referrals of that entity's workers' compensation patients, and from among whom an adjuster, officer, employee, or insured patient of the entity chooses the initial provider; provided, the entity has no right to sell the services of the providers to a third party.

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

04 NCAC 10D .0103 QUALIFICATION BY DEPARTMENT OF INSURANCE

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

Authority G.S. 97-2(21); 97-25.

04 NCAC 10D .0104 QUALIFICATION AND REVOCATION

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

Authority G.S. 97-25.2.

04 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.~~

Authority G.S. 97-25.2.

04 NCAC 10D .0106 CONTRACT PROVISIONS

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

- ~~(1) The the principal place(s) of employment of the covered employees, including address(es) and phone number(s) of the workplace(s);~~
- ~~(2) The the name, title, mailing address, phone number, fax number, and e-mail email address, if any, of an officer or responsible employee of the MCO empowered to assent to the treatment or referral of covered employees, capable of obtaining and providing complete business, administrative and medical records generated pursuant to the contract, and empowered to resolve routine disputes with patients, employees, employers and providers under the Commission's jurisdiction;~~
- ~~(3) The the name, title, mailing address, phone number, fax number, and e-mail email address,~~

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

Authority G.S. 97-25.2.

04 NCAC 10D .0107 INFORMATION FOR EMPLOYEE/PATIENT-EMPLOYEE

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

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

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

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

Authority G.S. 97-25.2.

04 NCAC 10D .0108 INCLUSIVE PROVIDER PANELS

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

for that specialty, and is willing to contract to provide their services on a non-discriminatory basis.

Authority G.S. 97-2(19); 97-2(20); 97-25; 97-25.2.

04 NCAC 10D .0109 QUALITY ASSURANCE AND UTILIZATION REVIEW

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

Authority G.S. 97-25.2.

04 NCAC 10D .0110 SUSPENSION OF RULES

For good cause, and in its discretion, subject to statutory requirements, the Commission may waive adherence to any of these Rules.

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

Authority G.S. 97-80(a); 97-25.2.

04 NCAC 10D .0111 SANCTIONS

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

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

Authority G.S. 97-18(i); 97-25; 97-25.2; 97-80(a); 97-88(1); 1A-1, Rule 37.

SUBCHAPTER 10E –ADMINISTRATIVE RULES OF THE INDUSTRIAL COMMISSION

SECTION .0100 – ADMINISTRATION

04 NCAC 10E .0101 INSTRUCTIONS FOR FILING A PETITION FOR RULE-MAKING

~~(a) All insurance companies and self insured administrators providing benefits under the North Carolina Workers' Compensation Act shall, within 90 days of the effective date of these Rules, adopt, file with the Chairman of the North Carolina Industrial Commission at 430 N. Salisbury Street, Raleigh, NC 27611 and implement a Utilization Review Plan for containing~~

~~medical compensation services costs. If an entity has in effect a Utilization Review Plan that predates these Rules, it may file it with the Chairman of the Commission in lieu of adopting a new plan.~~

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

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

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

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

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

- (1) the name and address of the person submitting the petition;
- (2) a citation to any rule for which an amendment or repeal is requested;
- (3) a draft of any proposed rule or amended rule;
- (4) an explanation of why the new rule or amendment or repeal of an existing rule is requested and the effect of the new rule, amendment, or repeal on the procedures of the Commission; and
- (5) any other information the person submitting the petition considers relevant.

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

(c) When the Chair denies a petition for rule-making, he or she must send written notice of the denial to the person who submitted the request. The notice must state the reason for the denial. When the Chair grants a rule-making petition, he or she must initiate rule-making proceedings and send written notice of the proceedings to the person who submitted the request.

Authority G.S. 150B-20.

04 NCAC 10E .0102 MAILING LIST

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

(b) The request shall:

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

- (2) specify the subject areas within the authority of the Commission for which notice is requested; and
- (3) state the calendar year(s) for which the notice is desired.

Authority G.S. 97-80(a); 150B-21.2(d).

SECTION .0200 – FEES

04 NCAC 10E .0201 DOCUMENT AND RECORD FEES

- (a) The fees in this Rule apply to all subject areas within the authority of the Commission.
- (b) Upon written request, to the extent permitted by Article 1 of Chapter 97, Article 31 of Chapter 143, and Chapter 132 of the North Carolina General Statutes, transcripts of Commission proceedings, copies of recordings of Commission proceedings, copies of exhibits from Commission proceedings, and copies of all other public documents are available at the “actual cost” as defined by G.S. 132.6.2(b). The Commission shall provide the “actual cost” on the Commission’s website. the actual cost.
- (f) Certified copies are available upon request at a cost of one dollar (\$1.00) per certification in addition to any other applicable cost for the document. Electronic copy certification is not available.
- (g) Documents shall be sent via certified mail upon request at the actual cost established by the United States Postal Service.
- (h) North Carolina sales tax shall be added if applicable.

Authority G.S. 7A-305; 97-79; 97-80; 132-6.2; 143-291.1; 143-291.2; 143-300.

04 NCAC 10E .0202 HEARING COSTS OR FEES

- (a) The following hearing costs or fees apply to all subject areas within the authority of the Commission:
 - (1) one hundred twenty dollars (\$120.00) for a hearing before a Deputy Commissioner;
 - (2) one hundred twenty dollars (\$120.00) if a case is withdrawn after the case is calendared for a specific hearing date;
 - (3) two hundred twenty dollars (\$220.00) for a hearing before the Full Commission;
 - (4) one hundred twenty dollars (\$120.00) if an appeal or request for review to the Full Commission is withdrawn before the appeal or request for review is scheduled for specific hearing date;
 - (5) one hundred fifty-five dollars (\$155.00) if an appeal or request for review to the Full Commission is withdrawn after the appeal or request for review is calendared for specific hearing date;
 - (6) one hundred twenty dollars (\$120.00) for the dismissal of an appeal or request for review due to the failure to prosecute or perfect the appeal or request for review before the appeal or request for review is calendared for a specific hearing date; and

- (7) one hundred and fifty-five dollars (\$155.00) for the dismissal of an appeal or request for review due to the failure to prosecute or perfect the appeal or request for review after the appeal or request for review is calendared for a specific hearing date.

- (b) Failure to pay fees or costs assessed by the Commission may result in further penalty, including a notice and order to show cause as to why a fee or cost assessed by the Commission has not been paid.

Authority G.S. 7A-305; 97-80; 143-291.1; 143-291.2; 143-300.

04 NCAC 10E .0203 FEES SET BY THE COMMISSION

- (a) In workers’ compensation cases, the Commission sets the following fees:
 - (1) three hundred seventy-five dollars (\$375.00) for the processing of a compromise settlement agreement;
 - (2) two hundred fifty dollars (\$250.00) for the processing a Form 21 Agreement for Compensation for Disability, Form 26 Supplemental Agreement as to Payment of Compensation, or Form 26A Employer’s Admission of Employee’s Right to Permanent Partial Disability;
 - (3) three hundred dollars (\$300.00) for the processing of a request for a third party distribution order;
 - (4) one hundred seventy-five dollars (\$175.00) for the processing of a Form 24 Application to Stop or Suspend Payment of Compensation; and
 - (5) a fee equal to the filing fee required to file of a civil action in the Superior Court division of the General Court of Justice for the processing of a Form 33I Intervenor’s Request that Claim be Assigned for Hearing.
- (b) In tort claims cases, the filing fee is an amount equal to the filing fee required to file a civil action in the Superior Court division of the General Court of Justice.

Authority G.S. 97-10.2; 97-17; 97-18.2; 97-26(i); 97-73; 97-80; 143-291.2; 143-300.

04 NCAC 10E .0204 ACCIDENT PREVENTION AND SAFETY EDUCATIONAL PROGRAM FEES

- (a) The following fees shall be assessed for accident prevention and safety educational programs:
 - (1) one hundred twenty-five dollars (\$125.00) per person for an Accident Prevention Awareness (APCAP) Workshop;
 - (2) seventy-five dollars (\$75.00) per person for an Advanced APCAP Workshop;
 - (3) thirty dollars (\$30.00) per person for a Safety and Health Workshop;

- (4) twenty dollars (\$20.00) per person for a First Aid, CPR, and AED Course, plus fifteen dollars (\$15.00) per person for materials;
- (5) fifteen dollars per person (\$15.00) for a First Aid Course, plus twelve dollars (\$12.00) per person for materials;
- (6) fifteen dollars per person (\$15.00) for a CPR and AED Course, plus twelve dollars (\$12.00) per person for materials;
- (7) twenty dollars (\$20.00) per person for a Defensive Driving Course, plus four dollars (\$4.00) per person for materials;
- (8) fifty dollars (\$50.00) per person for a HAZWOPER OPS Course or Refresher Course;
- (9) thirty dollars (\$30.00) per person for a HAZWOPER Awareness Course;
- (10) twenty-five dollars (\$25.00) per person for a Work Zone Flagger Course, plus five dollars (\$5.00) for materials;
- (11) thirty dollars (\$30.00) per person for a Trenching Competent Person Course;
- (12) thirty-five dollars (\$35.00) per person for a Competent Person Scaffolding Course;
- (13) forty-five dollars (\$45.00) per person for an eight-hour NFPA E Arc Flash Course;
- (14) thirty dollars (\$30.00) per person for a four-hour NFPA E Arc Flash Course;
- (15) fifty dollars (\$50.00) per person for a Safety for Supervisors Course;
- (16) one hundred fifty dollars (\$150.00) per person for a Safety Leadership Course;
- (17) a two hundred dollar (\$200.00) flat fee for a (five to eight-hour) Workplace Training;
- (18) a one hundred-fifty dollar (\$150.00) flat fee for a (three to four-hour) Workplace Training (3-4 hours); and
- (19) a one hundred dollar (\$100.00) flat fee for a (one to two-hour) Workplace Training.

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

Authority G.S. 97-73(d); 97-80.

SECTION .0300 – RULES OF THE COMMISSION

04 NCAC 10E .0301 SUSPENSION OF RULES

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

Authority G.S. 97-25.2; 97-25.4; 97-80; 130A-425(d); 143-166.4; 143-296; 143-300.

04 NCAC 10E .0302 SANCTIONS

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

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

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

SUBCHAPTER 10F – ELECTRONIC BILLING RULES

SECTION .0100 – ADMINISTRATION

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

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

Authority G.S. 97-26(g1); 97-80.

04 NCAC 10F .0102 DEFINITIONS

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

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

- (1) The medical fees should be based on the 1995 CPT codes adopted by the American Medical Association with values based on a Resource Based Relative Value System (RBRVS).
- (2) CPT codes for General Medicine will be based on North Carolina 1995 Medicare values multiplied by 1.58, which the Commission believes would leave the General Medicine charges as a whole at roughly the same level

as in the Commission's fee schedule that has been in effect since January 1, 1993 (hereafter, the 1993 Fee Schedule). Since the Medicare relative value codes for each procedure in the schedule are likely to be different than the codes used in the 1993 Fee Schedule, individual codes under the 1996 Fee Schedule will likely be more or less than the code for the same procedure in the 1993 Fee Schedule, but on average the charges for General Medicine will be at the same level.

- (3) CPT codes for Physical Medicine will be based on North Carolina 1995 Medicare values multiplied by 1.30, which the Commission believes would be a slight decrease from the 1993 Fee Schedule. Since the Medicare relative value codes for each procedure in the schedule are likely to be different than the codes used in the 1993 Fee Schedule, individual codes under the 1996 Fee Schedule will likely be more or less than the code for the same procedure in the 1993 Fee Schedule, but on average the charges for Physical Medicine under the 1996 Fee Schedule will be slightly lower than the 1993 Fee Schedule.
- (4) CPT codes for Radiology will be based on North Carolina 1995 Medicare values multiplied by 1.96, which the Commission believes would be a 20% decrease from the 1993 Fee Schedule. Since the Medicare relative value codes for each procedure in the schedule are likely to be different than the codes used in the 1993 Fee Schedule, individual codes under the 1996 Fee Schedule will likely be more or less than the code for the same procedure in the 1993 Fee Schedule, but on average the charges for Radiology under the 1996 Fee Schedule will be approximately 20% lower than the 1993 Fee Schedule.
- (5) CPT codes for Surgery will be based on North Carolina 1995 Medicare values multiplied by 2.06, which the Commission believes would be an 8% decrease from the 1993 Fee Schedule. Since the Medicare relative value codes for each procedure in the schedule are likely to be different than the codes used in the 1993 Fee Schedule, individual codes under the 1996 Fee Schedule will likely be more or less than the code for the same procedure in the 1993 Fee Schedule, but on average the charges for Surgery under the 1996 Fee Schedule will be 8% lower than the 1993 Fee Schedule.

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

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

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

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

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

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

As used in this Subchapter:

- (1) "Clearinghouse" means a public or private entity, including a billing service, repricing company, community health management information system or community health information system, and "value-added" networks and switches, that is an agent of either the payer or the provider and that may perform the following functions:
 - (a) Processes or facilitates the processing of medical billing information received from a client in a nonstandard format or containing nonstandard data content into standard data elements or a standard transaction for further processing of a bill related transaction; or
 - (b) Receives a standard transaction from another entity and processes or facilitates the processing of medical billing information into nonstandard format or nonstandard data content for a client entity.
- (2) "Complete electronic bill" submission means a medical bill that meets all of the criteria enumerated in this Subchapter.
- (3) "Electronic" refers to a communication between computerized data exchange systems that complies with the standards enumerated in this Subchapter.
- (4) "Implementation guide" is a published document for national electronic standard formats as defined in this Subchapter that specifies data requirements and data transaction sets.
- (5) "National Provider Identification Number" or "NPI" means the unique identifier assigned to a health care provider or health care facility by the Secretary of the United States Department of Health and Human Services.

- (6) "Payer" means the insurance carrier, third-party administrator, managed care organization, or employer responsible for paying the workers' compensation medical bills.
- (7) "Payer agent" here means any person or entity that performs medical bill related processes for the payer responsible for the bill. These processes include reporting to government agencies, electronic transmission, forwarding or receipt of documents, review of reports, adjudication of bill, and final payment.

Authority G.S. 97-26(g1); 97-80.

04 NCAC 10F .0103 FORMATS FOR ELECTRONIC MEDICAL BILL PROCESSING

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

- (1) that injured workers are provided the standard of services and care intended by the Workers' Compensation Act;
- (2) that providers of medical services are reimbursed reasonable fees for providing these services; and
- (3) that medical costs are adequately contained. G.S. 97-26.

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

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

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

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

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

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

(h) The multiplier of 2.06 for Surgery will yield an 8% reduction. The Commission had originally proposed a multiplier of 2.02, which would have yielded a 10% reduction. The higher multiplier, and consequently the lower percentage reduction, gives recognition to the fact that the early intervention of good surgery is often what is needed for good results in difficult workers' compensation injury situations.

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

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

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

(a) Beginning March 1, 2014, electronic medical billing transactions shall be conducted using the electronic formats adopted under the Code of Federal Regulations, Title 45, part 162, subparts K, N, and P. Whenever a standard format is replaced with a newer standard, the most recent standard shall be used. The requirement to use a new version shall commence on the effective date of the new version as published in the Code of Federal Regulations. The Code of Federal Regulations, Title 45, part 162, subparts K, N, and P is hereby incorporated by reference and includes subsequent amendments and editions. A copy may be obtained at no charge from the Internal Revenue Service's website, <http://ecfr.gpoaccess.gov>, or upon request, at the offices of the Commission, located in the Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, between the hours of 8:00 a.m. and 5:00 p.m.

(b) Nothing in this Subchapter shall prohibit payers and health care providers from using a direct data entry methodology for complying with these requirements, provided the methodology

complies with the data content requirements of the adopted formats and these rules.

Authority G.S. 97-26(g1); 97-80.

04 NCAC 10F .0104 BILLING CODE SETS

Billing codes and modifier systems identified below are valid codes for the specified workers' compensation transactions, in addition to any code sets defined by the standards adopted in 04 NCAC 10F .0102:

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

Authority G.S. 97-26(g1); 97-80.

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

(a) Applicability

- (1) Payers and payer agents shall:

- (A) accept electronic medical bills submitted in accordance with the adopted standards;
 - (B) transmit acknowledgments and remittance advice in compliance with the adopted standards in response to electronically submitted medical bills; and
 - (C) support methods to receive electronic documentation required for the adjudication of a bill.
- (2) A health care provider shall:
- (A) exchange medical bill data in accordance with the adopted standards;
 - (B) submit medical bills as defined by this Rule to any payers that has established connectivity with the health care provider system or clearinghouse;
 - (C) submit required documentation in accordance with Paragraph (d) of this Rule; and
 - (D) receive and process any acceptance or rejection acknowledgment from the payer.

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

- (1) be submitted in the correct billing format, with the correct billing code sets as presented in this Rule;
- (2) be transmitted in compliance with the format requirements described in this Rule;
- (3) include in legible text all medical reports and records, including evaluation reports, narrative reports, assessment reports, progress reports and notes, clinical notes, hospital records and diagnostic test results that are necessary for adjudication;
- (4) identify the:
 - (A) injured employee;
 - (B) employer;
 - (C) insurance carrier, third party administrator, managed care organization or its agent;
 - (D) health care provider;
 - (E) medical service or product;
 - (F) any other requirements as presented in the companion guide; and
 - (G) use current and valid codes and values as defined in the applicable formats defined in this Subchapter.

(c) Acknowledgment

- (1) Interchange Acknowledgment (TA1) notifies the sender of the receipt of, and structural defects associated with, an incoming transaction.
- (2) Implementation Acknowledgment (ASC X12 999) transaction is an electronic notification to

- the sender of the file that it has been received and has been:
- (A) accepted as a complete and structurally correct file; or
 - (B) rejected with a valid rejection code.
- (3) Health Care Claim Status Response (ASC X12 277) or Acknowledgment transaction (detail acknowledgment) is an electronic notification to the sender of an electronic transaction (individual electronic bill) that the transaction has been received and has been:
- (A) accepted as a complete, correct submission; or
 - (B) rejected with a valid rejection code.
- (4) A payer shall acknowledge receipt of an electronic medical bill by returning an Implementation Acknowledgment (ASC X12 999) within one day of receipt of the electronic submission.
- (A) Notification of a rejected bill shall be transmitted using the appropriate acknowledgment when an electronic medical bill does not meet the definition of a complete electronic medical bill as described in this Rule or does not meet the edits defined in the applicable implementation guide or guides.
 - (B) A health care provider or its agent may not submit a duplicate electronic medical bill earlier than 60 days from the date originally submitted if a payer has acknowledged acceptance of the original complete electronic medical bill. A health care provider or its agent may submit a corrected medical bill electronically to the payer after receiving notification of a rejection. The corrected medical bill shall be submitted as a new, original bill.
- (5) A payer shall acknowledge receipt of an electronic medical bill by returning a Health Care Claim Status Response or Acknowledgment (ASC X12 277) transaction (detail acknowledgment) within two days of receipt of the electronic submission.
- (A) Notification of a rejected bill is transmitted in an ASC X12N 277 response or acknowledgment when an electronic medical bill does not meet the definition of a complete electronic medical bill or does not meet the edits defined in the applicable implementation guide or guides.
 - (B) A health care provider or its agent may not submit a duplicate electronic medical bill earlier than 60 days from
- the date originally submitted if a payer has acknowledged acceptance of the original complete electronic medical bill. A health care provider or its agent may submit a corrected medical bill electronically to the payer after receiving notification of a rejection. The corrected medical bill shall be submitted as a new, original bill.
- (6) Acceptance of a complete medical bill is not an admission of liability by the payer. A payer may subsequently reject an accepted electronic medical bill if the employer or other responsible party named on the medical bill is not legally liable for its payment.
- (A) The subsequent rejection shall occur no later than seven days from the date of receipt of the complete electronic medical bill.
 - (B) The rejection transaction shall indicate that the reason for the rejection is due to denial of liability.
- (7) Acceptance of an incomplete medical bill does not satisfy the written notice of injury requirement from an employee or payer as required in G.S. 97-22.
- (8) Acceptance of a complete or incomplete medical bill by a payer does not begin the time period by which a payer shall accept or deny liability for any alleged claim related to such medical treatment pursuant to G.S. 97-18 and 4 NCAC 10A 0601.
- (9) Transmission of an Implementation Acknowledgment under Subsection (c)(2) of this Rule and acceptance of a complete, structurally correct file serves as proof of the received date for an electronic medical bill in this Rule.
- (d) Electronic Documentation**
- (1) Electronic documentation, including but not limited to medical reports and records submitted electronically that support an electronic medical bill, may be required by the payer before payment may be remitted to the health care provider. Electronic documentation may be submitted simultaneously with the electronic medical bill.
- (2) Electronic transmittal by electronic mail shall contain the following information:
- (A) name of the injured employee;
 - (B) identification of the worker's employer, the employer's insurance carrier, or the third party administrator or its agent handling the workers' compensation claim;
 - (C) identification of the health care provider billing for services to the

employee, and where applicable, its agent;

(D) date(s) of service; and

(E) workers' compensation claim number assigned by the payer, if known.

(e) Electronic remittance notification

(1) An electronic remittance notification is an explanation of benefits (EOB) or explanation of review (EOR), submitted electronically regarding payment or denial of a medical bill, recoupment request, or receipt of a refund.

(2) A payer shall provide an electronic remittance notification in accordance with G.S. 97-18.

(3) The electronic remittance notification shall contain the appropriate Group Claim Adjustment Reason Codes, Claim Adjustment Reason Codes (CARC) and associated Remittance Advice Remark Codes (RARC) as specified by ASC X12 835 implementation guide or, for pharmacy charges, the National Council for Prescription Drugs Program (NCPDP) Reject Codes, denoting the reason for payment, adjustment, or denial.

(4) The remittance notification shall be sent within two days of:

(A) the expected date of receipt by the medical provider of payment from the payer; or

(B) the date the bill was rejected by the payer. If a recoupment of funds is being requested, the notification shall contain the proper code described in Subparagraph (e)(3) of this Rule and a explanation for the amount and basis of the refund.

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

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

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

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

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

(a) Upon receipt of medical bills submitted in accordance with these Rules, a payer shall evaluate each bill's conformance with the criteria of a complete medical bill as follows:

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

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

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

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

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

(c) The payer may contact the medical provider to obtain the information necessary to make the bill complete as follows:

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

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

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

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

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

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

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

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

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

Authority G.S. 97-26(g1); 97-80.

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

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

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

- (1) For bills submitted electronically, the rejection of all or part of the bill shall be sent to the submitter within two days of receipt.
- (2) If bills are submitted in a batch transmission, only the specific bills failing edits shall be rejected.

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

(i) Payment of all uncontested portions of a complete medical bill shall be made within 30 days of receipt of the original bill, or receipt of additional information requested by the payer allowed under the law. Amounts paid after the 30 day review period shall accrue an interest penalty of 10 percent per month after the due date. The interest payment shall be made at the same time as the medical bill payment.

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

Authority G.S. 97-18(1); 97-26(g1); 97-80.

04 NCAC 10F .0107 COMMUNICATION BETWEEN HEALTH CARE PROVIDERS AND PAYERS

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

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

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

Authority G.S. 97-26(g1); 97-80(a).

04 NCAC 10F .0108 SANCTIONS

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

Authority G.S. 1A-1, Rule 37; 97-26(g1); 97-80.

04 NCAC 10F .0109 EFFECTIVE DATE

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

Authority G.S. 97-26(g1); 97-80.

SUBCHAPTER 10G – NORTH CAROLINA INDUSTRIAL COMMISSION RULES FOR MEDIATED SETTLEMENT AND NEUTRAL EVALUATION CONFERENCES

SECTION .0100 – MEDIATION AND SETTLEMENT

04 NCAC 10G .0101 ORDER FOR MEDIATED SETTLEMENT CONFERENCE

(a) Mediation Upon Agreement of the Parties. If the parties to a workers' compensation claim or state tort claim agree to mediate ~~their the claim, they the parties~~ may schedule and proceed with mediation on their own, or ~~they the parties~~ may submit a request for a mediation order pursuant to ~~Rule 1(d). Paragraph (d) of this Rule.~~ No order from the Commission is necessary if the parties mutually agree to ~~mediate, mediate the claim,~~ but the mediator shall file a report of mediation with the Commission as required by ~~Rule 6(b)(4). Paragraph (g) of Rule .0106 of this Subchapter.~~ If the parties proceed with mediation in the absence of an order from the ~~Commission, Commission~~ and the Commission thereafter enters a mediation order, the parties shall ~~timely~~ notify the Commission that ~~they the parties~~ have agreed upon the selection of a mediator or, if the ~~mediation-mediated settlement~~ conference has been completed, that ~~they the parties~~ request to be excused from any further mediation obligations pursuant to ~~Rule 1(g). Paragraph (f) of this Rule.~~

(b) Referral Upon Receipt of a Form 33 ~~Request for Hearing-Request that Claim be Assigned for Hearing.~~ In any case in which the Commission receives a Form 33 ~~Request for Hearing-Request that Claim be Assigned for Hearing,~~ the Commission shall order ~~that disputed the case to a mediated settlement conference. conference unless doing so would be contrary to the interest of justice.~~

(c) By Order of the Commission. Commissioners, Deputy Commissioners, the Commission's Dispute Resolution Coordinator, and such other employees as the Commission Chair ~~may designate from time to time~~ may, by written order, require the parties and their representatives to attend a mediated settlement conference concerning a dispute within the ~~tort and~~ workers' compensation and state tort claim jurisdiction of the

Commission. Requests to dispense with or defer a ~~mediation~~ mediated settlement conference shall be addressed to the Dispute Resolution Coordinator. Unless the context otherwise requires, references to the "Commission" in ~~these the Rules in this Subchapter~~ shall mean the Dispute Resolution Coordinator.

(d) Mediation Upon Request of a Party. If a case is not otherwise ordered to a mediated settlement conference, a party may move the Commission to order ~~such a conference~~. ~~Such The motion shall be served on non-moving parties and shall state the reasons why the order should be entered, allowed and, if the case is pending on the hearing docket, whether the party prefers for the case to be set for hearing on the next docket, for it to not be heard until further notice from the parties, or for it to not be set before a specified date. The motion shall be served on non-moving parties.~~ Responses may be filed in writing with the Commission within 10 days after the date of the service of the motion. ~~The Commission may require that any~~ Any motion for a mediation order shall be submitted on a form provided by the Commission.

(e) Timing of the Order. The order requiring mediation may be issued whenever it appears that the parties have a dispute arising under the Workers' Compensation Act or the Tort Claims Act.

(f) Content of Order. ~~The Commission's order shall (1) require that the mediated settlement conference be held in the case, that pertinent documents be exchanged and that any specified discovery be completed prior to the conference; (2) establish a deadline for the pre conference exchange of documents and other discovery, and for the completion of the conference; (3) provide a period within which the parties may select a mediator by mutual agreement (see Rule 2); (4) state the rate of compensation of the Commission appointed mediator in the event that the parties do not exercise their right to select a mediator pursuant to Rule 2; (5) state that the parties shall be required to pay the mediator's fee at the conclusion of the settlement conference unless otherwise ordered by the Commission (see Rule 7); and, (6) may specify a date for an Industrial Commission hearing should the parties fail to reach a settlement.~~

~~(g)(f)~~ Motion to Dispense with or Defer Mediated Settlement Conference. Mediation may be dispensed with ~~or canceled~~ by the Commission, but Commission in the interest of justice or judicial economy. As used in this Rule, the term "dispensed with" means setting aside or rescinding the mediation order(s) entered in the case, or excusing the parties from their obligations under the applicable order(s) or the Rules in this Subchapter. Mediation may not be dispensed with or canceled by the parties or the mediator unless the parties have agreed, subject to Commission approval, on a full and complete resolution of all disputed issues set forth in the request for hearing filed in the case, and the parties have given notice of the settlement to the Dispute Resolution Coordinator. As used herein, the terms "dispensed with" and "canceled" shall mean and refer to setting aside or rescinding the mediation order(s) entered in the case, or excusing the parties from their obligations under the order(s) or these rules. Within 55 days of the filing of a Form 33 Request for Hearing, Request that Claim be Assigned for Hearing, or otherwise within the deadline set forth in ~~21 days of the date of the Commission's order entered pursuant to Rules 1(e) and 1(d), Paragraph (c) or Paragraph (d) of this Rule,~~ a party may move to

dispense with or defer the mediated settlement conference. ~~Such The motion shall state the reasons the relief is sought, sought and must be received by the Dispute Resolution Coordinator within the applicable 21 or 55 day deadline. For good cause shown, the Commission may grant the motion. However, failure to file a motion to dispense with mediated settlement conference within the above stated 21 or 55 day deadline and after a mediator has been appointed may result in the moving party or parties, or other responsible person, being required to pay an administrative fee of up to \$100.00 to the Commission.~~

~~(h)(g)~~ Exemption from Mediated Settlement Conference. ~~In order to provide for the most efficacious use of mediation and neutral evaluation procedures, the Commission may specify, by type or kind, those cases to be ordered into or excluded from mediation and neutral evaluation procedures. The State shall not be compelled to participate in a mediation or neutral evaluation procedure with a prison inmate.~~

~~(i)(h)~~ Motion to Authorize the Use of Neutral Evaluation Procedures. The parties may move the Commission to authorize the use of a neutral evaluation procedure contained in Rule .0109 of this Subchapter in lieu of a mediated settlement conference. ~~The Commission may require that such~~ The motion shall be filed on a form provided by the Commission, and such motion shall be filed Commission within 55 days of the filing of a Form 33 Request for Hearing, Request that Claim be Assigned for Hearing, or otherwise within 21 days of the order requiring a mediated settlement conference the deadline set forth in the Commission's order entered pursuant to Rules 1(e) and 1(d), Paragraph (c) or Paragraph (d) of this Rule, and shall state:

- (1) ~~that all parties consent to the motion, motion;~~
- (2) ~~that the neutral evaluator and the parties have agreed upon the selection and all terms of compensation of the neutral selected; selected; and~~
- (3) ~~the name, address, and telephone number of the neutral evaluator selected by the parties; parties.~~
- (4) ~~the names of all persons and entities the parties have agreed to excuse from attending the proceeding; and~~
- (5) ~~such other information as may be required by the Commission.~~

~~(i)~~ If the parties are unable to agree to the matters listed in Paragraph (h), selection of a neutral or the persons excused from attending, then the Commission shall deny the motion for authorization to use a neutral evaluation procedure, and the parties shall attend the mediated settlement conference as originally ordered by the Commission. If the parties are able to ~~timely agree on the above matters listed in Paragraph (h), then~~ the Commission ~~may shall~~ order the use of a neutral evaluation proceeding. Provided, proceeding; provided, however, that the Commission ~~will shall~~ not order the use of a neutral evaluation proceeding in any case in which the plaintiff is not represented by counsel.

(j) Cases Involving Plaintiffs Not Represented by Counsel. Unless an unrepresented plaintiff requests that the plaintiff's case be mediated, the Commission shall enter an order dispensing with mediation.

Authority G.S. 97-80(a), (c); 143-296; 143-300; Rule 1 of Rules Implementing Statewide Mediated Settlement Conference in Superior Court Civil Actions.

04 NCAC 10G .0102 SELECTION OF MEDIATOR

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

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

~~selected mediator after the appointment of another mediator by the Commission, the Commission may require one or more of the parties, or other responsible person(s), to pay a substitution of mediator fee to the Commission of up to \$100.00.~~

(e) ~~Mediator Lists~~ To assist parties in the selection of mediators by agreement, the Commission shall maintain a list of mediators eligible for appointment by the Commission in compensation and tort cases, and a list of mediators who are not eligible for appointment, but who may be selected by the parties and approved by the Commission. The Commission shall provide copies of these lists to parties on request, and may charge a reasonable fee for maintaining and distributing these lists.

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

Authority G.S. 97-80(a),(c); G.S. 143-296; 143-300; Rule 2 of Rules Implementing Statewide Mediated Settlement Conference in Superior Court Civil Actions.

04 NCAC 10G .0103 THE MEDIATED SETTLEMENT CONFERENCE

(a) Where Conference Is to Be ~~Held~~ Held. Unless all parties in a workers' compensation case or a state tort claims case and the mediator otherwise agree, the mediated settlement conference shall be held in the county where the case is pending. The mediator shall be responsible for reserving reserve a place and making make arrangements for the conference and for giving give timely notice to all attorneys and unrepresented parties of the time and location of the conference.

(b) When Conference Is to Be ~~Held~~ Held. ~~Subject to the Commission's orders, The conference shall be held at the time agreed to by the parties and the mediator, or if the parties do not agree, at the time specified by the mediator.~~

(c) Request to Extend Date of ~~Completion~~ Completion. ~~A party, or the mediator, may request that the Commission In the interest of justice, the Commission may extend the deadline for completion of the conference conference upon the Commission's own motion, a motion or stipulation of the parties or the suggestion of the mediator. The Commission may grant the request and extend the completion deadline by written order.~~

(d) ~~Recesses~~ Recesses. The mediator may recess the conference at any time and may set times for reconvening. ~~No further notification is required for persons present at the recessed conference. If the time for reconvening is set before the conference is recessed, no further notification is required for persons present at the recessed conference.~~

(e) The Mediated Settlement Conference Is Not to Delay Other ~~Proceedings~~ Proceedings. A mediated settlement conference shall ~~is not be~~ cause for the delay of other proceedings in the case, including the completion of discovery, discovery and the filing or hearing of motions, except by order of the Commission unless ordered by the Commission in the interest of justice. However, No depositions shall be taken following a

Commission order requiring mediation until mediation is concluded, except by agreement of the parties or order of the ~~Commission~~. Commission in the interest of justice.

(f) Inadmissibility of Negotiations by Parties and Attorneys. Evidence of statements made and conduct occurring in a mediated settlement conference or other settlement proceeding conducted ~~under these rules, pursuant to the Rules in this Subchapter,~~ whether attributable to a party, the mediator, other neutral, or a neutral observer present at the settlement conference or proceeding, shall be not be subject to discovery and shall be inadmissible in any proceeding in the action or other actions on the same claim, except:

- (1) ~~In~~ proceedings for sanctions for violations of the attendance or payment of mediation fee provisions of ~~Rules 4 and 7, contained in Rule .0104 and Rule .0107 of this Subchapter;~~
- (2) ~~In~~ proceedings to enforce or rescind a settlement of the action;
- (3) ~~In~~ disciplinary proceedings before the North Carolina State Bar or any agency enforcing standards of conduct for mediators or other neutrals, including the ~~Industrial Commission;~~ or
- (4) ~~In~~ proceedings to enforce laws concerning juvenile or elder abuse. As used in these rules, the term "neutral observer" includes persons seeking mediator certification, persons studying dispute resolution processes, and persons acting as interpreters. No settlement agreement to resolve any or all issues reached at the proceeding conducted under this subsection or during its recesses shall be enforceable unless it has been reduced to writing and signed by the parties. No evidence otherwise discoverable shall be inadmissible merely because it is presented and discussed in a mediated settlement conference or other settlement proceeding.

(g) No settlement agreement to resolve any or all issues reached at the settlement conference or proceeding conducted under this Subchapter or reached during a recess in the conference or proceeding shall be enforceable unless the settlement agreement has been reduced to writing and signed by the parties. No evidence otherwise discoverable shall be inadmissible solely because the evidence is presented or discussed in a mediated settlement conference or other settlement proceeding.

~~(g)(h)~~ Inadmissibility of Mediator Testimony. No mediator, other neutral, or neutral observer present at a settlement proceeding shall be compelled to testify or produce evidence concerning statements made and conduct occurring in anticipation of, during, or as a follow-up to a mediated settlement conference or other settlement proceeding conducted pursuant to these rules—the Rules in this Subchapter in any ~~Industrial Commission case or civil proceeding for any purpose, including proceedings to enforce or rescind a settlement of the action, except:~~ to attest to the signing of any agreements, and except proceedings for sanctions for violations of the attendance or payment of mediation fee provisions of Rules 4 and 7, disciplinary hearings before the State Bar or any agency

~~enforcing standards of conduct for mediators or other neutrals, including the Industrial Commission, and proceedings to enforce laws concerning juvenile or 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.

Authority G.S. 97-80(a), (c); 143-296; 143-300; Rule 3 of Rules Implementing Statewide Mediated Settlement Conference in Superior Court Civil Actions.

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

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

- ~~(1) Parties.~~
- ~~(A)(1) All all individual parties;~~
- ~~(B)(2) Employers. in a workers' compensation case, a representative of the employer at the time of injury is required to attend only if: (1) the employer, instead of or in addition to the insurance company or administrator, has decision making authority with respect to settlement; or (2) the employer is offering the claimant employment and the suitability of that employment is in issue; or (3) the employer and the claimant have agreed to simultaneously mediate non compensation issues arising from the injury; or (4) the Commission orders the employer representative to attend the mediation conference.~~
- (A) the employer, instead of or in addition to the insurance company or administrator, has decision-making authority with respect to settlement;
- (B) the employer is offering the claimant employment and the suitability of that employment is in issue;
- (C) the employer and the claimant have agreed to simultaneously mediate non-compensation issues arising from the injury; or
- (D) the Commission orders the employer representative to attend the conference if the representative's physical attendance is necessary to

- resolve matters in dispute in the subject action:
- ~~(C)(3)~~ an officer, employee or agent of a ny party that is not a natural person or a governmental entity shall be represented at the conference by an officer, employee or agent who is not such party's outside counsel and who has been the authorized authority to decide on behalf of such party whether and on what terms to settle the action; and
- ~~(D)(4)~~ in a workers' compensation case, an employee or agent of a ny party that is a governmental entity shall be represented at the conference by an employee or agent who is not such party's outside counsel or Attorney General's counsel responsible for the case and who has the authority to decide on behalf of such party and on what terms to settle the action; action, provided if under law,
- (5) When the governing law prescribes that the terms of a proposed settlement terms can may be approved only by a Board, the representative shall have an employee or agent who is not such party's outside counsel or Attorney General's counsel responsible for the case and who has the authority to negotiate on behalf of the party and to make a recommendation to that the Board. Because G.S. 143-295 provides the Attorney General with settlement authority on behalf of governmental entities and agencies for state tort claims, an employee or agent of the named governmental entity or agency is not required to attend the mediated settlement conference; the Attorney General shall attempt to make every effort to make an employee or agent of the named governmental entity or agency in a state tort claim available via telecommunication, and mediation shall not be delayed due to the absence or unavailability of the employee or agent of the named governmental entity or agency.
- ~~(2)(6)~~ Attorneys. the parties' counsel of record; provided, that appearance by counsel does not dispense with or waive the required attendance of the parties listed above; in Subparagraphs (1) through (4);
- ~~(3)(7)~~ Insurance Company Representatives. A a representative of each defendant's primary workers' compensation or liability insurance carrier or self-insured which may be obligated to pay all or part of any claim presented in the action. Each such carrier or self-insured shall be represented at the conference by an officer, employee or agent who is not such party's outside counsel and who has the authority to make a decision decide on behalf of such the carrier or self-insured whether and on what terms to settle the action, or who has been

authorized tonegotiate on behalf of such carrier or self-insured and can promptly communicate during the conference with persons who have such decision making authority; and

- ~~(4)(8)~~ Other Parties and Persons. by order of the Commission, other representatives of parties, employers or, or carriers, who may be obligated to pay all or part of any claim presented in the action and who are not required to attend the conference pursuant to the above rules Subparagraphs (1) through (6) of this Rule, may be required to attend 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) orearriers 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 of justice upon motion of a party and notice to all parties and persons required to attend the conference.

- (A) In the absence of an order by the Dispute Resolution Coordinator, only by agreement of all parties and persons required to attend and the mediator; or
- (B) By order of the Dispute Resolution Coordinator, upon motion of a party and notice to all parties and persons required to attend and the mediator.

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

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

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

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

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

~~(f)(h) Related Cases Cases. Upon application by any party or person and upon notice to all parties, the Commission may, in the interest of justice, order that an attorney of record, party or representative of an insurance carrier that who may be liable for~~

all or any part of a claim pending in an Industrial a Commission case shall, upon reasonable notice, to attend a mediated settlement conference that may be convened in another pending case, regardless of the forum in which the other case may be pending, provided that all parties in the other pending case consent to the attendance ordered pursuant to this rule Paragraph. Any disputed issues concerning such an order shall be addressed to the Commission's Dispute Resolution Coordinator. Unless otherwise ordered, any attorney, party or carrier representative that who properly attends a mediated settlement conference pursuant to this Paragraph rule shall not be required to pay any of the mediation fees or costs related to that mediation conference. Requests that a party, attorney of record, or insurance carrier representative in a related case attend a mediated settlement conference in an Industrial a Commission case shall be addressed to the court or agency in which the related case is pending, provided that all parties in the Industrial Commission case consent to the requested attendance.

Authority G.S. 97-80(a),(c); 143-295; 143-296; 143-300; Rule 4 of Rules Implementing Statewide Mediated Settlement Conference in Superior Court Civil Actions.

04 NCAC 10G .0104A FOREIGN LANGUAGE INTERPRETERS

~~(a) Services of Foreign Language Interpreters Required Unless Waived. When a person who does not speak or understand the English language is required to attend a mediation mediated settlement conference, the person shall be assisted by a qualified foreign language interpreter unless the right to an interpreter is waived by both the parties.~~

~~(b) Qualifications of Interpreters. To qualify as a foreign language interpreter, a person must shall possess sufficient experience and education, or a combination of experience and education, speaking speaking and understanding English and the foreign language to be interpreted, to qualify as an expert witness pursuant to G.S. 8C-1, Rule 702.~~

~~(c) Notice to Industrial Commission and Opposing Party of Need for Interpreter. Any party who is unable to speak or understand English shall so notify the Industrial Commission and the opposing party, party(ies) in writing, not less than 21 days prior to the date of the mediation mediated settlement conference. The notice shall state with specificity the language(s) that must shall be interpreted.~~

~~(d) Designation of Interpreter. Upon notice of the need for an interpreter, the employer or insurer shall retain a qualified, disinterested interpreter, who possesses the qualifications listed in Paragraph (b) of this Rule, either agreed upon by the parties or approved by the Industrial Commission, to assist at the mediation mediated settlement conference. The parties may select by agreement, or in the absence of an agreement, the Commission may appoint a disinterested interpreter possessing the qualifications listed in Paragraph (b) of this Rule.~~

~~(e) Interpreter Fees. The interpreter's fee shall constitutes a cost as contemplated by G.S. 97-80. A qualified interpreter who appears at a mediation mediated settlement conference shall be is entitled to payment of the fee agreed upon by the interpreter and the employer or insurer that retained the interpreter. Except in cases where a claim for compensation has been prosecuted~~

without reasonable ground, the fee agreed upon by the interpreter and employer or insurer shall be paid by the employer or insurer. Where ~~it is ultimately determined by the Commission~~ ultimately determines that the request for an interpreter was unfounded, attendant costs ~~may shall~~ be assessed against the movant.

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

Authority G.S. 97-79(b); 97-80(a), (c); 143-296; 143-300.

04 NCAC 10G .0105 SANCTIONS

If a person or party whose attendance at a mediated settlement conference is required by Rule ~~4.0104~~ 0104 of this Subchapter fails to ~~attend, attend or cancels,~~ without Commission approval in accordance with Paragraph (f) of Rule .0101 of this Subchapter, a duly ordered mediated settlement conference without good cause, or otherwise violates ~~these rules~~ the Rules in this Subchapter without good cause, the Commission may impose upon the party or his principal any lawful sanction, including ~~but not limited to requiring the party or his principal to the payment of pay attorneys' fees, mediator fees and expenses incurred by persons attending the conference, holding the party or his principal in contempt, or any and other sanctions authorized by 04 NCAC 10A .0802, by Rule 37(b) of the Rules of Civil Procedure.~~ Any sanctions that ~~may be~~ are assessed against a party under ~~these rules~~ the Rules in this Subchapter, including, ~~but not limited to, mediation~~ including mediated settlement conference postponement fees and sanctions for the unauthorized cancellation or failure to appear at a mediation the conference, may be assessed against the party or the party's principal or attorney depending on whose conduct necessitated the assessment of sanctions.

Authority G.S. 97-80(a),(c); 143-296; 143-300; Rule 5 of Rules Implementing Statewide Mediated Settlement Conference in Superior Court Civil Actions.

04 NCAC 10G .0106 AUTHORITY AND DUTIES OF MEDIATORS

(a) ~~Authority of Mediator.~~

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

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

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

~~(b) Duties of Mediator.~~

~~(1)(d) Information to the Parties.~~ The mediator shall define and describe the following to the parties at the beginning of the mediated settlement conference:

- ~~(A)(1)~~ the process of mediation;
- ~~(B)(2)~~ the differences between mediation and other forms of conflict resolution;
- ~~(C)(3)~~ the costs of the ~~mediated settlement conference~~;
- ~~(D)(4)~~ the facts that the ~~mediated settlement conference~~ is not a trial or hearing, the mediator is not acting in the capacity of a Commissioner or Deputy Commissioner, Commissioner and the mediator will shall not act in the such capacity of a Commissioner or Deputy Commissioner in the subject case at any time in the future, and the parties retain their right to a hearing if ~~they~~ the parties do not reach a settlement;
- ~~(E)(5)~~ the circumstances under which the mediator may meet alone with ~~either~~ any of the parties or with any other person;
- ~~(F)(6)~~ whether and under what conditions, communications with the mediator ~~will shall~~ be held in confidence during the conference;
- ~~(G)(7)~~ the inadmissibility of conduct and statements as provided by G.S. 8C-1, Rule 408 of the Evidence Code and Subparagraph 3(f) of this Rule; Paragraph (f) of Rule. 0103 of this Subchapter;
- ~~(H)(8)~~ the duties and responsibilities of the mediator and the parties; ~~and, and~~
- ~~(I)(9)~~ the fact that any agreement reached ~~will shall~~ be reached by mutual consent of the parties.

~~(2)(e) Disclosure.~~ The mediator ~~has a duty to shall~~ be impartial and ~~to~~ advise all parties of any circumstances bearing on possible bias, prejudice or partiality.

~~(3)(f) Declaring Impasse.~~ ~~It is the duty of~~ The mediator to ~~timely shall~~ determine when mediation is not viable, that an impasse exists, or that mediation should end.

(4)(g) Reporting Results of Conference. In all cases within the Commission's jurisdiction, whether mediated voluntarily or pursuant to an order of the Commission, the mediator shall report the results of the mediated settlement conference on a form provided by the Commission. If an agreement was reached, the report shall state whether the issue or matter under mediation ~~will~~ shall be resolved by ~~Industrial~~ Commission form agreement, compromise settlement agreement, other settlement agreement, voluntary dismissal or removal from the hearing docket, and shall identify the persons designated to file or submit for approval ~~such the~~ agreement, or dismissal. The mediator shall not attach a copy of the parties' memorandum of agreement to the mediator's report transmitted to the Commission and, except as ~~set forth above~~ permitted under the Rules in this Subchapter, or ~~as may be ordered unless deemed necessary in the interest of justice~~ by the Commission, the mediator shall not disclose the terms of settlement in the mediator's report. The Commission ~~may~~ shall require the mediator to provide statistical data for evaluation of the mediated settlement conference program on forms provided by the Commission.

(5)(h) Scheduling and Holding the Conference. ~~It is the duty of~~ The mediator ~~to~~ shall schedule the mediated settlement conference, ~~conference~~ in consultation with the ~~parties, parties~~ and conduct ~~it the~~ conference prior to the ~~conference completion deadline set out in the Commission's order, and prior to the date of any hearing before a Deputy Commissioner if the case is scheduled for hearing after the mediator is appointed order.~~ Deadlines for completion of the conference shall be strictly observed by the mediator unless said the time limits are changed by the Commission.

(6)(i) Standards of Conduct. All mediators conducting ~~mediation mediated settlement~~ conferences pursuant to ~~these rules the~~ Rules in this Subchapter shall adhere to the ~~Standards of Conduct for Mediators Standards of Professional Conduct for Mediators~~ adopted by the Supreme Court of North Carolina and enforced by the ~~N.C.~~ North Carolina Dispute Resolution Commission. The Standards of Professional Conduct for Mediators is hereby incorporated by reference and includes subsequent amendments and editions. A copy may be obtained at no charge from the North Carolina Administrative Office of the ~~Court's~~ website, <http://www.nccourts.org/Courts/CRS/Councils/DRC/Documents/StandardsOfConduct 1-1-12.pdf>, or upon request, at the offices of the Commission, located in the Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, between the hours of 8:00 a.m. and 5:00 p.m.

Authority G.S. 97-80(a), (c); 143-296; 143-300; Rule 6 of Rules Implementing Statewide Mediated Settlement Conference in Superior Court Civil Actions.

04 NCAC 10G .0107 COMPENSATION OF THE MEDIATOR

(a) By ~~Agreement Agreement~~. When the mediator is stipulated to by the parties, compensation shall be as agreed upon between the parties and the mediator.

(b) By Commission ~~Order Order~~. When the mediator is appointed by the Commission, the mediator's compensation shall be as ~~follows follows~~:

- (1) Conference Fees. The mediator shall be paid by the parties at the rate of one hundred fifty dollars (\$150.00) per hour for mediation services provided at the mediated settlement conference.
- (2) Administrative Fees. The parties shall pay to the mediator a one time, per case administrative fee of one hundred fifty dollars (\$150.00), ~~\$150.00, unless otherwise ordered by the Commission.~~ The mediator's administrative fee shall be paid in full unless, within 10 days after ~~the date that~~ the mediator has been appointed, written notice is given to the mediator and to the Dispute Resolution Coordinator that the issues for which a request for hearing ~~had been was~~ filed have been fully resolved or that the hearing request has been withdrawn.
- (3) Postponement Fees. As used ~~herein in this Subchapter~~, the term "postpone" ~~shall~~ means to reschedule or otherwise not proceed with a scheduled ~~mediation mediated settlement~~ conference after ~~that the~~ conference has been scheduled to convene on a specific date. After a conference is scheduled to convene on a specific date, ~~it the~~ conference may not be postponed ~~without unless~~ the requesting party ~~first notifying notifies~~ all other parties ~~concerning of~~ the grounds for the requested ~~postponement, or without postponement and obtains~~ the consent and approval of the mediator or the Dispute Resolution ~~Coordinator Coordinator~~ that the postponement is for the benefit of the parties. If ~~a mediation the~~ conference is postponed without good cause, the mediator shall be paid a postponement fee, ~~unless, upon application of the party or parties charged with the fee, the fee is waived by the Commission. Unless the Commission otherwise orders,~~ The postponement fee shall be ~~two hundred twenty five dollars (\$225.00) three hundred dollars (\$300.00)~~ if the ~~mediation conference~~ is postponed within seven calendar days of the scheduled ~~conference, date, and one hundred twenty five dollars (\$125.00) one hundred fifty dollars (\$150.00)~~ if the ~~mediation~~ conference is postponed more than seven calendar days prior to ~~a the scheduled conference date.~~ Unless otherwise ordered by the Commission in the interest of justice, postponement fees shall be allocated in equal shares to the party or parties requesting the postponement, ~~unless otherwise ordered by the Commission.~~
- (4) The settlement of a case prior to the scheduled date ~~for of the mediation mediated settlement conference~~ shall be good cause for a postponement, provided that the mediator was

notified of the settlement ~~immediately~~ after ~~it~~ the settlement was reached and that the mediator received notice of the settlement at least ~~fourteen (14)~~ 14 calendar days prior to the date scheduled for mediation.

(c) Payment by ~~Parties—Parties~~. Payment ~~shall be~~ is due upon completion of the mediated settlement conference; provided, that the State shall be billed at the conference and shall pay within 30 days of receipt of the ~~billing, bill,~~ and insurance companies or carriers whose written procedures do not provide for payment of the mediator at the conference may pay within 15 days of the conference. Unless otherwise agreed to by the parties or ordered by the ~~Commission~~ Commission due to a party or parties ~~violating a Rule in this Subchapter, the costs of the mediated settlement conference shall be allocated to the parties, as follows:~~

- (1) one share by plaintiff(s);
- (2) one share by the workers' compensation defendant-employer or its insurer, or if more than one employer or carrier is involved, or if there is a dispute between employer(s) or carrier(s), one share by each separately represented entity;
- (3) one share by participating third-party tort defendants or their carrier, or if there are conflicting interests among them, one share from each ~~such~~ defendant or group of defendants having shared interests; ~~and, and~~
- (4) one share by the defendant State agency in a State-Tort Claims Act case. Parties obligated to pay a share of the costs ~~shall be~~ are responsible for equal shares; provided, however, that in workers' compensation claims the defendant shall pay the plaintiff's share of mediation, postponement, and substitution fees, as well as its ~~own~~ defendant's own share.

(d) Unless the Dispute Resolution Coordinator enters an order allocating such fees to a particular ~~party, party due to the party~~ violating a Rule in this Subchapter, the fees may be taxed as other costs by the Commission. After the case is concluded, the defendant shall be reimbursed for the plaintiff's share of such fees ~~when the case is concluded~~ from benefits that may be determined to be due to the plaintiff, and the defendant may withhold funds from any award for this purpose.

Authority G.S. 97-80(a), (c); 143-296; 143-300; Rule 7 of Rules Implementing Statewide Mediated Settlement Conference in Superior Court Civil Actions.

04 NCAC 10G .0108 MEDIATOR CERTIFICATION AND DECERTIFICATION

(a) Party ~~Selection—Selection~~. The parties may, by mutual consent, select any North Carolina Dispute Resolution Commission-certified mediator, with or without the qualifications in Paragraph (b) of this Rule, as ~~their—the parties'~~ mediator; by mutual consent, with or without the qualifications in (b); provided, that the Commission may ~~shall~~, for good cause, bar any persons from holding ~~themselves—himself or herself~~ out

as a mediator of cases within ~~its—the Commission's~~ jurisdiction or from receiving a fee for mediation of such cases.

(b) Appointment of ~~Mediators—Mediators~~. If the parties have agreed or been ordered to mediate, and cannot agree on the selection of a mediator, the Commission shall appoint a mediator, from a list of persons who holds current certification from the North Carolina Dispute Resolution Commission that they he or she is qualified to carry out mandatory mediations in the Superior Courts of the State, State of North Carolina and who ~~have~~ has filed a declaration with the Commission, on forms provided by ~~the Commission~~, stating ~~that—that~~ the declarant agrees to accept and perform mediations of disputes before the Commission with reasonable frequency when called upon for the fees and at the rates of payment specified by the Commission. A mediator making this declaration shall notify the commission when any of the facts declared are no longer accurate.

- (1) ~~If an attorney, that declarant remains a member in good standing of the North Carolina State Bar;~~
- (2) ~~The declarant agrees to accept and perform mediations of disputes before the Commission with reasonable frequency when called upon for the fees and at the rates of payment specified by the Commission;~~
- (3) ~~If the declarant desires to be appointed by the Commission to mediate workers' compensation cases, that he or she has completed N.C. State Bar approved continuing legal education course(s) on workers' compensation law during the previous two years totaling not less than six hours. A mediator making such declaration shall immediately notify the Commission when any of the facts declared are no longer accurate. The Commission may require a new declaration on a periodic or intermittent basis. The Commission shall delete from such lists any mediator whose certification from the Dispute Resolution Commission has expired or been revoked. The Commission may charge an administrative fee to defray the costs of maintaining lists and referring cases to mediators.~~

(c) ~~Mediator Lists~~ The Commission may maintain and provide to parties separate lists of mediators who have successfully completed mediation training certified by the Dispute Resolution Commission, and who desire to hold mediations in disputes arising under the Workers' Compensation Act and the State Tort Claims Act.

(d) ~~(c) Failure of Mediator to Appear at Conference~~. Conference—In the event that If a mediator fails to appear at a scheduled mediation-mediated settlement conference without good cause, the mediator shall is not be entitled to the administrative fee for the case, and may be deleted from the Commission's list of mediators qualified for appointments for a period of six months.

Authority G.S. 97-80(a), (c); 143-296; 143-300; Rule 8 of Rules Implementing Statewide Mediated Settlement Conference in Superior Court Civil Actions.

04 NCAC 10G .0109 NEUTRAL EVALUATION

(a) ~~Nature of Neutral Evaluation—Evaluation.~~ As used in this Subchapter, neutral evaluation is an informal, abbreviated presentation of facts and issues by the parties to an a neutral evaluator at an early stage of the case. The neutral evaluator is responsible for evaluating the strengths and weaknesses of the case, and for providing a candid assessment of liability, settlement value, and a dollar value or range of potential awards if the case proceeds to a hearing. The neutral evaluator is also responsible for identifying areas of agreement and disagreement and suggesting necessary and appropriate discovery.

(b) ~~When Conference Is to Be Held—Held—~~ The provisions applicable to the scheduling of mediation-mediated settlement conferences set forth in Rule 3(b) .0103 of this Subchapter shall also be applicable apply to neutral evaluation proceedings.

(c) ~~Pre-conference Submissions, Submissions—~~ No later than 45 20 days prior to the date established for the neutral evaluation conference to begin, each party may, but is not required to, furnish the evaluator with written information about the case, and shall at the same time certify to the evaluator that they the party has served a copy of such summary on all other parties to in the case. The information provided to the neutral evaluator and the other parties hereunder—under this Rule shall be a summary of the significant facts and issues in the party's case, shall not be more than 10 pages in length, and shall have attached to it include as attachments copies of any documents supporting the parties' party's summary. Information provided to the neutral evaluator and to the other parties pursuant to this Paragraph shall not be filed with the Commission.

(d) ~~Replies to Pre-conference Submissions, Submissions—~~ No later than five days prior to the date established for the neutral evaluation conference to begin, any party may, but is not required to, send additional written information not exceeding 5 pages in length to the neutrals evaluator, evaluator responding to the submission of an opposing party. The party's response shall not exceed five pages in length be served on all other parties and the party sending such the response shall certify such service to the neutrals evaluator, evaluator that the party has served a copy of the response on all other parties in the case, but such The response shall not be filed with the Commission.

(e) ~~Conference Procedure, Procedure—~~ Prior to a neutral evaluation conference, the neutral evaluator may, if he or she deems it necessary, may request additional written information from any party. At the conference, the neutral evaluator may address questions to the parties and give them the parties an opportunity to complete their summaries with a brief oral statement.

(f) ~~Modification of Procedure, Procedure—~~ Subject to the approval of the neutral evaluator, the parties may agree to modify the procedures for neutral evaluation required by these rules the Rules for neutral evaluation, in this Subchapter, or such the procedures may be modified by order of the Commission-Commission in the interest of justice. The modified procedures may include the presentation of submissions in writing or by telephone in lieu of the physical appearance at a neutral evaluation conference, and may also include revisions to the time periods and page limitations concerning the parties' submissions.

(g) ~~Evaluator's Duties.~~

(1)(g) ~~Evaluator's Opening Statement.~~ At the beginning of the neutral evaluation conference, the neutral evaluator shall define and describe the following points to the parties:

(A)(1) ~~the facts that the neutral evaluation;~~

(A) ~~the conference is not a hearing,~~

(B) ~~the neutral evaluator is not acting in the capacity of a Commissioner or Deputy Commissioner, Commissioner and the neutral will shall not act in the such capacity of a Commissioner or Deputy Commissioner in the subject case at any time in the future,~~

(C) ~~the neutral evaluator's opinions are not binding on any party, and~~

(D) ~~the parties retain their right to a hearing if they the parties do not reach a settlement-settlement;~~

(B)(2) ~~the fact that any settlement reached will be only by mutual consent of the parties-parties;~~

(C)(3) ~~the process of the proceeding;~~

(D)(4) ~~the differences between the proceeding and other forms of conflict resolution;~~

(E)(5) ~~the costs of the proceeding;~~

(F)(6) ~~the inadmissibility of conduct and statements as provided by G.S. 8C-1, Rule 408 of the Evidence Code and Paragraph (f) of Rule .0103 in this Subchapter; Rule 3(f) above of the Rules; and~~

(G)(7) ~~the duties and responsibilities of the neutral evaluator and the participants.~~

(2)(h) ~~Oral Report to Parties by Evaluator.~~ In addition to the written report to the Commission required under these rules, the Rules in this Subchapter, at the conclusion of the neutral evaluation conference, the neutral evaluator shall issue an oral report to the parties advising them the parties of his or her the neutral evaluator's opinions opinion of the case. Such The opinion shall include a candid assessment of liability, estimated settlement values and options, and the strengths and weaknesses weaknesses of the parties' claims and defenses if the case proceeds to a hearing. The oral report shall also contain a suggested settlement or disposition of the case and the reasons therefor. The neutral evaluator shall not reduce his or her oral report to writing-writing and shall not inform the Commission thereof.

(3)(i) ~~Report of Evaluator to Commission.~~ Within 10 days after the completion of the neutral evaluation conference, the neutral evaluator:

(1) ~~shall submit to the Dispute Resolution Coordinator a written report using a form prepared and distributed by the Commission, stating:~~

(A) ~~when and where the conference was held,~~

(B) ~~the names of those persons who attended the conference,~~

(C) ~~whether or not an agreement was reached by the parties, and~~

(D) ~~whether the issue or matter will be resolved by Industrial-Commission~~

form agreement, compromise settlement agreement, other settlement agreement, voluntary dismissal or removal from the hearing docket, docket and

(2) shall identify the persons designated to file or submit for approval such agreement, or dismissal.

(3) ~~The Commission may require~~ the neutral evaluator ~~to~~ shall provide statistical data for evaluation of the settlement conference programs on forms provided by the Commission.

~~(h)(j)~~ ~~Negotiations.~~ ~~Negotiations~~— If all parties at the neutral evaluation conference request and agree, the neutral evaluator may assist the parties in settlement discussions. If the parties do not reach a settlement during ~~such the~~ discussions, however, the neutral evaluator shall complete the neutral evaluation conference and make his or her written report to the Commission as if ~~such the~~ settlement discussions had not occurred.

~~(i)(k)~~ ~~Finalizing Agreement.~~ ~~Agreement~~— If the parties are able to reach an agreement before the conclusion of the neutral evaluation conference and before the evaluator's evaluator provides his report to the Commission, the parties are able to reach an agreement, the parties shall reduce the agreement to writing, specifying all the terms of ~~their the parties'~~ agreement that bearing bear on the resolution of the dispute before the Commission, and shall sign ~~it the~~ agreement along with ~~their the parties'~~ respective counsel. By stipulation of the parties and at their expense, the agreement may be electronically or stenographically recorded. All agreements for payment of compensation shall be submitted in proper form for Commission approval, approval and shall be filed with the Commission within 20 days of the conclusion of the ~~mediation~~ conference.

~~(j)(l)~~ ~~Applicability of Mediation Rules and Duties.~~ ~~Duties~~— All provisions and duties applicable to mediated settlement conferences set forth in ~~Rules 3 through 7 Rule .0103 through Rule .0107 of these rules this Subchapter, which that~~ are not in conflict with the provisions and duties of Rule 9 ~~.0109 herein of this Subchapter shall be incorporated by reference and shall be applicable apply~~ to neutral evaluation conferences conducted under these rules the Rules in this Subchapter.

~~(k)(m)~~ ~~Ex Parte Communications Prohibited.~~ ~~Prohibited~~— Unless all parties agree otherwise, there shall be no ex parte communication prior to the conclusion of the proceeding between the neutral evaluator and any counsel or party on any matter related to the proceeding except with regard to administrative matters.

~~(l)(n)~~ ~~Adherence to Standards of Conduct for Neutrals.~~ ~~Neutrals~~— All neutrals neutral evaluators conducting neutral evaluation conferences pursuant to these rules the Rules in the Subchapter shall adhere to any applicable standards of conduct which may be are adopted by the N.C. North Carolina Dispute Resolution Commission and are hereby incorporated by reference.

Authority G.S. 97-80(a), (c); 143-296; G.S. 143-300; Rule 11 of Rules Implementing Statewide Mediated Settlement Conference in Superior Court Civil Actions.

04 NCAC 10G .0110 SUSPENSION OF RULES

~~In the interest of justice, or to comply with the law from time to time as it may be amended or declared, the Commission may waive any requirement of these rules.~~

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

Authority G.S. 97-80(a),(c); 143-296; 143-300.

04 NCAC 10G .0111 MOTIONS

~~Unless otherwise indicated, indicated by the Rules in this Subchapter or an applicable order by the Commission in the interest of justice or judicial economy, motions pursuant to these rules the Rules in this Subchapter shall be addressed to the Commission's Dispute Resolution Coordinator (unless the applicable order provides otherwise) and served on all parties to the claim and the settlement procedure. Responses may be filed with the Commission within 10 days after the date of receipt of the motion. Notwithstanding the above, for good cause the Commission may, in the interest of justice, act upon oral motions, or act upon motions prior to the expiration of the 10-day response period. Motions will shall be decided without oral argument unless otherwise ordered ordered in the interest of justice. Any appeals from orders issued pursuant to a motion under these rules the Rules in this Subchapter shall be addressed to the attention of the Commission Chair or the Chairman's Chair's designee for appropriate action.~~

Authority G.S. 97-80(a),(c); G.S. 143-296; G.S. 143-300.

04 NCAC 10G .0112 MISCELLANEOUS

~~Throughout these rules the Rules in this Subchapter any reference to the number of days within which any act may be performed shall mean and refer to calendar days, and shall include Saturdays, Sundays and legal holidays holidays established by the State Personnel Commission. Provided, however, that if the last day (a) to file a motion, (b) to give notice of the selection of a mediator, or (c) for a pro se plaintiff to give notice that the plaintiff requests mediation is a Saturday, Sunday or legal holiday, holiday established by the State Personnel Commission, the motion or notice may be filed or given on the next day that is not a Saturday, Sunday or legal holiday holiday established by the State Personnel Commission.~~

Authority G.S. 97-80(a),(c); G.S. 143-296; G.S. 143-300.

SUBCHAPTER 10H – RULES OF THE INDUSTRIAL COMMISSION RELATING TO THE LAW- ENFORCEMENT OFFICERS', FIREMEN'S, RESCUE SQUAD WORKERS' AND CIVIL AIR PATROL MEMBERS' DEATH BENEFITS ACT

SECTION .0100 - ADMINISTRATION

RULE I. 04 NCAC 10H .0101 LOCATION OF OFFICES AND HOURS OF BUSINESS

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

Authority G.S. 143-166.4.

RULE II. TRANSACTION OF BUSINESS BY THE COMMISSION.

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

SECTION .0200 - RULES OF COMMISSION

RULE III. 04 NCAC 10H .0201 DETERMINATION OF CLAIMS BY THE COMMISSION

~~1-(a) Upon application or request to the Industrial Commission for an award under the provisions of the Law-Enforcement Officers', Firemen's, Rescue Squad Workers' and Civil Air Patrol Members' Death Benefits Act, the Full Commission will shall determine whether sufficient information or evidence is contained in the Commission's workers' compensation or other files upon which to base an Order order for the payment of benefits. If the Full Commission is satisfied that such an Order order should be issued, it will, shall, without conducting a formal hearing, file an appropriate Award award directing the payment of benefits.~~

~~The Full Commission, on joint request of the interested parties or for good cause shown, may in its discretion The Full Commission, order or approve a settlement for less than the maximum amount set forth in G.S. §143-166.3.~~

~~2-(b) If the Full Commission is of the opinion that it the Commission's workers' compensation or other files has insufficient information or evidence before it upon which to base basis an award for the payment of benefits, should be issued, the Full Commission will shall place the case upon the Commission's hearing docketdocket, in the county where the incident giving rise to the death is alleged to have occurred. The case will thereafter be set for hearing before a Hearing Commissioner or Hearing Deputy Commissioner in such county or in such other county as the Full Commission may direct, due notice of the hearing being given to all parties and to the Attorney General of the State of North Carolina who may appear as amicus curiae.~~

~~3. The Hearing Commissioner or Hearing Deputy Commissioner before whom the case is set for hearing, in his discretion, may order the parties to appear at a reasonable time and place for a pre trial hearing to determine such matters as he deems necessary. The Hearing Commissioner or Deputy Commissioner will, having received all evidence pertinent to the case, thereafter proceed to file a Decision and Award in the case~~

~~in which benefits are awarded or denied. Such Decision will be sent to all parties.~~

~~4. The Commission may, of its own motion, order a rehearing of any case.~~

~~5. The Commission will give reasonable notice of hearing in every case. Postponement or continuance of a scheduled hearing will rest entirely in the discretion of the Commission.~~

~~6. In all cases where it is suitable that infants or incompetents sue by their guardian ad litem, the Commission will appoint such guardian ad litem upon the written application of a reputable disinterested person closely connected with such infant or incompetent. But, if such person will not apply, then, upon the like application of some reputable citizen; and the Commission will make such appointment only after due inquiry as to the fitness of the person to be appointed.~~

~~7. Any claimant who gives to the opposing party or an agent of that party a written or recorded statement of the facts and circumstances surrounding his claim shall be furnished by the opposing party a copy of such statement within ten days upon request. Further, any claimant who has given such a statement shall, without request, be furnished by the opposing party a copy thereof immediately following a denial of his claim or no less than ten days prior to a pending hearing.~~

~~Such copy shall be furnished at the expense of the party to whom the statement was given.~~

~~If any party fails to comply with this rule, then an Order may be entered by the hearing officer prohibiting that party from introducing designated matters into evidence.~~

~~8. In the absence of written notice of appeal from the Decision and Award filed in such a case by the Hearing Commissioner or Hearing Deputy Commissioner within fifteen days from receipt of such award, the award as filed will be binding on the parties.~~

Authority G.S. 143-166.4.

04 NCAC 10H .0202 HEARINGS BEFORE THE COMMISSION

~~3-(a) The Hearing Commissioner or Hearing Commissioner or Deputy Commissioner before whom the case regarding the Law-Enforcement Officers', Firemen's, Rescue Squad Workers' and Civil Air Patrol Members' Death Benefits Act is set for hearing, shall order the parties to participate in a pre-trial conference. This conference shall be conducted at such place and by such method as the Commissioner or Deputy Commissioner deems appropriate, including conference telephone calls, in his discretion, may order the parties to appear at a reasonable time and place for a pre trial hearing to determine such matters as he deems necessary. The Hearing Commissioner or Deputy Commissioner will, having received all evidence pertinent to the case, thereafter proceed to file a Decision and Award in the case in which benefits are awarded or denied. Such Decision will be sent to all parties.~~

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

~~5-(c) The Commission will shall give reasonable notice of hearing in every case. Postponement or continuance of a scheduled hearing will shall be granted to prevent manifest~~

injustice or to promote judicial economy, rest entirely in the discretion of the Commission.

(d) Notice of the hearing shall be given to the Attorney General of the State of North Carolina, who may appear as amicus curiae.

Authority G.S. 143-166.4.

04 NCAC 10H .0203 APPOINTMENT OF GUARDIAN AD LITEM

6-(a) In all cases where it is suitable that infants Infants or incompetents sue by may bring an action under this Subchapter only through their guardian ad litem; ad litem, the Commission will appoint such guardian ad litem upon the written application of a reputable disinterested person closely connected with such infant or incompetent. But, if such person will not apply, then, upon the like application of some reputable citizen; and the Commission will make such appointment only after due inquiry as to the fitness of the person to be appointed. The Commission shall appoint a person as guardian ad litem if the Commission determines it to be in the best interest of the infant or incompetent. The Commission shall appoint a guardian ad litem only after due inquiry as to the fitness of the person to be appointed.

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

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

Authority G.S. 1A-1 Rule 17(b)(2); 143-166.4.

04 NCAC 10H .0204 WRITTEN OR RECORDED STATEMENT

(a) Upon the request of the employer or his agent to take a written or a recorded statement, the employer or his agent shall advise any person eligible for payments that the statement may be used to determine whether the claim will be paid or denied. Any person eligible for payments who gives the employer, its carrier, or any agent either a written or recorded statement of the facts and circumstances surrounding the decedent's injury shall be furnished a copy of such statement within 45 days after request. Any person eligible for payments shall immediately be furnished with a copy of the written or recorded statement following a denial of the claim. A copy shall be furnished at the expense of the party to whom the statement was given.

(b) If any party fails to comply with this Rule, a Commissioner or Deputy Commissioner shall enter an order prohibiting that party from introducing the statement into evidence or using any part of the statement.

Authority G.S. 143-166.4.

IV. APPEAL TO THE FULL COMMISSION 04 NCAC 10H .0205 REVIEW BY THE FULL COMMISSION

1-(a) In any case in which Decision is filed by Hearing Commissioner or Hearing Deputy Commissioner, appeal may be

made to the Full Commission by giving written notice of appeal to the Commission within fifteen days from receipt of the Decision, with written statement of service of copy by mail or in person on opposing party or parties. A party may request a review of an award filed by a Deputy Commissioner by filing a letter expressing a request for review to the Full Commission within 15 days of receipt of the award. The award is binding on the parties if not appealed.

2-(b) Upon After receipt of notice of appeal review, the Commission will shall supply to the appellant and to the appellee a transcript of the record upon which is based the Decision and the award is based and from which appeal a review is being taken to the Full Commission. The appellant shall, within ten days of receipt of transcript of the record, file with the Commission a written statement of the particular grounds for the appeal, with written statement of service of copy by mail or in person on all opposing party or parties.

(c) Particular grounds Grounds for appeal review not set forth will be are deemed to be abandoned and argument thereon will shall not be heard before the Full Commission.

A nonappealing party is not required to file conditional assignments of error in order to preserve his rights for possible further appeals.

3-(d) When an appeal a review is made to the Full Commission, appellant's brief, if any, in support of his ground for appeal shall be filed in triplicate with the Commission, with written statement of service of copy by mail or in person on appellee all opposing parties no less than fifteen 15 days prior to the hearing on appeal review. Appellee shall have five days in which to file a reply brief, if any deemed necessary, in triplicate with the Commission, with written statement of service of copy by mail or in person on all opposing party or parties.

(e) Any motions by either party shall be filed in triplicate with the Full Commission, with written statement of service of copy by mail or in person on all opposing party or parties.

4. No new evidence will be presented to or heard by the Full Commission.

5. Ruling on a motion for a new hearing to take additional evidence will be governed by the general law of the State for the granting of new trials on the grounds of newly discovered evidence. Such motion must be written, supported by affidavit, and maybe argued before the Full Commission at the time of the hearing on appeal.

6-(f) The parties, or either of them, may waive oral argument before the Full Commission. Upon the request of a party, or its own motion, the Commission may waive oral arguments to prevent manifest injustice, to promote judicial economy, or to expedite a decision in the public interest. In the event of such waiver, a Decision the Full Commission shall file an award based on the record, exceptions, record and briefs, briefs, if any, will be given by the Full Commission.

Authority G.S. 143-166.4.

04 NCAC 10H .0206 SUSPENSION OF RULES

To prevent manifest injustice to a party, or to expedite a decision in the public interest, the Commission may, except as otherwise provided by the Rules in this Subchapter, suspend or vary the requirements or provisions of any of the Rules in this Subchapter

in a case pending before the Commission upon application of a party or upon its own initiative, and may order proceedings in accordance with its directions.

Authority G.S. 143-166.4.

04 NCAC 10H .0207 SANCTIONS

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

(b) Failure to timely file forms as required by either the Rules in this Subchapter or pursuant to the Law-Enforcement Officers' Firemen's, Rescue Squad Workers' and Civil Air Patrol Members' Death Benefits Act may result in fines or other sanctions.

Authority G.S. 1A-1, Rule 37; 143-166.4.

SUBCHAPTER 10I - CHILDHOOD VACCINE-RELATED INJURY RULES OF THE NORTH CAROLINA INDUSTRIAL COMMISSION

SECTION .0100 –ADMINISTRATION

~~RULE 101. LOCATIONS OF OFFICES AND HOURS OF BUSINESS.~~ 04 NCAC 10I .0101 LOCATIONS OF OFFICES AND HOURS OF BUSINESS

For purposes of this Subsection, the offices of the North Carolina Industrial Commission are located in the Dobbs Building, 430 North Salisbury Street, in Raleigh, North Carolina, 27611. The same office hours as are or may be observed by other State offices in Raleigh will be observed by the Industrial Commission. Documents pertaining to the Childhood Vaccine-Related Injury claims that are not being filed electronically may be filed between the hours of 8:00 a.m. and 5:00 p.m. only. Documents permitted to be filed electronically may be filed until 11:59 p.m. on the required filing date.

Authority G.S. 130A-424; 130A-425(d).

~~RULE 103. OFFICIAL FORMS.~~ 04 NCAC 10I .0102 OFFICIAL FORMS

The use of any printed forms related to Childhood Vaccine-Related Injury claims, other than those approved and adopted provided by this the Commission is prohibited, except that. Approved forms may be obtained from the Commission. Insurance insurance carriers, and self-insurers, attorneys and other parties may reproduce prepare forms for their own use, provided: (1) that the color of the paper upon which the form is printed shall be substantially identical to that used on the approved Commission's form, (2) no statement, question, or information blank contained on the approved Commission's form is omitted from the substituted form, and (3) such substituted form is substantially identical in size and format with the approved Commission's form.

- ~~(2)(1)~~ no statement, question, or information blank contained on the ~~approved Commission's Commission~~ form is omitted from the substituted form; and
- ~~(3)(2)~~ such the substituted form is substantially identical in size and format with the ~~approved Commission's Commission~~ form.

Authority G.S. 130A-424; 130A-425(d).

SECTION .0200 - RULES OF COMMISSION

~~RULE 201. RULE OF CIVIL PROCEDURE.~~ 04 NCAC 10I .0201 RULES OF CIVIL PROCEDURE

The Rules of Civil Procedure ~~apply in cases involving a purported~~ as provided in G.S. 130A-17 apply in Childhood Vaccine-Related Injury claims, to the extent that such Rules are not inconsistent so long as such rules are consistent with Article 17 of Chapter 130A of the North Carolina General Statutes. Statutes, except as hereinafter specifically provided. In the event of such inconsistency, the Childhood Vaccine-Related Injury Compensation Program Act and the Rules of this Subchapter control.

Authority G.S. 130A-425(d).

~~RULE 202. PROCEDURE.~~ 04 NCAC 10I .0202 PROCEDURE

Upon provision of a copy of the claim and supporting documentation, including all available medical records pertaining to the alleged injury, as provided in When a claim is filed in accordance with N.C.G.S. § G.S. 130A-425(b), the respondent further proceedings shall be suspended for a period of ninety (90) days during which the responsible government agencies shall determine and report their its position to the claimant and the commission on the issues listed in N.C.G.S. § 130A-426(a). G.S. 130A-426(a) within 90 days. If the said agencies agree respondent agrees that the claimant claimant is entitled has established damages which entitle claimant to money compensation meeting or exceeding the maximum amount set forth in G.S. §130A-427(b), the Commission shall so notify the claimant claimant and respondents respondent, and further notify them of the services the Department of Human Resources proposes to provide pursuant to G.S. §130A-427(a)(5). The Commission shall allow the parties an opportunity to settle the matter before proceeding thereafter allow the parties a reasonable period of time to settle the matter before proceeding to hearing.

Authority G.S. 130A-423; 130A-424; 130A-425; 130A-427.

~~RULE 203. ATTORNEYS FEES.~~ 04 NCAC 10I .0203 ATTORNEYS' FEES

At the conclusion of the case, counsel for the plaintiff shall submit to the Commission an account of time and services rendered the plaintiff for consideration in setting a fee pursuant to:

An attorney seeking fees pursuant to G.S. 130A-427(a)(4) shall submit to the Commission a copy of the fee agreement, a request

for payment of fee, and an affidavit or itemized statement in support of an award of attorneys' fees.

Authority G.S. 130A-425(d); 130A-427(a)(4).

04 NCAC 10I .0204 SUSPENSION OF RULES

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

Authority G.S. 130A-425(d).

04 NCAC 10I .0205 SANCTIONS

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

(b) Failure to timely file forms as required by either the Rules in this Subchapter or pursuant to the Childhood Vaccine-Related Injury Compensation Program may result in fines or other sanctions.

Authority G.S. 130A-425(d).

**SUBCHAPTER 10J – FEES FOR MEDICAL
COMPENSATION**

**SECTION 0100 – FEES FOR MEDICAL
COMPENSATION**

**04 NCAC 10J .0101 FEES FOR MEDICAL
COMPENSATION**

(a) The Commission has adopted and published a Medical Fee Schedule, pursuant to the provisions of G.S. 97-26(a), setting maximum amounts, except for hospital fees pursuant to G.S. 97-26(b), that may be paid for medical, surgical, nursing, dental, and rehabilitative services, and medicines, sick travel, and other treatment, including medical and surgical supplies, original artificial members as may reasonably be necessary at the end of the healing period and the replacement of such artificial members when reasonably necessitated by ordinary use or medical circumstances. The amounts prescribed in the applicable published Fee Schedule shall govern and apply according to G.S. 97-26(c). However, in other hardship cases where sufficient reason is demonstrated to the Commission, amounts in excess of those so published may be allowed.

(b) The Commission's Medical Fee Schedule contains maximum allowed amounts for medical services provided pursuant to Chapter 97 of the General Statutes. The Medical Fee Schedule utilizes 1995 through the present, Current Procedural Terminology (CPT) codes adopted by the American Medical Association, Healthcare Common Procedure Coding Systems

(HCPCS) codes, and jurisdiction-specific codes. A listing of the maximum allowable amount for each code is available on the Commission's website at <http://www.ic.nc.gov/ncic/pages/feesched.asp> and in hardcopy at 430 N. Salisbury Street, Raleigh, North Carolina.

(c) The following methodology provides the basis for the Commission's Medical Fee Schedule:

- (1) CPT codes for General Medicine are based on North Carolina Medicare values multiplied by 1.58.
- (2) CPT codes for Physical Medicine are based on North Carolina Medicare values multiplied by 1.30.
- (3) CPT codes for Radiology are based on North Carolina Medicare values multiplied by 1.96.
- (4) CPT codes for Surgery are based on North Carolina Medicare values multiplied by 2.06.

(d) The Commission's Hospital Fee Schedule, adopted pursuant to G.S. 97-26(b), provides for payment as follows:

- (1) Inpatient hospital fees: Inpatient services are reimbursed based on a Diagnostic Related Groupings (DRG) methodology. The Hospital Fee Schedule utilizes the 2001 Diagnostic Related Groupings adopted by the State Health Plan. Each DRG amount is based on the amount that the State Health Plan had in effect for the same DRG on June 30, 2001. DRG amounts are further subject to the following payment band that establishes maximum and minimum payment amounts:
 - (A) The maximum payment is 100 percent of the hospital's itemized charges.
 - (B) For hospitals other than critical access hospitals, the minimum payment is 75 percent of the hospital's itemized charges.
 - (C) For critical access hospitals, the minimum payment is 77.07 percent of the hospital's itemized charges.
- (2) Outpatient hospital fees: Outpatient services are reimbursed based on the hospital's actual charges as billed on the UB-04 claim form, subject to the following percentage discounts:
 - (A) For hospitals other than critical access hospitals, the payment shall be 79 percent of the hospital's billed charges.
 - (B) For critical access hospitals, the payment shall be 87 percent of the hospital's billed charges. For purposes of the hospital fee schedule, critical access hospitals are those hospitals designated as such pursuant to federal law (42 CFR 485.601 et seq.)
- (3) Ambulatory surgery fees: Ambulatory surgery center services are reimbursed at 79 percent of billed charges.

(4) Other rates: If a provider has agreed under contract with the insurer or managed care organization to accept a different amount or reimbursement methodology, that amount or methodology establishes the applicable fee.

(e) A provider of medical compensation shall submit its statement for services within 75 days of the rendition of the service, or if treatment is longer, within 30 days after the end of the month during which multiple treatments were provided. However, in cases where liability is initially denied but subsequently admitted or determined by the Commission, the time for submission of medical bills shall run from the time the health care provider received notice of the admission or determination of liability. Within 30 days of receipt of the statement, the employer, carrier, or managed care organization, or administrator on its behalf, shall pay or submit the statement to the Commission for approval or send the provider written objections to the statement. If an employer, carrier, administrator, or managed care organization disputes a portion of the provider's bill, the employer, carrier, administrator, or managed care organization, shall pay the uncontested portion of the bill and shall resolve disputes regarding the balance of the charges through its contractual arrangement or through the Commission.

(f) Pursuant to G.S. 97-18(i), when the 10 percent addition to the bill is uncontested, payment shall be made to the provider without notifying or seeking approval from the Commission. When the 10 percent addition to the bill is contested, any party may request a hearing by the Commission pursuant to G.S. 97-83 and G.S. 97-84.

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

(h) The responsible employer, carrier, managed care organization, or administrator shall pay the statements of medical compensation providers to whom the employee has been referred by the treating physician authorized by the insurance carrier for the compensable injury or body part, unless the physician has been requested to obtain authorization for referrals or tests; provided that compliance with the request shall not unreasonably delay the treatment or service to be rendered to the employee.

(i) Employees are entitled to reimbursement for sick travel when the travel is medically necessary and the mileage is 20 or more miles, round trip, at the business standard mileage rate set by the Internal Revenue Service per mile of travel and the actual cost of tolls paid. Employees are entitled to lodging and meal expenses, at a rate to be established for state employees by the North Carolina Director of Budget, when it is medically necessary that the employee stay overnight at a location away from the employee's usual place of residence. Employees are entitled to reimbursement for the costs of parking or a vehicle for hire, when the costs are medically necessary, at the actual costs of the expenses.

(j) Any employer, carrier or administrator denying a claim in which medical care has previously been authorized is responsible for all costs incurred prior to the date notice of

denial is provided to each health care provider to whom authorization has been previously given.

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

TITLE 12 – DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Sheriffs' Education and Training Standards Commission intends to adopt the rule cited as 12 NCAC 10B .2009 and amend the rules cited as 12 NCAC 10B .0101, .0205-.0206, .0410, .0702, .0713, .0901, .1002, .1004-.1005, .1202, .1204-.1205, .1602, .1604-.1605, .2003-.2007, .2102-.2103.

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://www.ncdoj.gov/About-DOJ/Law-Enforcement-Training-and-Standards/Sheriffs-Education-and-Training-Standards/All-Commission-Forms-and-Publications.aspx>

Proposed Effective Date: *January 1, 2013*

Public Hearing:

Date: *September 15, 2012*

Time: *10:00 a.m.*

Location: *1700 Tryon Park Drive, Raleigh, NC 27602*

Reason for Proposed Action:

12 NCAC 10B .0101 and 12 NCAC 10B .0702 - Revision amends the physical address for the Division as we have moved to a new location.

12 NCAC 10B .0410 - Revision redacts a rule cite that no longer exists.

12 NCAC 10B .0901 - Revision make it clear that the instructors for the Telecommunicator Certification Course are not covered by the rules set out by the Criminal Justice Commission and updates the contact information for the Office of Administrative Hearings.

12 NCAC 10B .0205 - Revision will allow the Commission to reduce the period of sanction after an administrative hearing where the basis for adverse action is made under 12 NCAC .0204(d). So that the Commission more discretion in granting leniency for individuals who have been found to have violated a Commission rule.

12 NCAC 10B .0206 - Revision clarifies that summary suspensions or denials can be issued for all justice officers or criminal justice officers who fail to complete in-service training as required. This makes this rule consistent with provisions of 12 NCAC 10B Section .2000.

12 NCAC 10B .0713 - Revision requires the school offering the commission-certified basic training courses to have the trainee provide documentation that he/she meets the educational requirement that is already in place for obtaining certification from the Commission. This ensures that trainees enrolled in basic training courses can meet the educational requirement required for certification.

12 NCAC 10B .1002; 1004; .1005; .1202; .1204; .1205; .1602; .1604; .1605 - Revision removes formula for awarding

professional certificates based on a combination of having earned college degrees, years of experience and training points. This will allow individuals to claim their college credits gained in the process of being enrolled and or having completed degree programs.

12 NCAC 10B .2004 and .2102 - Revisions set out that:

- the classroom portion regarding use of force may also be taught by a Professional Lecturer with a law degree;
- corrects the type of instructor who may teach the Active Shooter: Practical Refresher topic of instruction; and
- requires the instructors who will be teaching the required in-service training blocks of instruction to pass a test on the material to be taught before actually teaching;

The purpose is to require the instructor to be knowledgeable in the specific topics he/she will teach.

12 NCAC 10B .2103 - Revision to remove statutory citation regarding use of force and reference to firearms instructor. This rule sets out the training requirements for in-service firearms training. Detention officers who are authorized to carry firearms are already required to qualify with the weapon and complete use-of-force instruction by 12 NCAC 10B .2101 and .2104. The statutory citation referenced only applies to law enforcement, and the law regarding detention officers is found elsewhere. Since this rule sets out the requirements for both deputy sheriffs and detention officers, removal of the citation corrects the rule to ensure all references to required training explicitly include detention officers as well as deputy sheriffs. The reference to the specialized firearms instructor is being removed to be consistent with the amendment to .2004 and .2012 described above.

12 NCAC 10B .2003 and .2009 - Revision of .2003 and adoption of .2009 sets out by rule the requirements and qualifications for in-service training coordinators as currently taught in the Coordinating In-Service Training Course for in-service training coordinators. The purpose is to ensure the training provider delivers and documents training delivery in accordance with the expectations of the Commission.

12 NCAC 10B .2005 and .2007 - The revisions set out what will be required for in-service training in 2013. These in-service training programs began in 2005 with deputies completing 4 hours of domestic violence training. Since 2006 deputies have been required to complete 24 hours of in-service training. Since 2007 detention officers and telecommunicators have been required to complete 16 hours. In 2013, deputies must likewise complete approximately 24 hours, and detention officers and telecommunicators must complete 16 hours. The purpose is to improve performance, reduce errors and reduce the number of lawsuits, and protect public health, safety and welfare by ensuring each officer remains knowledgeable in the relevant subject areas of enforcement, corrections, or communications.

12 NCAC 10B .2006 - Revision requires a local or state police officer certified under the Criminal Justice Commission to make up any missed in-service training upon transferring to a deputy position. The purpose is to improve performance, reduce errors and reduce the number of lawsuits, and protect public health, safety and welfare by ensuring each deputy remains knowledgeable in his/her area of enforcement.

Procedure by which a person can object to the agency on a proposed rule: Objections shall be submitted in writing explaining the reasons for objection and specifying the portion of the rule to which the objection is being made. Such objection should be sent to: Julia Lohman, Sheriffs' Standards Division, NC Department of Justice, Post Office Drawer 629, Raleigh, NC 27602

Comments may be submitted to: Julia Lohman, Post Office Drawer 629, Raleigh, NC 27602, phone (919)779-8213, fax (919)662-4516, email jlohman@ncdoj.gov

Comment period ends: September 15, 2012

Procedure for Subjecting a Proposed Rule to Legislative

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

Fiscal impact (check all that apply).

- ☒ State funds affected
- ☐ Environmental permitting of DOT affected
- ☐ Analysis submitted to Board of Transportation
- ☒ Local funds affected
- ☒ Date submitted to OSBM: April 26, 2012
- ☒ Substantial economic impact (≥\$500,000)
- ☒ Approved by OSBM
- ☐ No fiscal note required

CHAPTER 10 - N.C. SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION

SUBCHAPTER 10B - N.C. SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION

SECTION .0100 - COMMISSION ORGANIZATION AND PROCEDURES

12 NCAC 10B .0101 LOCATION

The N.C. Sheriffs' Education and Training Standards Commission is established within the Department of Justice and is located in the ~~Sam J. Ervin, Jr. Justice Building at 114 Edenton Street~~ at 1700 Tryon Park Drive in Raleigh, North Carolina. The mailing address is:

North Carolina Sheriffs' Education and Training Standards Commission
Post Office Box 629

Raleigh, North Carolina 27602
Telephone ~~(919) 716-6460~~ (919) 779-8213

Authority G.S. 17E-6.

SECTION .0200 - ENFORCEMENT RULES

12 NCAC 10B .0205 PERIOD OF SUSPENSION: REVOCATION: OR DENIAL

When the Commission suspends, revokes, or denies the certification of a justice officer, the period of sanction shall be:

- (1) permanent where the cause of sanction is:
 - (a) commission or conviction of a felony;
 - (b) commission or conviction of a crime for which authorized punishment included imprisonment for more than two years; or
 - (c) the second revocation, suspension, or denial of an officer's certification for any of the causes requiring a five-year period of revocation, suspension, or denial as set out in Item (2) of this Rule.
- (2) not less than five years where the cause of sanction is:
 - (a) commission or conviction of offenses as specified in 12 NCAC 10B .0204(d)(1);
 - (b) material misrepresentation of any information required for certification or accreditation from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission;
 - (c) knowingly and designedly by any means of false pretense, deception, fraud, misrepresentation or cheating whatsoever, obtained or attempted to obtain credit, training or certification from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission;
 - (d) knowingly and designedly by any means of false pretense, deception, fraud, misrepresentation or cheating whatsoever, aiding another in obtaining or attempting to obtain credit, training, or certification from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission. This Sub-Item also applies to obtaining or attempting to obtain credit for in-service training as required by 12 NCAC 10B .1700, .1800, .2000, or .2100;
 - (e) failure to make either of the notifications as required by 12 NCAC 10B .0301(a)(7);

- (f) removal from office under the provisions of G.S. 128-16 or the provisions of G.S. 14-230; or
- (g) a positive result on a drug screen, or a refusal to submit to drug testing as required by the rules in this Chapter or the rules of the Criminal Justice Education and Training Standards Commission or has refused to submit to an in-service drug screen pursuant to the guidelines set forth in the Drug Screening Implementation Guide as required by the employing agency through which the officer is certified.

The Commission may either reduce or suspend the periods of sanction under this Item or substitute a period of probation in lieu of revocation, suspension or denial following an administrative hearing. This authority to reduce or suspend the period of sanction may be utilized by the Commission when extenuating circumstances brought out at the administrative hearing warrant such a reduction or suspension.

- (3) for an indefinite period, but continuing so long as the stated deficiency, infraction, or impairment continues to exist, where the cause of sanction is:
 - (a) failure to meet or satisfy relevant basic training requirements;
 - (b) failure to meet or maintain the minimum standards of employment or certification;
 - (c) failure to meet or satisfy the in-service training requirements as prescribed in 12 NCAC 10B .2000 or .2100 or 12 NCAC 09E .0100;
 - (d) commission or conviction of offenses as specified in 12 NCAC 10B .0204(d)(2), (3), (4) and (5); or
 - (e) denial, suspension, or revocation of certification pursuant to 12 NCAC 10B .0204(c)(5).

The Commission may either reduce or suspend the periods of sanction where revocation, denial or suspension of certification is based upon the Subparagraphs set out in 12 NCAC 10B .0204(d) .0204(d)(3), (d)(4), and (d)(5) or substitute a period of probation in lieu of revocation, suspension or denial following an administrative hearing. This authority to reduce or suspend the period of sanction may be utilized by the Commission when extenuating circumstances brought out at the administrative hearing warrant such a reduction or suspension.

Authority G.S. 17E-4; 17E-7.

12 NCAC 10B .0206 SUMMARY SUSPENSIONS: OR DENIALS

(a) The Commission may summarily suspend or deny the certification of a justice officer or instructor when, in the opinion of the Commission, the public health, safety, or welfare requires this emergency action of summary suspension or denial. The Commission has determined that the following conditions specifically affect the public health, safety, or welfare and therefore it, by and through the Director, shall utilize summary suspension or denial following a full investigation of the matter when:

- (1) the applicant for certification or the certified justice officer has committed or been convicted of a violation of the criminal code which would require a permanent revocation or denial of certification;
- (2) the justice officer has failed to comply with the training requirements of 12 NCAC 10B .0500, .0600, and 1300;
- (3) the certified ~~deputy sheriff or detention justice officer or criminal justice officer~~ fails to satisfactorily complete the minimum in-service training requirements as prescribed in 12 NCAC 10B .2000 or .2100 or 12 NCAC 09E .0100;
- (4) the applicant for certification has refused to submit to the drug screen as required in 12 NCAC 10B .0301(6) or .0406(c)(3) or in connection with an application for or certification as a justice officer or a criminal justice officer as defined in 12 NCAC 09A .0103(6); or
- (5) the applicant for certification or the certified officer has produced a positive result on any drug screen reported to the Commission as specified in 12 NCAC 10B .0410 or reported to any commission, agency, or board established to certify, pursuant to said commission, agency, or boards' standards, a person as a justice officer or a criminal justice officer as defined in 12 NCAC 09A .0103(6), unless the positive result is due to a medically indicated cause.

(b) Without limiting the application of G.S. 17E, a person who has had his or her certification summarily suspended or denied may not exercise the authority or perform the duties of a justice officer during the period of suspension or denial.

Authority G.S. 17E-8; 17E-9; 150B-3(c).

SECTION .0400 - CERTIFICATION OF JUSTICE OFFICERS

12 NCAC 10B .0410 AGENCY REPORTING OF DRUG SCREENING RESULTS

(a) Each agency shall report in writing to the Division all refusals and all positive results of drug screening obtained from applicants and lateral transfers pursuant to 12 NCAC 10B .0301(6) ~~or .0406(b)(4)~~ unless the positive result has been

explained to the satisfaction of the agency's medical review officer who shall be a licensed physician.

(b) Each agency, if it conducts a drug screen for in-service officers, shall report positive results to the Division provided the drug screen conducted conforms to 12 NCAC 10B .0301(6)(a), (b), (c), (d) and (f).

(c) For reporting purposes, a result will be considered "positive" only in the cases where the drug screen reveals the presence of an illegal drug at a level equal to or greater than the threshold value as established by the Department of Health and Human Services for Federal Workplace Drug Testing Programs and adopted by reference in 12 NCAC 10B .0301(6) of these Rules.

Authority G.S. 17E-4; 17E-7.

SECTION .0700 - MINIMUM STANDARDS FOR JUSTICE OFFICER SCHOOLS AND TRAINING PROGRAMS OR COURSES OF INSTRUCTION

12 NCAC 10B .0702 ADMINISTRATION OF JUSTICE OFFICER SCHOOLS

The rules covering the administration of Criminal Justice Schools and training programs or courses of instruction, codified as Title 12, Subchapter 9B, Section .0200 of the North Carolina Administrative Code, effective and previously adopted by the North Carolina Criminal Justice Education And Training Standards Commission are hereby incorporated by reference and shall automatically include any later amendments and editions of the incorporated material to apply to actions of the North Carolina Sheriffs' Education and Training Standards Commission with the exception of the Detention Officer Certification Course and the Telecommunicator Certification Course. Copies of the incorporated materials may be obtained at no cost from the Criminal Justice Standards Division, North Carolina Department of Justice, ~~Sam J. Ervin, Jr. Justice Building at 114 Edenton Street,~~ 1700 Tryon Park Drive, Post Office Drawer 149, Raleigh, North Carolina 27602.

Authority G.S. 17E-4.

12 NCAC 10B .0713 ADMISSION OF TRAINEES

(a) The school director shall not admit any individual as a trainee in any commission-certified basic training course who is not a citizen of the United States.

(b) The school may not admit any individual younger than 21 years of age as a trainee in any commission-certified basic training course without the prior written approval of the Director of the Standards Division. The Director shall approve those individuals who will turn 21 years of age during the course, but prior to the ending date.

(c) The school may not admit any individual who has not provided documentation that he or she meets the educational requirement as set out in 12 NCAC 10B .0302.

~~(d)~~ (e) The school shall give priority admission in commission-certified basic training courses to individuals holding full-time employment with criminal justice agencies.

~~(d)~~ (e) The school shall administer the reading component of a standardized test which reports a grade level for each trainee participating in either the Telecommunicator or Detention

Officer Certification Course. The specific type of test instrument shall be determined by the school director and shall be administered within the first week of the Course. The grade level results on each trainee shall be submitted to the Commission on each trainee's Report of Student Course Completion.

~~(e)~~(f) The school shall not admit any individual as a trainee in a presentation of the Detention Officer Certification Course or the Telecommunicator Certification Course unless as a prerequisite the individual has provided to the certified school director a Medical Examination Report Form (F-2) and the Medical History Statement Form (F-1) in compliance with 12 NCAC 10B .0304. The Medical Examination Report Form (F-2) and the Medical History Statement Form (F-1) required by the North Carolina Criminal Justice Education and Training Standards Commission shall be recognized by the Commission for the purpose of complying with this Rule.

~~(f)~~(g) The school shall not admit any individual trainee in commission-certified basic training courses unless as a prerequisite the individual has provided the certified School Director a certified criminal record check for local and state records for the time period where the trainee has resided within the past 10 years and where the trainee attended high school. An Administrative Office of the Courts criminal record check or a comparable out-of-state criminal record check will satisfy this requirement. If an individual trainee has received a probationary certificate from the Commission at the time of enrollment, this records check requirement is waived.

~~(g)~~(h) The school shall not admit any individual as a trainee in commission-certified basic training courses who has been convicted of the following:

- (1) a felony; or
- (2) a crime for which the punishment could have been imprisonment for more than two years; or
- (3) a crime or unlawful act defined as a "Class B Misdemeanor" within the five year period prior to the date of appointment; or
- (4) four or more crimes or unlawful acts as defined as "Class B Misdemeanors" regardless of the date of conviction; or
- (5) four or more crimes or unlawful acts defined as "Class A Misdemeanors" except the trainee may be enrolled if the last conviction occurred more than two years prior to the date of enrollment; or
- (6) a combination of four or more "Class A Misdemeanors" or "Class B Misdemeanors" regardless of the date of conviction.

(h) Individuals charged with crimes as specified in this Paragraph, and such offenses were dismissed or the person was found not guilty, may be admitted into the commission-certified basic training courses but completion will not ensure that certification as a justice officer through the Commission will be issued. Every individual who is admitted as a trainee in a presentation of the Basic Law Enforcement Training Course commission-certified basic training courses shall notify the School Director of all criminal offenses which the trainee is arrested for or charged with, pleads no contest to, pleads guilty to or is found guilty of, and notify the School Director of all

Domestic Violence Orders (G.S. 50B) and Civil No Contact Orders (50C) which are issued by a judicial official that provide an opportunity for both parties to be present. This shall include all criminal offenses except minor traffic offenses. A minor traffic offense is defined for purposes of this Paragraph as any offense under G.S. 20 or similar laws of other jurisdictions; except those Chapter 20 offenses published in the Class B Misdemeanor Manual. Other traffic offenses under laws of other jurisdictions which shall be reported to the School Director expressly include either first or subsequent offenses of driving while impaired if the maximum allowable punishment is for a term of more than six months but not more than two years, and driving while license permanently revoked or permanently suspended. The notifications required under this Paragraph must be in writing, must specify the nature of the offense, the court in which the case was handled, the date of the arrest or criminal charge, the date of issuance of the Domestic Violence Order (G.S. 50B), Civil No Contact Order (G.S. 50C) the final disposition, and the date thereof. The notifications required under this Paragraph must be received by the School Director within 30 days of the date the case was disposed of in court. The requirements of this Paragraph shall be applicable at all times during which the trainee is enrolled in a Basic Law Enforcement Training Course. The requirements of this Paragraph are in addition to the notifications required under 12 NCAC 10B .0301 and 12 NCAC 09B .0101(8).

Authority G.S. 17E-7.

SECTION .0900 - MINIMUM STANDARDS FOR JUSTICE OFFICER INSTRUCTORS

12 NCAC 10B .0901 CERT/INSTRUCTORS/BASIC LAW ENFORCEMENT TRAINING COURSE

The rules covering the certification of instructors, codified as Title 12, Subchapter 9B, Section .0300 of the North Carolina Administrative Code, and previously adopted by the North Carolina Criminal Justice Education and Training Standards Commission, are hereby incorporated by reference, and shall automatically include any later amendments and editions of the referenced materials, to apply to actions of the North Carolina Sheriffs' Education and Training Standards Commission with the exception of instructors for the Detention Officer Certification Course and Telecommunicator Certification Course. ~~Copies of the publication may be obtained from the Office of Administrative Hearings, Rules Division web-site <http://www.ncoah.com/rules>. Hearings, Capehart Crocker House, 424 North Blount Street, Raleigh, North Carolina 27601. The cost per copy is two dollars and fifty cents (\$2.50) for the first 10 pages and fifteen cents (\$0.15) for each page thereafter at the time of adoption of this Rule.~~

Authority G.S. 17E-4.

SECTION .1000 - PROFESSIONAL CERTIFICATE PROGRAM FOR SHERIFFS AND DEPUTY SHERIFFS

12 NCAC 10B .1002 GENERAL PROVISIONS

(a) In order to be eligible for one or more of the professional awards, a sheriff or deputy sheriff shall first meet the following preliminary qualifications:

- (1) be an elected or appointed sheriff or be a deputy sheriff who holds valid General or Grandfather Certification. A deputy sheriff serving under a probationary certification is not eligible for consideration. Any justice officer subject to suspension or revocation proceedings or under investigation for possible decertification action by the Commission or the North Carolina Criminal Justice Education and Training Standards Commission shall not be eligible for professional awards for the pendency of the proceeding;
- (2) the sheriff or deputy sheriff shall be familiar with and subscribe to the Law Enforcement Code of Ethics as promulgated by the International Association of Chiefs of Police;
- (3) if the applicant is a deputy sheriff, the deputy shall be a full-time sworn law enforcement officer of a North Carolina Sheriff's Office, as certified in writing by the sheriff; or be a full-time law enforcement officer of an agency who must be sworn by the sheriff in order to perform his duties as certified in writing by the Sheriff;
- (4) employees of a North Carolina Sheriff's Office who have previously held general or grandfather law enforcement officer certification but are presently, by virtue of promotion or transfer, serving in non-sworn positions not subject to certification are eligible to participate in the Professional Certificate Program. Eligibility for this exception requires continuous employment with the sheriff's office from the date of promotion or transfer from a sworn, certified position to the date of application for a professional certificate; and

(5) only training or experience gained in an officer's area of expertise will be eligible for application to this program.

(b) Certificates shall be awarded based upon a formula which combines formal education, law enforcement training, and actual experience as a law enforcement officer. These professional certificates are appropriate for sworn sheriffs and full-time deputy sheriffs. Points are computed in the following manner:

- (1) each semester hour of college credit shall equal one education point and each quarter hour shall equal two-thirds of an education point. No correspondence or vocational courses shall be credited towards education points unless an accredited institution credits the course(s) towards a degree;
- (2) twenty classroom hours of commission-approved law enforcement training shall equal one training point; and
- (3) experience as a sworn law enforcement officer as defined in Rule .0103(17) of this Subchapter shall be acceptable for ~~consideration~~ consideration; and
- (4) ~~applicants holding degrees shall not be awarded additional points for those degrees and must instead meet the training point requirements of this Section through completion of law enforcement training.~~

Authority G.S. 17E-4.

12 NCAC 10B .1004 INTERMEDIATE LAW ENFORCEMENT CERTIFICATE

(a) In addition to the qualifications set forth in Rule .1002, applicants for the Intermediate Law Enforcement Certificate shall possess or be eligible to possess the Basic Law Enforcement Certificate and shall have acquired the following combination of educational ~~points, points or degrees~~, law enforcement training and years of law enforcement training experience:

Educational Degrees	None	None	None	Associate	Bachelor
Years of Law Enforcement Experience	-	-	-	-	-
Minimum Law Enforcement Training Points	20	35	50	24	23
Minimum Total Education and Training Points	39	69	99	24	23

Years of Law Enforcement Experience	<u>8</u>	<u>6</u>	<u>4</u>
Minimum Law Enforcement Training Points	<u>20</u>	<u>35</u>	<u>50</u>
Minimum Total Education and Training Points	<u>39</u>	<u>69</u>	<u>99</u>

(b) Educational points claimed shall have been earned at a technical institute, technical college, community college, junior college, college or university accredited as such by the Department of Education of the state in which the institution is located, a national or regional accrediting body, or the state university of the state in which the institution is located. No credit shall be given for any correspondence or vocational courses unless credited towards a degree by an accredited institution.

(c) No more than 160 hours of training obtained by completing the commission-mandated basic law enforcement training course shall be credited toward training points.

Authority G.S. 17E-4.

**12 NCAC 10B .1005 ADVANCED LAW
ENFORCEMENT CERTIFICATE**

(a) In addition to the qualifications set forth in Rule .1002, applicants for the Advanced Law Enforcement Certificate shall possess or be eligible to possess the Intermediate Law Enforcement Certificate and shall have acquired the following combination of educational points, ~~points or degrees~~, law enforcement training points and years of law enforcement experience:

Educational Degrees	None	None	Associate	Bachelor	Doctoral, Professional or Master
-	-	-	-	-	-
Years of Law Enforcement Experience	12	9	9	6	4
Minimum Law Enforcement Training Points	35	50	33	27	23
Minimum Total Education and Training Points	69	99	33	27	23

Years of Law Enforcement Experience	<u>12</u>	<u>9</u>
Minimum Law Enforcement Training Points	<u>35</u>	<u>50</u>
Minimum Total Education and Training Points	<u>69</u>	<u>99</u>

(b) Educational points claimed shall have been earned at a technical institute, technical college, community college, junior college, college or university accredited as such by the Department of Education of the state in which the institution is located, a national or regional accrediting body, or the state university of the state in which the institution is located. No credit shall be given for any correspondence or vocational courses unless credited towards a degree by an accredited institution.

(c) No more than 160 hours of training obtained by completing the commission-mandated basic law enforcement training course shall be credited toward training points.

Authority G.S. 17E-4.

**SECTION .1200 - PROFESSIONAL CERTIFICATE
PROGRAM FOR DETENTION OFFICERS**

12 NCAC 10B .1202 GENERAL PROVISIONS

(a) In order to be eligible for one or more of the detention officer professional awards, a detention officer shall first meet the following preliminary qualifications:

- (1) Be a full-time detention officer who holds valid general or grandfather certification. A detention officer serving under a probationary certification is not eligible for consideration. Any detention officer subject to suspension or

revocation proceedings or under investigation for possible decertification action by the Commission or the North Carolina Criminal Justice Education and Training Standards Commission shall not be eligible for any detention officer professional awards for the pendency of the proceeding.

- (2) Be familiar with and subscribe to the Law Enforcement Code of Ethics as promulgated by the International Association of Chiefs of Police to include any subsequent editions or modifications thereto. A copy of the Code of Ethics may be obtained at no cost from the Sheriffs' Standards Division, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602-0629.
- (3) Employees of a North Carolina Sheriff's Office who have previously held general or grandfather detention officer certification but are presently, by virtue of promotion or transfer, serving in positions not subject to certification are eligible to participate in the Professional Certificate Program. Eligibility for this exception requires continuous employment with the sheriff's office from the date of promotion or transfer from a certified position to the date of application for a professional certificate.

(b) Only training and experience gained in an officer's area of expertise shall be eligible for application to this program.

(c) Certificates shall be awarded based upon a formula which combines formal education, training, and actual experience as a detention officer. Points are computed in the following manner:

- (1) Each semester hour of college credit shall equal one education point and each quarter hour shall equal two thirds of an education point. No correspondence or vocational courses shall be credited towards education points unless an accredited institution credits the course(s) towards a degree;
- (2) Twenty classroom hours of commission-approved training shall equal one training point; and
- (3) Experience as a member of a correctional or detention facility in North Carolina as defined in Rule .0103(13) of this Subchapter shall be acceptable for consideration;

~~(4) Applicants holding degrees shall not be awarded additional points for those degrees and must instead meet the training point requirements of this Section through completion of training in the field of jails or corrections.~~

Authority G.S. 17E-4.

12 NCAC 10B .1204 INTERMEDIATE DETENTION OFFICER PROFESSIONAL CERTIFICATE

(a) In addition to the qualifications set forth in Rule .1202 of this Section, applicants for the Intermediate Detention Officer Professional Certificate shall possess or be eligible to possess the Basic Detention Officer Professional Certificate and shall have acquired the following combination of educational points, ~~points or degrees~~, detention officer or corrections training points and years of detention officer experience:

Educational Degrees	None	None	None	Associate	Bachelor
Years of Detention Officer Experience	-	-	-	-	-
Minimum Detention Officer Training Points	8	6	4	4	2
Minimum Total Education and Training Points	-	-	-	-	-
	6	12	16	24	23
	-	-	-	-	-
	13	23	33	24	23

<u>Years of Detention Officer Experience</u>	<u>8</u>	<u>6</u>	<u>4</u>
<u>Minimum Detention Officer Training Points</u>	<u>6</u>	<u>12</u>	<u>16</u>
<u>Minimum Total Education and Training Points</u>	<u>13</u>	<u>23</u>	<u>33</u>

(b) Educational points claimed shall have been earned at a technical institute, technical college, community college, junior college, college or university accredited as such by the Department of Education of the state in which the institution is located, a national or regional accrediting body, or the state university of the state in which the institution is located. No credit shall be given for any correspondence or vocational courses unless credited towards a degree by an accredited institution.

(c) No more than 80 hours of training obtained by completing the commission-mandated detention certification course shall be credited toward training points.

Authority G.S. 17E-4.

12 NCAC 10B .1205 ADVANCED DETENTION OFFICER PROFESSIONAL CERTIFICATE

(a) In addition to the qualifications set forth in Rule .1202 of this Section, applicants for the Advanced Detention Officer Professional Certificate shall possess or be eligible to possess the Intermediate Detention Officer Professional Certificate and shall have acquired the following combination of educational points, ~~points or degrees~~, detention officer or corrections training points and years of detention officer experience:

Educational Degrees	None	None	Associate	Bachelor	Doctoral, Professional or Master
Years of Detention Officer Experience	-	-	-	-	-
Minimum Detention Officer Training Points	12	9	9	6	4
Minimum Total Education and Training Points	-	-	-	-	-
	12	16	27	26	26
	-	-	-	-	-
	23	33	27	26	26

Years of Detention Officer Experience	<u>12</u>	<u>9</u>
Minimum Detention Officer Training Points	<u>12</u>	<u>16</u>
Minimum Total Education and Training Points	<u>23</u>	<u>33</u>

(b) Educational points claimed shall have been earned at a technical institute, technical college, community college, junior college, college or university accredited as such by the Department of Education of the state in which the institution is located, a national or regional accrediting body, or the state university of the state in which the institution is located. No credit shall be given for any correspondence or vocational courses unless credited towards a degree by an accredited institution.

(c) No more than 80 hours of training obtained by completing the commission-mandated detention certification course shall be credited toward training points.

Authority G.S. 17E-4.

SECTION .1600 - PROFESSIONAL CERTIFICATE PROGRAM FOR TELECOMMUNICATORS

12 NCAC 10B .1602 GENERAL PROVISIONS

(a) In order to be eligible for one or more of the telecommunicator professional awards, a telecommunicator shall first meet the following preliminary qualifications:

- (1) be a full-time telecommunicator who holds valid general or grandfather certification under the North Carolina Sheriffs' Education and Training Standards Commission. A telecommunicator serving under a probationary certification is not eligible for consideration;
- (2) be familiar with and subscribe to the Telecommunicator Code of Ethics as published by APCO and NENA to include any subsequent editions or modifications thereto. A copy of the Code of Ethics may be obtained at no cost from the Sheriffs' Standards Division, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602-0629; and
- (3) employees of a North Carolina Sheriff's Office or other agency who have previously held general or grandfather telecommunicator certification under the North Carolina Sheriffs' Education and Training Standards

Commission but are presently, by virtue of promotion or transfer, serving in positions not subject to certification are eligible to participate in the Professional Certificate Program. Eligibility for this exception requires continuous employment with the sheriff's office or agency from the date of promotion or transfer from a certified position to the date of application for a professional certificate.

(b) Only training and experience gained in a telecommunicator's area of expertise will be eligible for application to this program.

(c) Certificates shall be awarded based upon a formula which combines formal education, training, and actual experience as a telecommunicator. Points are computed in the following manner:

- (1) Each semester hour of college credit shall equal one point and each quarter hour shall equal two thirds of a point;
- (2) 20 classroom hours of commission-approved training shall equal one point; and
- (3) Only experience as a full-time telecommunicator certified through the Commission shall be acceptable for consideration. ~~consideration; and~~
- (4) ~~Applicants holding degrees shall not be awarded additional points for those degrees and must instead meet the training point requirements of this Section through completion of training in the field of telecommunications.~~

Authority G.S. 17E-4.

12 NCAC 10B .1604 INTERMEDIATE TELECOMMUNICATOR CERTIFICATE

(a) In addition to the qualifications set forth in Rule .1602 of this Section, applicants for the Intermediate Telecommunicator Certificate shall possess or be eligible to possess the Basic Telecommunicator Certificate and shall have acquired the following combination of educational points, points or degrees, telecommunicator training points and years of telecommunicator training experience:

Educational Degrees	None	None	None	Associate	Bachelor
Years of Telecommunicator Experience	8	6	4	4	2
Minimum Telecommunicator Training Points	5	10	14	12	10
Minimum Total	12	20	28	12	10

Education and Training Points

<u>Years of Telecommunicator Experience</u>	<u>8</u>	<u>6</u>	<u>4</u>
<u>Minimum Telecommunicator Training Points</u>	<u>5</u>	<u>10</u>	<u>14</u>
<u>Minimum Total Education and Training Points</u>	<u>12</u>	<u>20</u>	<u>28</u>

(b) Educational points claimed shall have been earned at a technical institute, technical college, community college, junior college, college or university accredited as such by the Department of Education of the state in which the institution is located, a national or regional accrediting body, or the state university of the state in which the institution is located. No credit shall be given for any correspondence or vocational courses unless credited towards a degree by an accredited institution.

(c) No more than 40 hours of training obtained by completing the commission-mandated telecommunicator certification course shall be credited toward training points.

Authority G.S. 17E-4.

12 NCAC 10B .1605 ADVANCED TELECOMMUNICATOR CERTIFICATE

(a) In addition to the qualifications set forth in Rule .1602, applicants for the Advanced Telecommunicator Certificate shall possess or be eligible to possess the Intermediate Telecommunicator Certificate and shall have acquired the following combination of educational points, ~~points or degrees~~, telecommunicator training points and years of telecommunicator experience:

Educational Degrees	None	None	Associate	Bachelor	Doctoral, Professional or Master
Years of Telecommunicator Experience	12	9	9	6	4
Minimum Telecommunicator Training Points	10	12	17	14	12
Minimum Total Education and Training Points	20	23	17	14	12

<u>Years of Telecommunicator Experience</u>	<u>12</u>	<u>9</u>
<u>Minimum Telecommunicator Training Points</u>	<u>10</u>	<u>12</u>
<u>Minimum Total Education and Training Points</u>	<u>20</u>	<u>23</u>

(b) Educational points claimed shall have been earned at a technical institute, technical college, community college, junior college, college or university accredited as such by the Department of Education of the state in which the institution is located, a national or regional accrediting body, or the state university of the state in which the institution is located. No credit shall be given for any correspondence or vocational courses unless credited towards a degree by an accredited institution.

(c) No more than 40 hours of training obtained by completing the commission-mandated telecommunicator certification course shall be credited toward training points.

Authority G.S. 17E-4.

SECTION .2000 - IN-SERVICE TRAINING FOR JUSTICE OFFICERS

12 NCAC 10B .2003 IN-SERVICE TRAINING COORDINATOR

(a) If a Sheriff or Department Head chooses to conduct its own in-service training, then the Sheriff or Department Head must also appoint an "In-Service Training Coordinator" who meets the following criteria:

- (1) Has four years of experience as a criminal justice officer or as an administrator or specialist in a field directly related to the criminal justice system;
- (2) Holds General Instructor certification; and
- (3) Has successfully participated in the "Coordinating In-Service Training" course presented by the NC Justice Academy for the purpose of familiarization with trainee and instructor evaluation.

The Sheriff or Department Head shall submit an application for such appointment to the Division for approval of this designation.

(b) An In-Service Training Coordinator shall:

- (1) Administer the delivery of the course curriculum.
- (2) Select and schedule instructors.
- (3) Ensure that each instructor utilizes a lesson plan previously approved by the Sheriff or his/her designee.
- (4) Monitor, or designate a certified instructor to monitor the presentations of instructors during course deliveries and prepare a written evaluation on their performance and suitability for subsequent instructional assignments. The observations shall be of sufficient duration to ensure the instructor is using the Instructional System Development model, as taught in Criminal Justice Instructor Training set out in 12 NCAC 09B .0209, and that the delivery is objective based, documented by and consistent with a Commission-approved lesson plan.
- (5) Maintain records of all in-service training received by the agency's deputies, detention officers, and telecommunicators to include, at a minimum:
 - (A) Course title;
 - (B) Delivery hours of course;
 - (C) Course delivery dates;
 - (D) Names and addresses of instructors utilized for each topic; and
 - (E) A roster of enrolled trainees documenting class attendance.

Authority G.S. 17E-4; 17E-7.

12 NCAC 10B .2004 INSTRUCTORS

The following requirements and responsibilities are hereby established for instructors who conduct a Commission-mandated In-Service Training Program:

- (1) The instructors shall:
 - (a) hold General Instructor Certification as issued by the North Carolina Criminal Justice Education and Training Standards Commission as set out in 12 NCAC 09B .0302, .0304, and .0306;
 - (b) hold Professional Lecturer Instructor certification issued by either the Commission as set out in either 12 NCAC 10B .0906 or .0916, or the Criminal Justice Education and Training Standards Commission as set out in 12 NCAC 09B .0306, or General Instructor Certification as issued by the North Carolina Criminal Justice Education and Training Standards Commission as set out in 12 NCAC 09B .0302, .0304, and .0306, when teaching a legal block of instruction;
 - (c) hold Professional Lecturer Instructor certification issued by the Criminal

Justice Education and Training Standards Commission as set out in 12 NCAC 09B .0306, when teaching a medical or psychological block of instruction; or

- (d) hold Specific Instructor Certification issued by the Criminal Justice Education and Training Standards Commission when teaching the lesson plans published by the NC Justice Academy as follows:

- (i) Firearms range qualification must be taught by a Firearms Instructor certified in accordance with 12 NCAC 09B .0304(e). The instructor who teaches the classroom instruction regarding use of force may be either a Professional Lecturer by virtue of possessing a law degree under this Commission or the North Carolina Criminal Justice Commission or a Specific Certification-Firearms issued by the North Carolina Criminal Justice Education and Training Standards Commission;
- (ii) Weapons Retention and Disarming Techniques must be taught by Subject Control Arrest Techniques Instructor certified in accordance with 12 NCAC 09B .0304(e);
- (iii) Spontaneous Attack Defense and Subject Control/Arrest Techniques must be taught by a Subject Control Arrest Techniques Instructor certified in accordance with 12 NCAC 09B .0304(b);
- (iv) Handcuffing and Impact Weapons Refresher and Subject Control Arrest Techniques: Equipment Retention must be taught by a Subject Control Arrest Techniques Instructor certified in accordance with 12 NCAC 09B .0304(e);
- (v) Wellness and Stress Awareness and Health and Fitness for Detention Officers must be taught by a Physical Fitness Instructor certified in accordance with 12 NCAC 09B .0304(g);

- (vi) Law Enforcement Driver Training (classroom and practical) must be taught by a Specialized Law Enforcement Driver Training Instructor certified in accordance with 12 NCAC 09B .0304(f); and
- (vii) Active Shooter: Practical Refresher must be taught by a ~~Firearms Instructor certified in accordance with 12 NCAC 09B .0304(e).~~ General Instructor as set out in Subitem (1)(a) of this Rule, who has also completed the North Carolina Justice Academy's "Rapid Deployment Instructor Training Course."

In addition, each instructor certified by the Criminal Justice Commission to teach in a Commission-certified course shall remain competent in his/her specific or specialty areas. Competent includes remaining current in the instructor's area of expertise, which may be demonstrated by attending and successfully completing all instructor updates issued by the Commission.

- (e) Instructors who teach a required in-service training course must achieve a passing grade on a course-specific test developed by the North Carolina Justice Academy or by the agency delivering the training. Instructors who teach a required in-service training course online, in addition to meeting the above testing requirement, must also complete the in-service training for the course he or she will be teaching. Instructors who teach an in-service training course in a traditional classroom format will receive credit toward their own in-service training requirements, provided that they pass all required tests and have their instruction adequately documented once completed.
- (2) The use of guest participants is permitted provided they are subject to the direct on-site supervision of a commission-certified instructor.
- (3) The instructor shall deliver the training consistent with the specifications as established in the rules in this Section.
- (4) The instructor shall document the successful or unsuccessful completion of training for each person attending a training program and

forward a record of their completion to each person's Sheriff or Department Head.

Authority G.S. 17E-4; 17E-7.

12 NCAC 10B .2005 MINIMUM TRAINING REQUIREMENTS

(a) A Sheriff or Department Head may use a lesson plan developed by the North Carolina Justice Academy, or may use a lesson plan for any of the topical areas developed by another entity. The Sheriff or Department Head may also use a lesson plan developed by a certified instructor, provided that the instructor develops the lesson plan in accordance with the Instructional Systems Development model as taught in Criminal Justice Instructor Training in 12 NCAC 09B .0209. Lesson plans are designed to be delivered in approximate hourly increments; however, a person who completes the training in less than or more than the hourly increment will receive the number of credits that correspond to the number of hours (i.e. Legal Update designed to be delivered in four hours, will yield four credits). Successful completion of training will be demonstrated by passing tests as developed by the delivering agency or as written by the North Carolina Justice Academy.

~~(b) The 2011 Law Enforcement In-Service Training Program requires 24 hours of training in the following topical areas:~~

- ~~(1) Legal Update;~~
- ~~(2) Juvenile Minority Sensitivity Training: Interactions, Communications, and Understanding;~~
- ~~(3) Career Survival: Leadership and Mentoring;~~
- ~~(4) Firearms Training and Requalification for deputy sheriffs as set out in Section .2100 of this Subchapter;~~
- ~~(5) Domestic Violence: Lesbian, Gay, Bi Sexual and Transgender (LGBT) Relationships; and~~
- ~~(6) Any topic areas of the Sheriff's choosing.~~

~~(c) The 2011 Detention Officer In-Service Training Program requires 16 hours of training in the following topical areas:~~

- ~~(1) Legal Update for Detention Officers;~~
- ~~(2) Career Survival for Detention Officers; Interpersonal Communications;~~
- ~~(3) Communicable Diseases and Pandemics; and~~
- ~~(4) Any topic areas of the Sheriff's or Department Head's choosing.~~

~~(d) The 2011 Telecommunicator In-Service Training Program requires 16 hours of training in the following topical areas:~~

- ~~(1) Elder Abuse Awareness and the Telecommunicator;~~
- ~~(2) Tactical Dispatch;~~
- ~~(3) Handling Difficult Callers; and~~
- ~~(4) Any topic areas of the Sheriff's or Department Head's choosing.~~

~~(b)(e) The 2012 Law Enforcement In-Service Training Program requires 24 hours of training in the following topical areas:~~

- ~~(1) Legal Update;~~
- ~~(2) Juvenile Minority Sensitivity Training: Interactions Skills in Building Rapport;~~
- ~~(3) Career Survival: Social Networking and Digital Communications;~~

- (4) Firearms Training and Requalification for deputy sheriffs as set out in Section .2100 of this Subchapter; and
- (5) Awareness of Issues Surrounding Returning Military Personnel; and
- (6) Any topic areas of the Sheriff's choosing.

~~(c)(f)~~ The 2012 Detention Officer In-Service Training Program requires 16 hours of training in the following topical areas:

- (1) Inmate Movement;
- (2) Career Survival for Detention Officers; Social Networking and Digital Communications; and
- (3) Any topic areas of the Sheriff's or Department Head's choosing.

~~(d)(g)~~ The 2012 Telecommunicator In-Service Training Program requires 16 hours of training in the following topical areas:

- (1) Legal Update for Telecommunicators;
- (2) Career Survival for Telecommunicators; Social Networking and Digital Communications; and
- (3) Any topic areas of the Sheriff's or Department Head's choosing.

(e) The 2013 Law Enforcement In-Service Training Program requires 24 credits of training and successful completion in the following topical areas:

- (1) Legal Update;
- (2) Juvenile Minority Sensitivity Training: Don't Press Send;
- (3) Domestic Violence: The Children are Watching;
- (4) Firearms Training and Requalification for deputy sheriffs as set out in Section .2100 of this Subchapter; and
- (5) Any topic areas of the Sheriff's choosing.

(f) The 2013 Detention Officer In-Service Training Program requires 16 credits of training and successful completion in the following topical areas:

- (1) Inmate Sexual Assaults;
- (2) Detention Officer Legal Update;
- (3) Awareness of Issues Surrounding Returning Military Personnel; and
- (3) Any topic areas of the Sheriff's or Department Head's choosing.

(g) The 2013 Telecommunicator In-Service Training Program requires 16 credits of training and successful completion in the following topical areas:

- (1) Officer Involved Shootings;
- (2) Radio Demeanor and Broadcast Techniques; and
- (3) Any topic areas of the Sheriff's or Department Head's choosing.

Authority G.S. 17E-4; 17E-7.

12 NCAC 10B .2006 IN-SERVICE TRAINING PROGRAM SPECIFICATIONS

Justice officers who have been active as a deputy sheriff, detention officer, or between January and June of each calendar year must complete the respective In-Service Training

Program(s) established by 12 NCAC 10B .2002 by December of each calendar year. telecommunicator For each justice officer holding multiple certifications from the Commission, the Sheriff shall designate the officer's primary duties for the purpose of selecting which one of the in-service training programs the officer must complete for a calendar year. A justice officer who fails to complete in-service training as required, but is either separated or made inactive prior to the end of the calendar year, may be re-activated after completing the in-service training program prescribed for the year immediately preceding the year in which the officer is being activated. Persons applying to receive deputy certification who have prior service as a criminal justice officer as defined in 12 NCAC 09A .0103(6) between January and June of a prior year who failed to complete in-service training for that year, must complete the in-service training program prescribed for the year immediately preceding the year in which the officer is being activated as a deputy.

Authority G.S. 17E-4; 17E-7.

12 NCAC 10B .2007 SHERIFF/AGENCY HEAD RESPONSIBILITIES

Each Sheriff or Department Head shall ensure that the respectively required In-Service Training Program established by this Section is conducted. In addition, the Sheriff or Department Head shall:

- (1) report to the Division those deputy sheriffs, detention officers and telecommunicators who are inactive;
- (2) maintain a roster of each deputy sheriff, detention officer and telecommunicator who successfully completes the respectively required In-Service Training Program;
- ~~(3) report to the Division by January 15th, 2010:~~
 - ~~(a) those active telecommunicators who fail to complete the 2009 Telecommunicator Officer In Service Training Program in accordance with 12 NCAC 10B .2005;~~
 - ~~(b) those active detention officers who fail to complete the 2009 Detention Officer In Service Training Program in accordance with 12 NCAC 10B .2005; and~~
 - ~~(c) those active deputy sheriffs who fail to complete the 2009 Law Enforcement In Service Training Program in accordance with 12 NCAC 10B .2005. The reporting shall be on a Commission form;~~
- ~~(4) report to the Division by January 15th, 2011:~~
 - ~~(a) those active telecommunicators who fail to complete the 2010 Telecommunicator Officer In Service Training Program in accordance with 12 NCAC 10B .2005;~~
 - ~~(b) those active detention officers who fail to complete the 2010 Detention Officer In Service Training Program~~

- ~~in accordance with 12 NCAC 10B .2005; and~~
- (e) ~~those active deputy sheriffs who fail to complete the 2010 Law Enforcement In-Service Training Program in accordance with 12 NCAC 10B .2005. The reporting shall be on a Commission form.~~
- (3)(5) report to the Division by January 15th, 2012:
- (a) those active telecommunicators who fail to complete the 2011 Telecommunicator Officer In-Service Training Program in accordance with 12 NCAC 10B .2005;
- (b) those active detention officers who fail to complete the 2011 Detention Officer In-Service Training Program in accordance with 12 NCAC 10B .2005; and
- (c) those active deputy sheriffs who fail to complete the 2011 Law Enforcement In-Service Training Program in accordance with 12 NCAC 10B .2005. The reporting shall be on a Commission form.
- (4) report to the Division by January 15th, 2013:
- (a) those active telecommunicators who fail to complete the 2012 Telecommunicator Officer In-Service Training Program in accordance with 12 NCAC 10B .2012;
- (b) those active detention officers who fail to complete the 2012 Detention Officer In-Service Training Program in accordance with 12 NCAC 10B .2012; and
- (c) those active deputy sheriffs who fail to complete the 2012 Law Enforcement In-Service Training Program in accordance with 12 NCAC 10B .2005. The reporting shall be on a Commission form.

Authority G.S. 17E-4; 17E-7.

12 NCAC 10B .2009 TRAINING DELIVERY

The training provider shall ensure that the:

- (1) training is documented by roster which includes: student names, date/time of training, instructional topic, hours taught, instructor's name and training provider. The training provide may also issue a certificate to the officer;
- (2) training is taught by a Commission certified instructor;
- (3) instructors use the lesson plans prepared by the NC Justice Academy, another entity or

- develop their own developed in accordance with the provisions of 12 NCAC 10B .2005(a);
- (4) instructors provide each student with a copy of the student lesson plan during the course delivery; and
- (5) a copy of the lesson plan(s) is maintained indefinitely by the training provider.

Authority G.S. 17E-4; 17E-7.

SECTION .2100 - DEPUTY SHERIFF' AND DETENTION OFFICERS' FIREARMS IN-SERVICE TRAINING REQUALIFICATION PROGRAM

12 NCAC 10B .2102 INSTRUCTORS

The following requirements and responsibilities are hereby established for instructors who conduct the Deputy Sheriffs' and Detention Officers' In-Service Firearms Training and Requalification Program:

- (1) The instructor who performs the range qualification shall hold "Specific Instructor Certification-Firearms" issued by the North Carolina Criminal Justice Education and Training Standards Commission. The instructor who teaches the classroom instruction regarding use of force may be either a Professional Lecturer by virtue of possessing a law degree under this Commission or the North Carolina Criminal Justice Commission or a "Specific Certification-Firearms" issued by the North Carolina Criminal Justice Education and Training Standards Commission;
- (2) The instructor shall deliver the training consistent with the minimum specifications as established by 12 NCAC 10B .2103 and .2104; and shall be present at all times during which said training is being conducted to personally provide all supervision, classroom training, range training, and scoring for certification purposes;
- (3) The instructor shall document the successful or unsuccessful completion of training for each officer on a commission-approved Firearms Requalification Record Form and forward such form to each officer's sheriff;
- (4) The instructor shall submit to the sheriff copies of all courses of fire used for qualification of deputy sheriffs and detention officers in compliance with 12 NCAC 10B .2101(1).

Authority G.S. 17E-4; 17E-7.

12 NCAC 10B .2103 MINIMUM TRAINING REQUIREMENTS

(a) In order to qualify for commission approval the In-Service Firearms Training and Requalification Program shall include, at a minimum, the following specified topics:

- (1) Use of Force:
 - (A) review the authority to use deadly force ~~[G.S. 15A-401(d)(2)]~~ Including relevant case law and materials.
- (2) Safety:
 - (A) Range rules and regulations;
 - (B) Handling of a firearm;
 - (C) Malfunctions.
- (3) Review of Basic Marksmanship Fundamentals:
 - (A) Grip, stance, breath control and trigger squeeze;
 - (B) Sight and alignment/sight picture;
 - (C) Nomenclature.
- (4) Operation and Maintenance of all authorized weapons.

(b) The Commission recommends that students be tested on the authority to use deadly force.

(c) The ~~Specialized Firearms~~ Instructor shall teach the same training objectives for the topical areas listed in this Rule as specified in the Specialized Firearms Instructor Training Manual published by the North Carolina Justice Academy which is hereby incorporated by reference and shall automatically include any later amendments and editions of the referenced materials as the approved source for the above mandated topical areas. Copies of this publication may be obtained from the North Carolina Justice Academy, Post Office Drawer 99, Salemburg, North Carolina 28385. There is no cost per manual at the time of adoption of this Rule.

Authority G.S. 17E-4; 17E-7.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to amend the rule cited as 15A NCAC 02B .0308.

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://portal.ncdenr.org/web/wq/ps/csu/reclass>

Proposed Effective Date: March 1, 2013

Public Hearing:

Date: August 16, 2012

Time: 7:00 p.m.

Location: Tuttle Elementary School, 2872 Water Plant Road, Maiden, NC 28650

Reason for Proposed Action: Two portions of both Maiden Creek and Allen Creek in Catawba and Lincoln Counties (Catawba River Basin) are to be reclassified from WS-II Critical Area (CA) High Quality Waters (HQW) and WS-II (Balance of Watershed or BW) HQW to WS-V. The Town of Maiden (Town) has requested this reclassification, which will recognize that these waters are formerly used public water supplies. Town

council and staff understand that the Town cannot use these waters as a source of public water supply once these waters are reclassified to WS-V. The reasons provided by the Town for the desired reclassification are as follows: the Town no longer uses and will not use these water supplies, as they are insufficient for modern water demands and the associated water treatment plant has been dismantled; an existing long term contract allows the Town to receive treated water from the City of Hickory currently and into the future; and other protective measures, namely the Phase II regulations, apply.

Staff with the Division of Water Resources (DWR) stated that the Maiden Creek intake and associated water treatment plant have been rendered inoperable and decommissioned, respectively, and thus, the plant cannot pump and treat water. These staff also stated that although Allen Creek was approved for a raw water intake, the Town never built an intake structure in the creek, and utilized water from the creek a few times in the past during times of drought. Furthermore, staff with DWR stated that the Town should be allowed to have the waters reclassified because the Town is currently purchasing treated water and plans to do so in the future from the City of Hickory.

DWQ has no water quality data for Allen Creek, and DWQ's data for Maiden Creek, which was generated after this creek was classified as WS-II, actually shows less than excellent (high) water quality as well as impairment. Thus, it appears that the HQW designation was assigned to these waters solely due to the WS-II designation; all WS-II waters are HQW by definition.

There are currently 176 acres and 434 acres within the WS-II CA of Allen Creek and Maiden Creek, respectively, and 4,117 acres and 4,846 acres within the WII (BW) of Allen Creek and Maiden Creek, respectively. The waters within these two water supply watersheds proposed to be reclassified to WS-V are as follows: a segment of Maiden Creek from source to a point 0.7 mile upstream from backwaters of Maiden Reservoir, Bee Branch from source to Maiden Creek, another segment of Maiden Creek from a point 0.7 mile upstream from backwaters of Maiden Reservoir to dam at Maiden Reservoir, a segment of Allen Creek from source to a point 0.7 mile upstream of Maiden water supply intake, and another segment of Allen Creek from a point 0.7 mile upstream of Maiden water supply intake to Maiden water supply intake.

If reclassified, several significant restrictions regarding wastewater discharges, new development, new landfills, and new land application sites will no longer apply to these water supply watersheds. However, there is no requirement that the ordinances of the involved local governments be amended should the reclassification become effective. In addition, Phase II rules already apply in the proposed areas, except 87 acres in Lincoln County, and compliance with WS-II stormwater and density rules equates to compliance with Phase II rules. Should the reclassification become effective and local governments decide to no longer enforce the regulations associated with the existing classifications, compliance with Phase II rules would be required. The Phase II rules would apply substantial, albeit not as stringent, restrictions on new development compared to the restrictions associated with the existing classifications of the subject waters. Finally, the water supply water quality standards will remain in effect for the subject waters due to the proposed WS-V designation.

According to Mooresville Regional Office staff, there are currently no permitted or known planned wastewater discharges in the proposed areas, and in the existing WS-II CAs, there are currently no permitted or known planned landfills or application sites. According to local government staff, there is no known planned development in the subject areas. The subject areas contain very limited development; these areas are primarily a mixture of undeveloped forested and pasture lands, which the WS and HQW rules as well as Phase II rules do not affect, so such land uses will not be impacted by this reclassification. Given this information, and that there is no requirement that the ordinances of the involved local governments be amended should the reclassification become effective, the quantifiable results of the proposal's fiscal analysis showed no cost to the involved municipality and counties, and a one-time cost of three hundred fifty-five dollars (\$355.00) to the state. This fiscal analysis for this proposal has been approved by the Office of State Budget and Management.

Procedure by which a person can object to the agency on a proposed rule: The public hearing and comment period are to be held in accordance with the federal Water Pollution Control Act (the Clean Water Act) which requires States, at least every three years, to review and revise water quality standards to protect aquatic life and human health. The process is called the Triennial Review and includes an assessment and revision of the designated uses of waters (classifications) and the water quality criteria (standards), which are based on the designated uses. More specifically, the public hearing and comment period are to address the potential assignment of a WS-V classification to portions of both the Maiden Creek watershed and Allen Creek watershed for the purpose of protecting the proposed designated use as a former public water supply. This proposal will not result in changing the water quality standards for waters within the above-mentioned Critical Areas and Balances of the Watershed.

You may attend the public hearing and provide verbal comments, and/or submit written comments, data or other information by September 14, 2012. The comments, data and information provided during the comment period should specifically address the proposed reclassification of Maiden Creek and Allen Creek. The Hearing Officer may limit the length of time that you may speak at the public hearing, if necessary, so that all those who wish to speak may have an opportunity to do so.

All persons interested and potentially affected by the proposal are encouraged to read this entire notice and make comments on the proposed reclassification. The EMC may not adopt a rule that differs substantially from the text of the proposed rule published in this notice unless the EMC publishes the text of the proposed different rule and accepts comments on the new text [General Statute 150B 21.2 (g)]. Written comments on the proposed reclassification of Maiden Creek and Allen Creek may be submitted to Elizabeth Kountis of the Water Quality Planning Section at the postal address 1617 Mail Service Center, Raleigh, NC 27699-1617; email address elizabeth.kountis@ncdenr.gov; or fax number (919) 807-6497.

Comments may be submitted to: Elizabeth Kountis, DENR/DWQ Planning Section, 1617 Mail Service Center, Raleigh, NC 27699-1617; phone (919) 807-6418; fax (919) 807-6497; email elizabeth.kountis@ncdenr.gov

Comment period ends: September 14, 2012

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

Fiscal impact (check all that apply).

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

CHAPTER 02 - ENVIRONMENTAL MANAGEMENT COMMISSION

SUBCHAPTER 02B - SURFACE WATER AND WETLAND STANDARDS

SECTION .0300 - ASSIGNMENT OF STREAM CLASSIFICATIONS

15A NCAC 02B .0308 CATAWBA RIVER BASIN

(a) The Catawba River Basin Schedule of Classifications and Water Quality Standards may be inspected at the following places:

- (1) the Internet at <http://h2o.enr.state.nc.us/csu/> and <http://h2o.enr.state.nc.us/csu/>; and
- (2) the North Carolina Department of Environment and Natural Resources:
 - (A) Mooresville Regional Office
610 East Center Avenue, Suite 301
Mooresville, North Carolina;
 - (B) Asheville Regional Office
2090 US Highway 70
Swannanoa, North Carolina; and
 - (C) Division of Water Quality
Central Office

512 North Salisbury Street
Raleigh, North Carolina.

(b) Unnamed Streams. Such streams entering South Carolina are classified "C."

(c) The Catawba River Basin Schedule of Classifications and Water Quality Standards was amended effective:

- (1) March 1, 1977 see Paragraph (d) of this Rule;
- (2) August 12, 1979 see Paragraph (e) of this Rule;
- (3) April 1, 1982 see Paragraph (f) of this Rule;
- (4) January 1, 1985 see Paragraph (g) of this Rule;
- (5) August 1, 1985 see Paragraph (h) of this Rule;
- (6) February 1, 1986 see Paragraph (i) of this Rule;
- (7) March 1, 1989 see Paragraph (j) of this Rule;
- (8) May 1, 1989 see Paragraph (k) of this Rule;
- (9) March 1, 1990 see Paragraph (l) of this Rule;
- (10) August 1, 1990 see Paragraph (m) of this Rule;
- (11) August 3, 1992 see Paragraph (n) of this Rule;
- (12) April 1, 1994 see Paragraph (o) of this Rule;
- (13) July 1, 1995 see Paragraph (p) of this Rule;
- (14) September 1, 1996 see Paragraph (q) of this Rule;
- (15) August 1, 1998 see Paragraph (r) of this Rule;
- (16) April 1, 1999 see Paragraph (s) of this Rule;
- (17) August 1, 2000 see Paragraph (t) of this Rule;
- (18) August 1, 2004 see Paragraph (u) of this Rule;
- (19) May 1, 2007 see Paragraph (v) of this Rule;
- (20) September 1, 2010 see Paragraph (w) of this ~~Rule.~~ Rule; and
- (21) March 1, 2013 see Paragraph (x) of this Rule.

(d) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective March 1, 1977 as follows:

- (1) Torrence Branch (Index No. 11-136) from source to North Carolina-South Carolina State Line was reclassified from Class D to Class B; and
- (2) Edwards Branch (Index No. 11-137-8-2-1) from source to Brier Creek was reclassified from Class D to Class C.

(e) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective August 12, 1979 as follows: Unnamed Tributary to Lower Little River (Robinette Creek) (Index No. 11-69-1.5) from source to Lower Little River was reclassified from Class C to Class B.

(f) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective April 1, 1982 as follows:

- (1) Spainhour Creek (Index No. 11-39-3) from source to Lower Creek was reclassified from Class C (1) to Class C; and
- (2) Allen Creek (Index No. 11-129-5-7-2-4) from source to Maiden Creek was reclassified from Class C to Class A-II.

(g) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective

January 1, 1985 as follows: Catawba Creek from source to N.C. Highway 275 was reclassified from Class C(1) to Class C.

(h) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective August 1, 1985 as follows:

- (1) Brier Creek (Index No. 11-137-8-2) from source to Little Sugar Creek was reclassified from Class C (1) to Class C;
- (2) Little Hope Creek (Index No. 11-137-8-3) from source to Little Sugar Creek was reclassified from Class C (1) to Class C; and
- (3) McMullen Creek (Index No. 11-137-9-5) from source to N.C. Highway 16 was reclassified from Class C (1) to Class C.

(i) The Schedule of Classification and Water Quality Standards for the Catawba River Basin was amended effective February 1, 1986 with the reclassification of all A-I & A-II streams to WS-I & WS-III in the Catawba River Basin.

(j) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective March 1, 1989 as follows:

Wilson Creek (Index No. 11-38-34) and all tributary waters were reclassified from Class B-trout and Class C-trout to Class B-trout ORW and Class C-trout ORW.(k) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective May 1, 1989 as follows:

- (1) Henry Fork [Index Nos. 11-129-1-(1) and 11-129-1-(2)] from source to Laurel Creek, including all tributaries, were reclassified from Class WS-I, C and C trout to Class WS-I ORW, C ORW and C trout ORW, except Ivy Creek and Rock Creek which will remain Class C trout and Class C;
- (2) Jacob Fork [Index Nos. 11-129-2-(1) and 11-129-2-(4)] from source to Camp Creek, including all tributaries, were reclassified from Class WS-III trout and WS-III to WS-III trout ORW and WS-III ORW.

(l) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective March 1, 1990 as follows:

- (1) Upper Creek [Index No. 11-35-2-(1)] from source to Timbered Branch including all tributaries except Timbered Branch (Index No. 11-35-2-9) was reclassified from Class C Trout to Class C Trout ORW; and
- (2) Steels Creek [Index No. 11-35-2-12(1)] from source to Little Fork and all tributaries was reclassified from Class C Trout to Class C Trout ORW.

(m) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective August 1, 1990 as follows:

- (1) The classification for the portion of Mackey Creek [Index No. 11-15-(2)] from Marion Water Supply Intake to Laurel Fork was reclassified from Class C to Class C HQW;

- (2) Laurel Fork Creek [Index No. 11-15-3] from source to Mackey Creek was reclassified from Class C Tr to Class C Tr HQW;
 - (3) Armstrong Creek [Index No. 11-24-14-(1)] from source to Bee Rock Creek was reclassified from Class WS-III Tr to Class WS-III Tr HQW;
 - (4) Linville River [Index Nos. 11-29-(16) and 11-29-(19)] were reclassified from Class B Tr and Class B to Class B Tr HQW and Class B HQW, respectively;
 - (5) Upper Creek [Index No. 11-35-2-(8.5)] and its named tributaries was reclassified from Class C Tr to Class C Tr HQW;
 - (6) Upper Creek (Clear Water Beach Lake) [Index No. 11-35-2-(10)] from Holly Spring Branch to Dam Clear Water Beach Lake was reclassified from Class B Tr to Class B Tr HQW;
 - (7) Holly Spring Branch [Index No. 11-35-2-11] from source to Upper Creek was reclassified from Class C Tr to Class Tr HQW;
 - (8) Steels Creek [Index No. 11-35-2-12-(5)] from Little Fork to a point 1.7 miles upstream from N.C. Highway 181 Bridge was reclassified from Class B Tr to Class B Tr HQW and Steels Creek [Index No. 11-35-2-12-(7)] from a point 1.7 miles upstream from N.C. Highway 181 bridge to Clear Water Beach Lake, Upper Creek was reclassified from Class B to Class B HQW;
 - (9) Upper Creek [Index No. 11-35-2-(13)] from Dam at Clear Water Beach Lake to Warrior Fork was reclassified from Class WS-III Tr to Class WS-III Tr HQW;
 - (10) The portion of Johns River [Index No. 11-38-(28)] from Wilson Creek to Rhodhiss Lake, Catawba River was reclassified from Class C to Class C HQW;
 - (11) Mulberry Creek [Index No. 11-38-32-(1)] from source to Boone Fork and its tributaries Left Fork Mulberry Creek [Index No. 11-38-32-2], Right Fork Mulberry Creek [Index No. 11-38-32-3], Roaring Creek [Index No. 11-38-32-8] and Clark Branch [Index No. 11-38-32-10] were reclassified from Class C Tr to Class C Tr HQW;
 - (12) Amos Creek [Index No. 11-38-32-4] and Mills Creek [Index No. 11-38-32-5] and their named tributaries were reclassified from Class C to Class C HQW;
 - (13) Cane Branch [Index No. 11-38-32-6], Rush Branch [11-38-32-7] and Frankum Creek [11-38-32-9] and its named tributaries were reclassified from Class C to Class C HQW;
 - (14) Mulberry Creek [Index No. 11-38-32-(11)] from Boone Branch to Dam at Mulberry Beach was reclassified from Class B to Class B HQW;
 - (15) Boone Branch (Fork) [Index No. 11-38-32-12] and its named tributaries from source to Mulberry Creek was reclassified from Class B to Class B HQW;
 - (16) Brown Branch [Index No. 11-38-32-13] and Moore Branch [Index No. 11-38-32-14] were reclassified from Class B to Class B HQW; and
 - (17) Anderson Creek [Index No. 11-38-32-16] was reclassified from Class C to Class C HQW.
- (n) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective August 3, 1992 with the reclassification of all water supply waters (waters with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules, (15A NCAC 02B .0100, .0200 and .0300) which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.
- (o) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective April 1, 1994 as follows:
- (1) Friday Lake (Index No. 11-125.5) from its source to Little Paw Creek was reclassified from Class C to Class B; and
 - (2) The Linville River [Index No. 12-29-(1)] from Grandmother Creek to Linville Falls was reclassified from Class C Tr to Class B Tr.
- (p) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective July 1, 1995 with the reclassification of Clark Creek from a point 0.6 mile downstream of Catawba County SR 2014 to 0.4 mile upstream of Larkard Creek [Index No. 11-129-5-(4.5)], and Howards Creek from its source to 0.7 mile upstream of Lincoln County State Road 1200 [Index No. 11-129-4], including associated tributaries from Class WS-IV to Classes C and WS-IV.
- (q) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective September 1, 1996 as follows:
- (1) North Fork Catawba River [Index No. 11-24-(1)] from Laurel Branch to Armstrong Creek from Class C Tr to Class B Tr; and
 - (2) Catawba River (Lake Hickory) from Rhodhiss dam to highway 321 [Index No. 11-(51)] from Class WS-IV CA to Class WS-IV&B CA.
- (r) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective August 1, 1998 as follows:
- (1) The primary classification for portions of South Fork Catawba River [Index No. 11-129-(0.5)] and Hoyle Creek [Index No. 11-129-15-

- (1)] was reclassified from Class WS-IV to Class WS-V;
 - (2) Mill Creek [Index No. 11-7] from its source to Swannanoa Creek, including all tributaries, from Class C Tr to Class Tr HQW;
 - (3) Toms Creek [Index Nos. 11-21-(1) and 11-21-(2)] from its source to Harris Creek, including all tributaries were reclassified from Class C Tr to Class Tr HQW; and
 - (4) Harris Creek to McDowell County SR 1434, including all tributaries were reclassified from Class C to Class HQW.
- (s) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective April 1, 1999 as follows:
- (1) Portion of the Catawba River [Index Nos. 11-(27.5) and 11-(31)] from Class WS-IV & B and WS-IV to Class WS-V & B and WS-V;
 - (2) Armstrong Creek [Index Nos. 11-24-14-(1), 11-24-14-(13.5) and 11-24-14-(14)], and all tributaries from Classes WS-II Tr, WS-II, WS-II CA and C Tr to Classes C Tr HQW and C HQW;
 - (3) Lookout Shoals Lake from Oxford Dam to Island Creek [Index No. 11-(67)] from Class WS-V to Class WS-IV CA, from Island Creek to Elk Shoal Creek [Index No. 11-(70.5)] from Class WS-IV to Class WS-IV CA and from Elk Shoal Creek to a point one half mile upstream of Lookout Shoals Dam [Index No. 11-(72)] from Class WS-IV&B to Class WS-IV&B CA;
 - (4) The classifications of tributary streams that are within five miles and draining to the normal pool elevation of Lookout Shoals Lake (Protected Area) have been revised to Class WS-IV; and
 - (5) The classifications of tributary streams that are within one half mile and draining to the normal pool elevation of Lookout Shoals Lake (Critical Area) have been revised to Class WS-IV CA.
- (t) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended August 1, 2000 with the reclassification of Little Grassy Creek (Index No. 11-29-2), including all tributaries, from its source to the Linville River from Class C Tr to Class C Tr ORW.
- (u) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended August 1, 2004 with the reclassification of a segment of three surface waters, more specifically Henry Fork [11-129-1-(1)], Jerry Branch [11-129-1-3-(1)], and He Creek [11-129-1-4-(1)], from source to a formerly used City of Morganton Water Intake from Class WS-I ORW to Class WS-V ORW.
- (v) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended May 1, 2007 with the reclassification of the Catawba River [Index No. 11-(31.5)] from a point 0.6 mile upstream of Muddy Creek to a point 1.2 miles upstream of Canoe Creek from WS-IV to WS-IV

Tr and Catawba River [Index No. 11-(32.3)] from a point 1.2 miles upstream of Canoe Creek to a point 0.7 mile upstream of Canoe Creek (Morganton water supply intake) from WS-IV CA to WS-IV Tr CA. Named and unnamed tributaries to this portion of the Catawba River are not classified as Trout. Between the last day of May and the first day of November the water quality standard for dissolved oxygen shall not be less than a daily average of 5.0 mg/l with a minimum instantaneous value of not less than 4.0 mg/l.

(w) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended September 1, 2010 with the reclassification of the portion of the Catawba River [Index No. 11-(1)], from its source to the Left Prong Catawba River confluence, and its named tributaries, Chestnut Branch (Fork) [Index No. 11-2], Clover Patch Branch [Index No. 11-3], Youngs Fork Creek [Index No. 11-4], Spring Branch [Index No. 11-5], and Left Prong Catawba River [Index No. 11-6] from Class C Tr to Class C Tr HQW.

(x) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended March 1, 2013 as follows:

- (1) the portion of Maiden Creek [Index No. 11-129-5-7-2-(1)] from source to a point 0.7 mile upstream from backwaters of Maiden Reservoir, and its named tributary, Bee Branch [Index No. 11-129-5-7-2-2], from Class WS-II HQW to WS-V;
- (2) the portion of Maiden Creek [Index No. 11-129-5-7-2-(2.5)] from a point 0.7 mile upstream from backwaters of Maiden Reservoir to dam at Maiden Reservoir from Class WS-II HQW CA to WS-V;
- (3) the portion of Allen Creek [Index No. 11-129-5-7-2-4-(1)] from source to a point 0.7 mile upstream of Maiden water supply intake from Class WS-II HQW to WS-V; and
- (4) the portion of Allen Creek [Index No. 11-129-5-7-2-4-(2)] from a point 0.7 mile upstream of Maiden water supply intake to Maiden water supply intake from Class WS-II HQW CA to WS-V.

Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).

TITLE 19A – DEPARTMENT OF TRANSPORTATION

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Transportation intends to adopt the rules cited as 19A NCAC 02E .0608-.0611; amend the rules cited as 19A NCAC 02E .0210, .0601-.0604; and repeal the rule cited as 19A NCAC 02E .0211.

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://www.ncdot.gov/about/regulations/rules/>
Proposed Effective Date: November 1, 2012

Public Hearing:

Date: August 1, 2012

Time: 7:00 p.m. – 9:00 p.m.

Location: Wake Commons, Room 100C, 4011 Carya Drive, Raleigh, NC 27610

Public Hearing:

Date: August 13, 2012

Time: 7:00 p.m. – 9:00 p.m.

Location: City of Asheville Public Works Building, Room A-109, 161 South Charlotte Street, Asheville, NC 28801

Public Hearing:

Date: August 20, 2012

Time: 7:00 p.m. – 9:00 p.m.

Location: Pitt Community College Goess Center, Room 137, 1986 Pitt Tech Road, Winterville, NC 28590

Reason for Proposed Action: *The General Assembly enacted S.L. 2011-397, which establishes certain statutory standards for selective vegetation removal within the rights-of-way of the highway system and standards for denial of a permit for proposed and for revocation of permits for outdoor advertising. In addition, in Section 10 of S.L. 2011-397, the Department of Transportation was directed to adopt temporary rules to administer the act. NCDOT adopted the proposed temporary rules to comply with the legislative change and the Rules Review Commission approved the adopted temporary rules effective March 1, 2012.*

The Department of Transportation is now giving notice of intent to change the permanent rules to comply with S.L. 2011-397 and to make requirements for a vegetation removal permit for a business facility consistent with the requirements for a vegetation removal permit for an outdoor advertising sign.

Procedure by which a person can object to the agency on a proposed rule: *Any person who objects to the adoption of a permanent rule may submit written comments to the agency by hard copy mailed to NC Department of Transportation, Attn: Rulemaking Coordinator, 1501 Mail Service Center, Raleigh, NC 27699-1501; or by electronic copy by going to <http://www.ncdot.gov/about/regulations/rules/> and clicking on the link "To submit comments on proposed rules or for questions on NC Department of Transportation rule-making please Contact Us."*

Comments may be submitted to: *Helen Landi, 1501 Mail Service Center, Raleigh, NC 27699-1501; fax (919) 733-9150; email hlandi@ncdot.gov*

Comment period ends: *September 14, 2012*

Procedure for Subjecting a Proposed Rule to Legislative Review: *If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting*

review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

- ☒ State funds affected
- ☐ Environmental permitting of DOT affected
- ☒ Analysis submitted to Board of Transportation
- ☒ Local funds affected
- ☒ Date submitted to OSBM: May 29, 2012
- ☒ Substantial economic impact (≥\$500,000)
- ☒ Approved by OSBM
- ☐ No fiscal note required

CHAPTER 02 - DIVISION OF HIGHWAYS

SUBCHAPTER 02E - MISCELLANEOUS OPERATIONS

SECTION .0200 - OUTDOOR ADVERTISING

19A NCAC 02E .0210 REVOCATION OF OUTDOOR ADVERTISING PERMIT

The appropriate district engineer shall revoke a permit for a lawful outdoor advertising structure based on any of the following:

- (1) mistake of facts by the issuing District Engineer for which had the correct facts been known, he would not have issued the outdoor advertising permit;
- (2) misrepresentations of any facts made by the permit holder/sign holder or sign owner and on which the District Engineer relied in approving the outdoor advertising permit application;
- (3) misrepresentation of facts to any regulatory authority with jurisdiction over the sign by the permit holder/sign holder or sign owner, the permit applicant or the owner of property on which the outdoor advertising structure is located;
- (4) failure to pay annual renewal fees or provide the documentation requested under Rule .0207(c) of this Section;
- (5) failure to construct the outdoor advertising structure except all sign faces within 180 days from the date of issuance of the outdoor advertising permit;
- (6) a determination upon initial inspection of a newly erected outdoor advertising structure that it fails to comply with the Outdoor Advertising Control Act or the rules in this Section;
- (7) any alteration of an outdoor advertising structure for which a permit has previously

- been issued which would cause that outdoor advertising structure to fail to comply with the provisions of the Outdoor Advertising Control Act or the rules adopted by the Board of Transportation pursuant thereto;
- (8) alterations to a nonconforming sign or a sign conforming by virtue of the grandfather clause other than reasonable repair and maintenance as defined in Rule .0225(c). For purposes of this subsection, alterations include, ~~but are not limited to:~~
 - (a) enlarging a dimension of the sign facing, or raising the height of the sign;
 - (b) changing the material of the sign structure's support;
 - (c) adding a pole or poles; or
 - (d) adding illumination;
 - (9) failure to affix the emblem ~~within~~ as required by Rule .0208 of this Section or failure to maintain the emblem so that it is visible and readable from the main-traveled way or controlled route;
 - (10) failure to affix the name of the person, firm, or corporation owning or maintaining the outdoor advertising sign to the sign structure in sufficient size to be ~~clearly~~ visible as required by Rule .0208 of this Section;
 - (11) ~~destruction or cutting of trees, shrubs, or other vegetation located on the state-owned or maintained right of way where an investigation by the Department of Transportation reveals that the destruction or cutting:~~
 - (a) ~~occurred on the state owned or maintained right of way within 500 feet on either side of the sign location along the edge of pavement of the main traveled way of the nearest controlled route;~~
 - (b) ~~was conducted by a person or persons other than the Department of Transportation or its authorized agents or assigns, or without permission from the Department of Transportation; and~~
 - (c) ~~was conducted by one or more of the following: the sign owner, the permit holder, the lessee or advertiser employing the sign, the owner of the property upon which the sign is located, or any of their employees, agents or assigns, including, but not limited to, independent contractors hired by the permit holder/sign owner, the lessee/agents or advertiser employing the sign, or the owner of the property upon which the sign is located;~~
 - (11) unlawful destruction or illegal cutting of trees, shrubs or other vegetation within the right-of-way of any State-owned or State-maintained highway as specified in G.S. 136-133.1(i);
 - (12) unlawful use of a controlled access facility for purposes of repairing, maintaining or servicing an outdoor advertising sign where an investigation reveals that the unlawful violation:
 - (a) was conducted actually or by design by the sign ~~owner/permit~~ owner or permit holder, the lessee or advertiser employing the sign, the owner of the property upon which the sign is located, or any of their employees, agents, or assigns, including, ~~but not limited to,~~ independent contractors hired by any of the above persons; and,
 - (b) involved the use of highway right of way for the purpose of repairing, servicing, or maintaining a sign including stopping, parking, or leaving any vehicle whether attended or unattended, on any part or portion of the right of ~~way;~~ way except as authorized by the Department of Transportation, including activities authorized by the Department for selective vegetation removal pursuant G.S. 136-131.1, G.S. 136-131.2 and G.S. 136-133.4. Access from the highway main travel way shall be allowed only for surveying or delineation work in preparation for and in the processing of an application for a selective vegetation removal permit; or
 - (c) involved crossing the control of access fence to reach the sign ~~structure;~~ structure, except as authorized by the Department, including those activities referenced in Sub-item (b) of this Item;
 - (13) maintaining a blank sign for a period of 12 consecutive months;
 - (14) maintaining an abandoned, dilapidated, or discontinued sign;
 - (15) a sign that has been destroyed or significantly damaged as determined by ~~Rules~~ Rule .0201(8) and (29) of this Section;
 - (16) moving or relocating a nonconforming sign or a sign conforming by virtue of the grandfather clause which changes the location of the sign as determined by Rule .0201(27) of this Section;
 - (17) failure to erect, maintain, or alter an outdoor advertising sign structure in accordance with the North Carolina Outdoor Advertising

- Control Act, codified in G.S. 136, Article 11, and the rules adopted by the Board of Transportation pursuant thereto; and
- (18) willful failure to substantially comply with all the requirements specified in a vegetation removal permit if such willful failure meets the standards of G.S. 136-133.1(i) as specified in G.S. 136-133.4(e).

Authority G.S. 136-93; 136-130; 136-133; 136-133.1(i), 136-133.4(e).

19A NCAC 02E .0211 DENIAL OF PERMIT

(a) ~~Should the appropriate district engineer determine that a proposed outdoor advertising structure would not conform to the standards of outdoor advertising as set out in the Outdoor Advertising Control Act or the rules in this Section, the district engineer shall refuse to issue a permit for that proposed outdoor advertising structure.~~

(b) ~~When such noncompliance of the Outdoor Advertising Control Act or these Rules has been determined, the district engineer shall notify the permit applicant by certified mail, return receipt requested, in the form of a letter setting forth the factual and statutory or regulatory basis for the denial, and include a copy of the Act and rules.~~

(c) ~~The Department of Transportation shall not issue permits for new outdoor advertising signs at a sign location (as defined by Rule .0201 of this Section) as follows:~~

- (1) ~~for a period of five years where the unlawful destruction or illegal cutting of vegetation has occurred within 500 feet on either side of the proposed sign location, and as measured along the edge of pavement of the main traveled way of the nearest controlled route. For purposes of this paragraph only:~~

(A) ~~"Unlawful destruction or illegal cutting" is the destruction or cutting of trees, shrubs, or other vegetation on the state owned or maintained right of way which was conducted by a person or persons other than the Department of Transportation or its authorized agents or without the permission of the Department of Transportation;~~

(B) ~~The Department of Transportation's investigation shall reveal some evidence that the unlawful destruction or illegal cutting would create, increase, or improve a view to a proposed outdoor advertising sign from the main traveled way of the nearest controlled route;~~

(C) ~~The five year period shall run from the date on which the Department of Transportation has actual knowledge of the unlawful destruction or illegal cutting to be documented by the appropriate district engineer;~~

(D) ~~The five year prohibition period for a new sign permit shall apply equally to all sign locations including the following examples:~~

(i) ~~sign locations where the unlawful destruction or illegal cutting of vegetation occurs prior to the time the location becomes a conforming location;~~

(ii) ~~sign locations where a revocation of an existing permit has been upheld and a sign has been removed;~~

(iii) ~~sign locations where the unlawful destruction or illegal cutting occurs prior to receipt of an outdoor advertising permit application; and~~

(iv) ~~sign locations where the unlawful destruction or illegal cutting occurs following receipt of an outdoor advertising permit application, but prior to final issuance of the permit by the Department of Transportation.~~

(2) ~~Where existing trees, if they were to reach the average mature size for that species, would make the proposed sign faces, when erected, not completely visible from the viewing zone. For purposes of this subsection only:~~

(A) ~~"Existing trees" are those trees four inches or greater in diameter measured six inches from the ground;~~

(B) ~~"Average mature size" shall be determined by reference to the most recent edition of Hortus 3rd, A Concise Dictionary of Plants Cultivated in the United States and Canada, McMillan Publishing Co., Inc., New York, NY, published in 1976 or Manual of Woody Landscape Plants, Michael Dirr, Stipes Publishing Company.~~

(C) ~~Viewing Zone is the area which is 500 feet as measured along the edge of the main traveled way of the controlled route on each side of the proposed sign structure which will have a sign face.~~

(3) ~~Where the zoning is not part of comprehensive zoning or was zoned primarily to permit outdoor advertising structures or constitutes spot zoning or strip zoning as defined in 19 NCAC 2E .0201(4)(b)(iii).~~

- (4) ~~For a period of 12 months prior to the proposed letting of a new construction contract that may affect the spacing or location requirements for an outdoor advertising structure until the project is completed.~~
- (5) ~~On a route designated as a scenic byway.~~

Authority G.S. 136-130.

SECTION .0600 - SELECTIVE VEGETATION REMOVAL POLICY

19A NCAC 02E .0601 PERMIT TO REMOVE VEGETATION

(a) In recognition of the State of North Carolina's desire to assure that high quality and aesthetically pleasing views are provided highway users, along with recognizing that, within certain specified limitations, business facilities, hereinafter referred to as facilities, defined as office, institutional, commercial, and industrial buildings and certain outdoor advertising are legitimate commercial uses of property adjacent to the highways and are an integral part of the State's business and marketing economy, selective vegetation removal permits for opening views to facilities office, institutional, commercial, and industrial developments and legally erected forms of outdoor advertising, which border State highways, are provided by this Section.

(b) Selective cutting, thinning, pruning, replacement, relocation, or removal of vegetation within highway rights of way may be permitted only for opening views to a facility building office, institutional, commercial and industrial facilities and legally erected forms of outdoor advertising which are located directly adjacent to State highway rights of way. For purposes of selective vegetation removal permitting, facilities shall include at least one structural building. The building must have all required local and State permits, be related to the facility's function, and be open and operational on a year-round basis. When such cutting, thinning, pruning, replacement, relocation, or removal of vegetation is allowed, it shall be performed by the permittee or his agent at no cost to the Department of Transportation and shall comply with this Section.

Authority G.S. 136-18(5); G.S. 136-18(7); G.S. 136-18(9).

19A NCAC 02E .0602 REQUESTS FOR PERMITS FOR A FACILITY

(a) Applications for selective vegetation cutting, thinning, pruning, or removal (exclusive of grasses) at a facility shall be made by the owner of the facility business or advertisement to the appropriate Division Engineer of the North Carolina Department of Transportation, Division of Highways. Applications with all required documentation shall be submitted in both printed and electronic form. A non-refundable fee of two hundred dollars (\$200.00) must accompany each application.

(b) Selective vegetation cutting, thinning, pruning, or removal for opening views to facilities shall be permitted only for the Permittee's permittee's facilities adjacent to highway right of way at locations where such facilities have been constructed. The provisions shall not be used to provide visibility to

undeveloped property. Complete removal of all trees and other vegetation shall not be permitted. Dogwood trees and redbud trees shall be preserved. Other trees, which are not screening the facility from view and are four caliper inches and greater in diameter, measured six inches from the ground, shall be preserved. Trees, shrubs, and other vegetation less than four caliper inches in diameter may be removed. Trees, shrubs, and other vegetation, which are four caliper inches or greater in diameter as measured six inches from the ground and not to be preserved, may be cut, thinned, pruned, or removed according to approval of Department personnel designated by the Division Engineer. All vegetation cutting, thinning, pruning, or removal shall be in accordance with accepted International Society of Arboriculture (ISA) standards.

(c) The provisions shall not be used to provide visibility to undeveloped property or to on-premise signs.

(e)(d) Applications must be accompanied by a sketch showing the requested limits of the selective cutting, thinning, pruning, or removal of vegetation. For commercial, industrial, institutional, and office facilities, the limits of selective cutting, thinning, pruning, or removal shall be restricted to the area of right-of-way immediately adjacent to frontage property of the facility but not to exceed 1,000 contiguous linear feet. The permitted limits of the selective vegetation removal permit shall not be altered for subsequent applications. The applicant shall also include on the sketch the location, species, and caliper inches of all trees with a diameter of four caliper inches and greater, as measured six inches above ground level, at the time of the application and desired to be cut, thinned, pruned, or removed.

For outdoor advertising displays, these limits shall be restricted to a maximum cutting area for each sign face which shall be determined as follows:

- (1) The point located on the edge of the right of way which is the closest point to the center line of the sign face shall be point A;
- (2) The point located 100 feet down the right of way line in the direction of the sign viewing zone shall be point B;
- (3) The point on the edge of pavement of the travelway (not paved shoulder) which is the closest to the center line of the sign shall be point C;
- (4) The point 50 feet down the edge of pavement in the direction of the sign viewing zone from point C shall be point D;
- (5) The point 250 feet down the edge of pavement in the direction of the sign viewing zone from point C shall be point E; and
- (6) Lines drawn from point A to point D and from point B to point E shall define the limits of the cutting area (see diagrams that follow as examples of the application of this subsection). The Department of Transportation shall determine compensatory tree replanting to be performed by the sign owner as a result of the ABED removal zone versus the previous 125-foot rectangular zone. Compensatory tree planting is required to replace trees removed in the new portion of the ABED zone. This

~~replanting shall be inch for inch based on the caliper inches of trees removed in the ABED zone which are four inches and greater measured six inches above the ground. Location of replanting shall be areas of old 125 foot zone now not allowable to be cut by new ABED zone and locations within right of way on same route within one mile as designated by the Department where sign faces are blocked or will be blocked by existing trees in the 125 foot zone the ABED removal zone shall not be implemented. For commercial, industrial, institutional and office facilities, the limits of selective clearing or thinning shall be restricted to the area of right of way immediately adjacent to frontage property of the facility but not to exceed 1,000 linear feet.~~

(d)(e) Applications for permits for vegetation cutting to be performed on State Highway right of way must be accompanied by written authorizations(s) by the underlying fee owner(s) of all property upon which cutting is to take place, provided that where the right of way was secured in fee simple by the Department, such authorization shall not be required. The application must also be accompanied by written authorization of all owners of property abutting the area to be cut. The applicant must certify that permission has been obtained from the adjoining landowner(s) to access their private property, if applicable, for the purpose of conducting activities related to the selective vegetation removal permit application.

(e)(f) The selective vegetation ~~control~~ removal request shall may be investigated on site by ~~Maintenance and Roadside Environmental Department~~ personnel and a representative of the applicant.

(f)(g) If the application for vegetation cutting is for a site located within the corporate limits of a ~~City or Town~~, municipality and if the municipality has previously advised the Division Engineer in writing of its desire to review such applications, the applicant shall deliver the application to the municipality at least 30 days prior to submitting the application to the Department, so that local officials shall be given the opportunity to review the application. ~~application if the City or Town has previously advised the Division Engineer of their its desire to review such applications.~~

Authority G.S. 136-18(5); 136-18(7); 136-18(9); 136-18.7; 136-93; 136-130.

19A NCAC 02E .0603 ISSUANCE OR DENIAL OF PERMIT FOR A FACILITY

(a) ~~Within 30 days following receipt of the application, the Division Engineer shall approve or deny the application. If the application for vegetation cutting is for a site located within the corporate limits of a municipality and if the municipality has previously advised the Division Engineer in writing of its desire to review such applications, the applicant shall deliver the application to the municipality at least 30 days prior to submitting the application to the Department, so that local officials shall be given the opportunity to review the application.~~

The applicant, as part of the application, shall state in writing the date that he has delivered a copy of the application with required attachments to a municipality which has previously advised the Department in writing that it seeks to review such applications. After the 30-day municipal review period has concluded and all required documentation has been received by the Department, including the fee set out in G.S. 136-18.7, the Division Engineer shall have 30 days to approve or deny the application. If written notice of approval or denial is not given to the applicant within the 30-day Department review period, the application shall be deemed approved. If the application is denied, the Division Engineer shall advise the applicant, in writing, of the reasons for denial.

(b) The application shall be denied by the Division Engineer if:

- (1) ~~It requires removal of trees that were in existence before the business or advertisement was established. An existing tree shall be one that is four inches in diameter as measured six inches from the ground.~~
- (2)(1) The application is for the opening of view to a facility sign or business which has been declared illegal or is currently involved in litigation with ~~the department~~. Local, State, or Federal governments.
- (3)(2) It is determined by Departmental personnel that the facility ~~or advertisement~~ is not screened from view.
- (4)(3) The application is for the opening of view ~~to an outdoor advertising sign which was obscured from view at the time of erection of the sign.~~ to undeveloped property or to a facility that, due to obstructions off the right of way, is screened from view from the travel way regardless of the presence or absence of trees and other vegetation on the highway right of way.
- (5)(4) Removal of vegetation will adversely affect the safety of the traveling public.
- (5) The application is solely for providing visibility to on-premise signs.
- (6) ~~Trees, shrubs, or other vegetation of any sort were planted in accordance with a local, State, or Federal beautification project. The application is for the removal of vegetation planted in accordance with a local, State, or Federal beautification project. However, if a mitigation replanting plan which is related to the site for which the vegetation permit request is made (as set forth in 19A NCAC 02E .0611 except for the provisions in Paragraph (d) and Subparagraph (g)(11)) is approved by the applicant, the Department, and if applicable, the Federal Highway Administration then this subsection does not apply.~~
- (7) ~~Planting was done in conjunction with a designed noise barrier.~~
- (8)(7) ~~The applicant has not performed satisfactory work on previous requests under the provisions of the Rules in this Section (this~~

may not be cause for denial if the applicant engages a landscape contractor to perform the work. On two previous occasions, the applicant has failed to meet the requirements of a selective vegetation removal permit. This is not cause for denial if the applicant engages a landscape contractor to perform the current work.

- (9)(8) It involves opening of views to junkyards.
- (10) The application is contrary to ordinances or rules and regulations enacted by local government, within whose jurisdiction the work has been requested to be performed.
- (9) The applicant fails to provide all documentation required by statute and rule.
- (10) If any cutting, thinning, pruning, or removal of vegetation encompassing the entirety of the maximum vegetation cutting or removal zone is prohibited due to conservation easements or State or Federal rules, statutes, or permits.
- (11) If unlawful destruction or illegal cutting of vegetation has occurred within the highway right-of-way to create, increase, or improve a view to the facility from the travel way including acceleration and deceleration ramps, the Department shall not issue a selective vegetation removal permit for a period of five years. For the purposes of this section, unlawful destruction or illegal cutting is defined as the destruction or cutting of trees, shrubs, or other vegetation on the State-owned or State-maintained rights-of-way by anyone other than the Department or its authorized agents, or without written permission of the Department.

Authority G.S. 136-18(5); 136-18(7); 136-18(9); 136-93; 136-130.

19A NCAC 02E .0604 CONDITIONS OF SELECTIVE VEGETATION REMOVAL PERMIT FOR FACILITIES OR PERMIT REQUIREMENTS

- (a) Selected vegetation within the approved limits shall be thinned, pruned, or removed by the Permittee or his agent in accordance with accepted horticultural practices recommended by North Carolina State University. Roadside environmental personnel shall identify specific trees, shrubs, and other vegetation which may be pruned, thinned, or removed.
- (b) The Permittee may be required to furnish a performance bond or check in an amount determined by the Division Engineer to run concurrently with the permit, as deemed necessary to restore the right of way to the original condition if damage occurs.
- (c) A Division of Highways Roadside Inspector shall be present while work is underway.
- (d) Permits may be issued for multiple sites; however, a permit must be secured prior to performing any vegetation control work. Routine maintenance by the Permittee or his agent shall not be permitted.

(e) The Permittee or his agent shall not impede traffic on the highway in performing the work. Access to the work site on controlled access highways must be gained without using the main travelway of the highway. The Division Engineer shall determine traffic control signing which may be required. The Permittee shall furnish, erect and maintain the required signs as directed by the Division Engineer.

(f) Any damage to vegetation which is to remain, to highway fences, signs, paved areas, or other facilities shall be repaired or replaced by the Permittee to the satisfaction of the Division Engineer. All trimmings, lops, and debris shall be removed from the right of way and disposed of in areas provided by the Permittee. No burning or burying shall be permitted on the highway right of way. When chipping is used to dispose of trimmings, chips may be neatly spread on right of way at locations which the Division Engineer determines will not be harmful to the environment or traffic safety.

(g) Upon satisfactory completion of all work, the Roadside Inspector shall notify the Division Engineer who shall notify the Permittee in writing of such acceptance, terminate the permit, and return the performance bond or check.

(h) Failure to comply with all the requirements specified in the permit, unless otherwise mutually resolved, shall result in immediate revocation of the permit and forfeiture of any or all of the performance bond or check as determined by the Division Engineer based on conditions stated in Paragraph (b) of this Rule.

The following apply to the conditions of selective vegetation removal permit for facilities or permit requirements:

- (1) Selected vegetation, within the approved limits may be cut, thinned, pruned or removed by the permittee in accordance with the standards set out in G.S. 136-133.4.
- (2) The permittee shall indemnify and hold harmless the North Carolina Department of Transportation, its employees, attorneys, agents, and contractors against any and all claims or causes of action, and all losses therefrom, arising out of or in any way related to permittee's operation.
- (3) The permittee shall furnish a Performance and Indemnity Bond or certified check or cashier's check made payable to North Carolina Department of Transportation for the minimum sum of two thousand dollars (\$2,000). The bond, certified check or cashier's check shall cover all restoration of the right of way to the condition prior to the occurrence of the damage caused by the permittee or the permittee's agent, if damage occurs during the permitted selective vegetation removal. The bond or certified check or cashier's check is required before each permit to cut vegetation is issued. The bond shall run concurrently with the permit. The bond shall be released after a final inspection of the work by NCDOT reveals that all work provided for and specified by the permit is found to be completed and all damages to the right of way,

- including damage to fencing and other structures within the right-of-way, have been repaired or restored to the condition prior to the occurrence of the damage caused by the permittee or the permittee's agent.
- (4) Companies that plan to apply for two or more permits may provide continuing bonds for a minimum of one hundred thousand dollars (\$100,000) and this type of bond shall be kept on file by the Department.
 - (5) If the work is to be performed by any entity other than the sign owner or permittee, either the permittee or the other entity must furnish the required bonding as described in this Section, for all work provided for and specified by the permit. Required forms for all bonds are available upon request from the Department. Bonds are to be furnished with the Selective Vegetation Removal application form to the appropriate official assigned to receive selective vegetation removal applications at the local NCDOT Division of Highways Office.
 - (6) The permittee shall also provide proof of liability insurance of a minimum coverage of five million dollars (\$5,000,000). Whoever performs the work, the permittee, his contractor or agent, shall maintain all legally required insurance coverage, including worker's compensation and vehicle liability in the amounts required by and according to North Carolina law. The permittee, his contractor and agent, are liable for any losses due to the negligence or willful misconduct of his agents, assigns, and employees. The permittee may, in lieu of providing proof of liability insurance as described in this paragraph, be shown as an additional insured on the general liability policy of the approved contractor or agent to perform the permitted work on condition that the contractor or agent's policy is for a minimum coverage of five million dollars (\$5,000,000) and the permittee provides proof to the Department of the coverage. The permittee or contractor or agent providing the coverage shall also name the Department as an additional insured on its general liability policy and provide the Department with a copy of the certificate showing the Department named as an additional insured. Regardless of which entity provides the proof of general liability insurance, the required limit of insurance may be obtained by a single general liability policy or the combination of a general liability and excess liability or umbrella policy.
 - (7) The permittee shall provide a document verifying the requested selective vegetation removal site location in relationship to corporate limits of a municipality. The document shall be a current geographic information system map of the nearest municipality, with color-coded boundary lines and a corresponding key or legend indicating corporate limit and territorial jurisdiction boundaries and indicating the precise location of the business facility. The permittee shall also provide the property tax identification number for the parcel on which the facility is located. The Department may require additional information if the boundary or facility location remains in question.
 - (8) Access from the highway main travel way shall be allowed only for surveying or delineation work in preparation for and in the processing of an application for a selective vegetation removal permit.
 - (9) The permittee shall perform site marking of the maximum vegetation cut or removal zone. The applicant shall mark the permitted cutting distances according to 19A NCAC 02E .0602(d). The two maximum points along the right-of-way boundary (or fence if there is a control of access fence) shall be marked with visible flagging tape. The two maximum points, corresponding to the actual beginning point and the actual ending point, along the edge of the pavement of the travel way, perpendicular to the maximum points marked along the right-of-way boundary, shall be marked with spray paint. If the facility is located next to an acceleration or deceleration ramp, the two corresponding maximum points shall be marked along the edge of the pavement of the travel way of the ramp instead of the mainline of the roadway.
 - (10) The permittee shall tag, with visible material or flagging, those trees with a diameter of four caliper inches and larger, as measured six inches above ground level, at the time of the application that are requested to be cut, thinned, pruned, or removed within the maximum vegetation cut or removal zone. Trees tagged for cutting, thinning, pruning, or removal shall match with the trees shown on the required sketch of the requested vegetation cut or removal zone.
 - (11) The Department may disapprove the requested cutting, thinning, pruning, or removal of selected trees of four caliper inches or greater in diameter, as measured six inches above ground level, which are not screening the facility from view from the roadway. The Department will make this determination by allowing selective thinning of tree density which opens the view to the facility across the entire length of the maximum cut or removal zone, without complete removal of all trees

- and other vegetation. The Department shall disapprove cutting, thinning, pruning, or removal of dogwood and redbud trees that may have been tagged in error. If trees are disapproved for cutting, thinning, pruning or removal, the Department shall specify those trees to the applicant during the site investigation. The applicant shall remove the tree flagging for the disapproved trees and submit to the Department by electronic means an amended version of the original sketch of the site by indicating the changes on the sketch and initialing and dating the changes thereon. Failure to amend the sketch of the site according to this rule shall be considered failure to provide required documentation.
- (12) If any conservation easements or State or Federal rules, statutes or permits restrict an applicant from cutting, thinning, pruning or removing any vegetation from any portion but less than the entirety of the maximum vegetation cutting or removal zone, the permittee shall comply with applicable rules, statutes or permits for those portions of vegetation. If applicable easements, State or Federal rules, statutes, or permits allow certain degrees and methods of cutting, thinning, pruning, or removal for portions of vegetation, the permittee shall comply with State or Federal rules, statutes, or permits including equipment type for those portions of vegetation, including conservation easements. Portions of the maximum cutting or removal zone not within a conservation easement nor regulated by State or Federal environmental rules, statutes or permits regulating vegetation removal and other activities shall be governed by standards set out in G.S. 136-93.
- (13) The permittee must adhere to erosion control requirements, according to North Carolina General Statutes, Article 4, Chapter 113A entitled: Sedimentation Pollution Control Act of 1973.
- (14) A Division of Highways Inspector may be present while work is underway. The presence or absence of a Division of Highways inspector at the work site does not lessen the permittee's responsibility for conformity with the requirements of the permit and all applicable General Statutes and rules. Should the inspector fail to point out work that does not conform with the requirements, it does not prevent later notification to the permittee that the work is not in compliance with the permit.
- (15) A selective vegetation removal permit must be secured for each applicable facility site prior to performing any vegetation removal work. The Permittee or its contractor or agent must have a copy of the Selective Vegetation Removal Permit on the work site at all times during any phase of selective vegetation cutting, thinning, trimming, pruning, removal, or planting operations.
- (16) Should the Division Engineer ("Engineer") or his representative observe unsafe operations, activities or conditions, he shall suspend work. Work shall not resume until the unsafe conditions or activities have been eliminated or corrected. Failure to comply with any of the requirements for safety and traffic control of this permit shall result in suspension of work.
- (17) The permittee or its contractor or agent shall take appropriate measures to locate and protect utilities within the highway right-of-way within the work area of the selective vegetation removal zone. The permittee shall be responsible for restoration of any losses or damages to utilities caused by any actions of the permittee or its contractors or agents to the satisfaction of the utility owner.
- (18) Permits are valid for a period of one year and the permittee may cut, thin, prune, or remove vegetation more than one time during the permit year. If the applicant applies for and is approved for another permit during an existing permit year, the previous permit shall become null and void at the same time the new permit is issued.
- (19) The permittee shall provide to the appropriate Department official a 48-hour notification before entering the right-of-way for any work covered by the conditions of the permit. The permittee shall schedule all work with the appropriate Department official. The permittee shall notify the Department in advance of work scheduled for nights, weekends, and holidays. The Department reserves the right to modify the permittee's work schedule for nights, weekends, and holidays. When the Department restricts construction in work zones for the safety of the traveling public, the Department shall deny access to the right-of-way for selective vegetation removal.
- (20) If work is planned in an active work zone, the permittee shall receive written permission from the contractor or the Department (if the Department's employees are performing the work). The permittee shall provide the Division Engineer with a copy of the written permission.
- (21) Sites with vegetation not presenting a hazard from falling tree parts and follow-up work shall be restricted to individual and manual-operated power equipment and hand-held tools.
- (22) The Department may allow use of power-driven vegetation removal equipment (such as excavator-based land clearing attachments,

skid-steer cutters, and bucket trucks) and access from the private property side to the right-of-way. Tree removal, which presents a hazard from falling tree parts, shall be performed in accordance with International Society of Arboriculture standards. Written authorization must be obtained from the Department for use of power-driven vegetation removal equipment as well as for access to move resources from the private property to the right-of-way. The applicant must provide information on the permit application for which type(s) of equipment and access is requested. The applicant shall also provide contractor qualifications for the Department.

- (23) The Department shall determine the traffic control signage that is required. The permittee shall furnish, erect, and maintain the required signs as directed by the Department.
- (24) The height of stumps remaining after tree removal shall not exceed four inches above the surrounding ground level. The work site shall be left in a clean and orderly appearance at the end of each workday.
- (25) An applicant for a selective vegetation removal permit for a facility issued pursuant to 19A NCAC 02E .0602 may appeal a decision of the Department pertaining to the denial or conditioning of a permit for selective vegetation removal pursuant to the provisions of this section. Such an appeal shall be in accordance with the provisions of G.S. 136-133.3.
- (26) Upon completion of all work, the Department shall notify the Division Engineer who shall notify the Permittee in writing of acceptance, terminate the permit, and return the Performance and Indemnity Bond or certified or cashier's check to the permittee.
- (27) Pursuant to 136-133.4(e), willful failure to substantially comply with all the requirements specified in the permit, unless otherwise mutually resolved, shall result in immediate and summary revocation of the selective vegetation removal permit and forfeiture of any or all of the Performance and Indemnity Bond or check as determined by the Division Engineer based on conditions stated in this Rule.

Authority G.S. 136-18(5); 136-18(7); 136-18(9).

19A NCAC 02E .0608 REQUESTS FOR SELECTIVE VEGETATION REMOVAL PERMITS FOR OUTDOOR ADVERTISING

(a) Applications for selective vegetation cutting, thinning, pruning, or removal (exclusive of grasses) shall be made by the owner of an outdoor advertising sign permitted under G.S. 136-129(4) or (5) to the appropriate Division Engineer of the North

Carolina Department of Transportation, Division of Highways. Applications with all required documentation shall be submitted in both printed and electronic form. For sites within the corporate limits of a municipality which has previously advised the Department in writing that it seeks to review such applications, the applicant shall deliver the application to the municipality at least 30 days prior to submitting the application to the Department. A non-refundable fee of two hundred dollars (\$200.00) must accompany each application.

(b) Applications which include existing trees to be cut, thinned, pruned or removed, must be accompanied by a site plan in accordance with G.S. 136-133.1(c).

(c) For signs eligible for municipal review the applicant must include on the application and as a prerequisite to applicable municipal review submittal, the year the outdoor advertising sign was originally erected. The applicant must also furnish documentation of proof from the Department to verify the year of sign erection shown on the application. The Department reserves the right to require additional proof if the year of the sign erection remains in question either to the municipality or the Department.

(d) The selective vegetation removal request may be investigated on site by Department personnel and a representative of the applicant.

Authority G.S. 136-18(5); 136-18(7); 136-18(9); 136-18.7; 136-93; 136-129(4); 136-129(5); 136-130; 136-133.1; 136-133.2.

19A NCAC 02E .0609 ISSUANCE OR DENIAL OF SELECTIVE VEGETATION REMOVAL PERMIT FOR OUTDOOR ADVERTISING

(a) Within 30 days following receipt of the application for a selective vegetation removal permit for outdoor advertising, including the fee set out in G.S. 136-18.7 and all required documentation set out in G.S. 136-133.2 and these rules, the Division Engineer shall approve or deny the application. The applicant, as part of the application, shall state in writing the date that he has delivered a copy of the application with required attachments to a municipality which has previously advised the Department in writing that it seeks to review such applications. The applicant shall deliver the application to the municipality at least 30 days prior to submitting the application to the Department. Once all required documentation has been received by the Department, the Division Engineer shall have 30 days to approve or deny the application. If written notice of approval or denial is not given to the applicant within the 30-day Department review period, then the application shall be deemed approved. If the application is denied, the Division Engineer shall advise the applicant, in writing, of the reasons for denial.

(b) The application shall be denied by the Division Engineer if:

- (1) The application is for an outdoor advertising location where the outdoor advertising permit is less than two years old pursuant to G.S. 136-133.2.
- (2) The application is for the opening of a view to a sign which has been declared illegal or whose permit has been revoked or is currently involved in litigation with the Department.

- (3) Removal of vegetation will adversely affect the safety of the traveling public.
- (4) The application is for the removal of vegetation planted in accordance with a local, State, or Federal beautification project unless a mitigating replanting plan related to the site for which the vegetation permit request is made as set forth in 19A NCAC 02E .0611, except for the provisions in (d) and (g)(11); and is approved by the applicant, the Department, and if applicable, the Federal Highway Administration.
- (5) On two previous occasions, the applicant has failed to meet the requirements of a selective vegetation removal permit. This is not cause for denial if the applicant engages a landscape contractor to perform the current work.
- (6) It involves opening of views to junkyards.
- (7) The requested site is subject to a five-year moratorium for willful failure to substantially comply with all requirements specified in a prior selective vegetation removal permit pursuant to G.S. 136-133.4(e).
- (8) The applicant fails to provide all documentation required in applicable General Statutes and rules.
- (9) If any cutting, thinning, pruning, or removal of vegetation encompassing the entirety of the maximum vegetation cutting or removal zone is prohibited due to conservation easements or State or Federal rules, statutes, or permits.

Authority G.S. 136-18(5); 136-18(7); 136-18(9); 136-93; 136-130; 136-133.2; 136-133.3; 136-133.4.

19A NCAC 02E .0610 CONDITIONS OF SELECTIVE VEGETATION REMOVAL PERMIT FOR OUTDOOR ADVERTISING OR PERMIT REQUIREMENTS

The following apply to the conditions of selective vegetation removal permit for outdoor advertising or permit requirements:

- (1) Selected vegetation, as defined in 136-133.1(b) may be allowed to be cut, thinned, pruned or removed in accordance with the standards set out in G.S. 136-133.4.
- (2) The permittee shall indemnify and hold harmless the North Carolina Department of Transportation, its employees, attorneys, agents, and contractors against any and all claims or causes of action, and all losses therefrom, arising out of or in any way related to permittee's operation.
- (3) The permittee shall furnish a Performance and Indemnity Bond or certified check or cashier's check made payable to North Carolina Department of Transportation for the minimum sum of two thousand dollars (\$2,000). The bond, certified check or cashier's check shall cover all restoration of the right of way to the condition prior to the occurrence of

the damage caused by the permittee or the permittee's agent, if damage occurs during the permitted selective vegetation removal. The bond or certified check or cashier's check is required before each permit to cut vegetation is issued. The bond shall run concurrently with the permit. The bond shall be released after a final inspection of the work by NCDOT reveals that all work provided for and specified by the permit is found to be completed and all damages to the right of way, including damage to fencing and other structures within the right-of-way, have been repaired or restored to the condition prior to the occurrence of the damage caused by the permittee or the permittee's agent.

- (4) Companies that plan to apply for two or more permits may provide continuing bonds for a minimum of one hundred thousand dollars (\$100,000) and this type of bond shall be kept on file by the Department.
- (5) If the work is to be performed by any entity other than the sign owner or permittee, either the permittee or the other entity must furnish the required bonding as described in this Section, for all work provided for and specified by the permit. Required forms for all bonds are available upon request from the Department. Bonds are to be furnished with the Selective Vegetation Removal application form to the appropriate official assigned to receive selective vegetation removal applications at the local NCDOT Division of Highways Office.
- (6) The permittee shall also provide proof of liability insurance of a minimum coverage of five million dollars (\$5,000,000). Whoever performs the work, the permittee, his contractor or agent, shall maintain all legally required insurance coverage, including worker's compensation and vehicle liability in the amounts required by and according to North Carolina law. The permittee, his contractor and agent, are liable for any losses due to the negligence or willful misconduct of his agents, assigns, and employees. The permittee may, in lieu of providing proof of liability insurance as described in this Paragraph, be shown as an additional insured on the general liability policy of the approved contractor or agent to perform the permitted work on condition that the contractor or agent's policy is for a minimum coverage of five million dollars (\$5,000,000) and the permittee provides proof to the Department of the coverage. The permittee or contractor or agent providing the coverage shall also name the Department as an additional insured on its general liability policy and provide the

- Department with a copy of the certificate showing the Department named as an additional insured. Regardless of which entity provides the proof of general liability insurance, the required limit of insurance may be obtained by a single general liability policy or the combination of a general liability and excess liability or umbrella policy.
- (7) The permittee shall provide a document verifying the requested selective vegetation removal site location in relationship to corporate limits of a municipality, per G.S. 136-133.1(a)(5). The document shall be a current geographic information system map of the nearest municipality, with color-coded boundary lines and a corresponding key or legend indicating corporate limit and territorial jurisdiction boundaries and indicating the precise location of the outdoor advertising structure. The permittee shall also provide the property tax identification number for the parcel on which the outdoor advertising structure is located. The Department may require additional information if the boundary or sign location remains in question.
 - (8) The permittee shall perform site marking of the maximum vegetation cut or removal zone. The applicant shall mark the proper permitted cutting distances according to G.S. 136-133.1(a)(1) – (6). Points A & B along the right-of-way boundary (or fence if there is a control of access fence) are to be marked with visible flagging tape. Points C, D, & E along the edge of the pavement of the travel way are to be marked with spray paint, including the actual distances. If the sign is located at an acceleration or deceleration ramp, points C, D, & E shall be marked along the edge of the pavement of the travel way of the ramp instead of the mainline of the roadway.
 - (9) The permittee shall perform tagging of trees. The permittee shall tag with a visible material or flagging all trees, including existing trees and other trees that are, at the time of the selective vegetation removal application, greater than four inches in diameter as measured six inches from the ground and requested to be cut, thinned, pruned, or removed. The applicant shall tag the existing trees (the exact same existing trees as on the site plan) that are desired to be cut, thinned, pruned, or removed with visible material or flagging of a contrasting color. The permittee shall denote on the site plan or on the application the colors of flagging used to mark each category of trees.
 - (10) If there are existing trees requested to be removed, before any work can be performed under a selective vegetation removal permit the permittee must:
 - (a) Submit the reimbursement to the Department pursuant to G.S. 136-93.2 in a cashier's or certified check;
 - (b) Fully disassemble two non-conforming outdoor advertising signs and their supporting structures and return the outdoor advertising permits tags to the Department; or
 - (c) Obtain Departmental approval for the replanting plan in accordance with 19A NCAC 02E .0611.
 - (11) Should the vegetation removal permit be approved and tree removal is scheduled, for all disputed trees the sign owner shall cut such tree stumps in a level, horizontal manner uniformly across the stump at a four inch height, so that tree rings can be counted by the applicant or the Department to determine the age of the tree.
 - (12) After a tree is removed and the applicant or the Department discovers, based on the number of rings in the tree stump, an error in the tree survey report or site plan, the Department shall request an amendment to the tree survey report or site plan, and a redetermination pursuant to G.S. 136-133.1(d) and (e) shall be made by the Department and the applicant shall be subject to that redetermination.
 - (13) If any conservation easements or State or Federal rules, statutes or permits restrict an applicant from cutting, thinning, pruning or removing any vegetation from any portion but less than the entirety of the maximum vegetation cutting or removal zone, the permittee shall comply with applicable rules, statutes or permits for those portions of vegetation. If applicable easements, State or Federal rules, statutes, or permits allow certain degrees and methods of cutting, thinning, pruning, or removal for portions of vegetation, the permittee shall comply with State or Federal rules, statutes, or permits including equipment type for those portions of vegetation, including conservation easements. Portions of the maximum cutting or removal zone not within a conservation easement nor regulated by State or Federal rules, statutes or permits regulating vegetation removal and other activities shall be governed by standards set out in G.S. 136-133.4.
 - (14) The permittee must adhere to erosion control requirements, according to North Carolina General Statutes, Article 4, Chapter 113A entitled: Sedimentation Pollution Control Act of 1973.
 - (15) A Division of Highways Inspector may be present while work is underway. The presence

- or absence of a Division of Highways inspector at the work site does not lessen the permittee's responsibility for conformity with the requirements of the permit and all applicable General Statutes and rules. Should the inspector fail to point out work that does not conform with the requirements, it does not prevent later notification to the permittee that the work is not in compliance with the permit.
- (16) A selective vegetation removal permit must be secured for each applicable outdoor advertising site prior to performing any vegetation removal work.
- (17) Should the Division Engineer ("Engineer") or his representative observe unsafe operations, activities or conditions, he shall suspend work. Work shall not resume until the unsafe conditions or activities have been eliminated or corrected. Failure to comply with any of the requirements for safety and traffic control of this permit shall result in suspension of work.
- (18) The applicant must certify that he or she has permission from the adjoining landowner(s) to access their private property for the purpose of conducting activities related to the selective vegetation removal permit application.
- (19) The Permittee or its contractor or agent must have a copy of the Selective Vegetation Removal Permit on the work site at all times during any phase of selective vegetation cutting, thinning, trimming, pruning, removal, or planting operations.
- (20) The permittee or its contractor or agent shall take appropriate measures to locate and protect utilities within the highway right-of-way within the work area of the selective vegetation removal zone. The permittee shall be responsible for restoration of any losses or damages to utilities caused by any actions of the permittee or its contractors or agents to the satisfaction of the utility owner.
- (21) Permits are valid for a period of one year and the permittee may cut, thin, prune, or remove vegetation more than one time during the permit year. If the applicant applies for and is approved for another selective vegetation removal permit during an existing permit year, the previous permit shall become null and void at the same time the new permit is issued.
- (22) The permittee shall provide to the appropriate Department official, a 48-hour notification before entering the right-of-way for any work covered by the conditions of the permit. The permittee shall schedule all work with the appropriate Department official. The permittee shall notify the Department in advance of work scheduled for nights, weekends and holidays. The Department reserves the right to modify the permittee's work schedule for nights, weekends, and holidays. When the Department restricts construction in work zones for the safety of the traveling public, the Department shall deny access to the right-of-way for selective vegetation removal.
- (23) If work is planned in an active work zone, the permittee shall receive written permission from the contractor or the Department (if the Department's employees are performing the work). The permittee shall provide the Division Engineer with a copy of the written permission.
- (24) Sites with vegetation not presenting a hazard from falling tree parts and follow-up work shall be restricted to individual and manual-operated power equipment and hand-held tools.
- (25) The Department may allow use of power-driven vegetation removal equipment (such as excavator-based land clearing attachments, skid-steer cutters, and bucket trucks) and access from the private property side to the right-of-way. Tree removal, which presents a hazard from falling tree parts, shall be performed in accordance with International Society of Arboriculture standards. Written authorization must be obtained from the Department for use of power-driven vegetation removal equipment as well as for access to move resources from the private property to the right-of-way. The applicant must provide information on the permit application for which type(s) of equipment and access is requested. The applicant shall also provide contractor qualifications for the Department.
- (26) The Department shall determine the traffic control signage that is required. The permittee shall furnish, erect, and maintain the required signs as directed by the Department.
- (27) The height of stumps remaining after tree removal shall not exceed four inches above the surrounding ground level. The work site shall be left in a clean and orderly appearance at the end of each workday.
- (28) Upon completion of all work, the Department shall notify the Division Engineer who shall notify the Permittee in writing of acceptance, terminate the permit, and return the Performance and Indemnity Bond or certified or cashier's check to the permittee. For replanting work, a different bond release schedule shall be applicable according to 19A NCAC 02E.0611(g)(8).
- (29) Pursuant to 136-133.4(e), willful failure to substantially comply with all the requirements specified in the permit, unless otherwise mutually resolved, shall result in immediate and summary revocation of the selective vegetation removal permit and forfeiture of

any or all of the Performance and Indemnity Bond or check as determined by the Division Engineer based on conditions stated in this Rule.

Authority G.S. 136-18(5); 136-18(7); 136-18(9); 136-93; 136-130; 136-133.4.

19A NCAC 02E .0611 REQUIREMENTS FOR BEAUTIFICATION AND REPLANTING CONDITIONS OF SELECTIVE VEGETATION REMOVAL PERMITS FOR OUTDOOR ADVERTISING AND BUSINESS FACILITIES.

(a) Any site qualifies for a beautification and replanting plan.

(b) For future selective vegetation removal applications at replanted sites, replanted materials may be removed only if partially blocking the view to a sign face. In this case, the Department will require plant substitutions on a one for one basis. All requests for plant substitutions shall be approved by the Department and installed according to the rules in this Section.

(c) Submittal of a selective vegetation removal application shall be in accordance with G.S. 136.133.1(c).

(d) This Paragraph applies to all replanting plans except mitigating replanting plans as specified in 19A NCAC 02E .0609(b)(4). The caliper inches of existing trees to be removed, according to the applicant's site plan shall equal the caliper inches to be replanted by the applicant at the outdoor advertising site from which existing trees are requested to be removed. If the caliper inches of existing trees from the site plan exceed the density of the Departments replanting site design, the excess caliper inches of trees shall be delivered by the applicant to the Department according to the schedule described in Subparagraph (g)(6) of this Rule. If plant material other than trees is proposed, the Department may consider such substitution for the required caliper inches. The excess trees shall be planted and maintained by the Department at sites to be determined by the Department.

(e) For sites that qualify according to the replanting criteria described in this rule, the Department shall consult with the applicant and any local government that has requested to review and provide comments on selective vegetation removal applications pursuant to G.S. 136-93(d) or has notified the Department of its desire to review and provide comments on beautification and replanting plans for outdoor advertising sites. If the local government does provide comments on a beautification and replanting plan, the Department shall take the comments into consideration. If the local government does not make appropriate request for a review, the criteria stated in the rules in this section shall be followed for replanting determination.

(f) In consideration of differences in outdoor advertising sign structure heights, the Department shall maintain on file regionalized landscape design plans and plant lists as a guide for applicants. The applicant may submit one of the Department's plans or a proposed beautification and replanting plan prepared and sealed by a North Carolina licensed landscape architect. The Department's written approval, based on the American Standard for Nursery Stock for a minimum of a 1.5 caliper inch replanted tree, of the beautification, replanting, and maintenance

plan shall allow the applicant to proceed with requested vegetation cutting, thinning, pruning or removal at the outdoor advertising site. If plant material other than trees is proposed, the Department may consider such substitution for the required caliper inches.

(g) The approved beautification and replanting plan becomes a part of the selective vegetation removal permit pursuant to G.S. 136-93(b) and 136-133.1(e). All applicable requirements of the permit, including the performance bond and insurance, shall continue to apply until all replanting and establishment requirements are satisfied and accepted in writing by the Department. The Department shall approve the replanting portion of the selective vegetation removal permit in writing detailing the requirements of the beautification and replanting plan. The requirements include the following:

- (1) The work for initial plantings and all future replacements must be adhered to by the permittee or any or their employees, agents, or assigns according to International Society of Arboriculture standards except as stipulated in the rules in this section. Initial and replacement planting will be considered acceptable when the plants have been placed in the plant hole, backfilled, watered, mulched, staked, and guyed. All plants of one species, which are shown on the plans to be planted within a bed, shall be planted concurrently and the entire group shall be completed before any plant therein is considered acceptable. Replacement planting consists of replacing those plants which are not in a living and healthy condition as defined in these rules.
- (2) The permittee must adhere to erosion control requirements, according to North Carolina General Statutes, Article 4, Chapter 113A entitled: Sedimentation Pollution Control Act of 1973.
- (3) All plant materials shall be approved in writing by the Department prior to arrival at the outdoor advertising site or prior to excess trees being furnished and delivered to the Department. The approval shall be based on the American Standard for Nursery Stock.
- (4) All work is subject to NCDOT Division of Highways inspection and shall be scheduled with the Department. A minimum 48-hour notification shall be provided to the Department by the permittee before entering the right-of-way for any beautification and replanting plan requirements.
- (5) Grinding of all cut stumps (to a minimum depth of four inches below ground level) must be completed in the area of replanting during the preparation of the site, prior to initial planting.
- (6) All initial and replacement plantings shall be installed during the first planting season (November 1 to March 15) contemporaneous with or following the selective vegetation

- removal. If replanting cannot be completed by the March 15 deadline, the replanting shall occur during the next planting season. The same dates (November 1 to March 15) apply when the permittee provides the Department with excess plant material at a site where existing caliper inches exceeds the site design capacity.
- (7) The permittee shall contact the Department to schedule a final replanting acceptance inspection upon completion of any plant material installation. For one year from the date of the initial planting acceptance for the entire replanting plan, the permittee must establish all plant materials according to these provisions. Establishment for all initial or replacement plants shall begin immediately after they are planted. The permittee shall be responsible for the area around plantings for a distance of six feet beyond the outside edges of the mulch. Establishment shall include cutting of grass and weeds; watering; replacement of mulch; repair or replacement of guy stakes, guy wires, and water rings; and other work to encourage the survival and growth of plant material. The permittee shall remove and dispose of dead plants from the replanting plan site during the establishment period. Prior to the end of the one-year establishment period, the permittee is responsible for contacting the Department to schedule a site meeting with Departmental officials to identify plants to be replaced that are not in a living and healthy condition. Plants do not meet the living and healthy condition requirement and need replacement if 25 percent or more of the crown is dead, if the main leader is dead, or if an area of the plant has died leaving the character of its form compromised, lopsided, or disfigured. The permittee shall replace, during the planting period, plant material needed to restore the planting to the original quantity, size, and species of plant material. Any desired changes in plant material proposed by the permittee must be requested in writing to the Department. The Department shall notify the permittee in writing of the replacement plantings.
- (8) At the conclusion of the one-year establishment period the Department shall issue a written acceptance of the permittee's work and release the applicable bond. Then a one-year observation period shall begin in which the permittee or sign owner shall maintain stability of the original and replacement plantings to promote their continued livability and healthy growth. The sign owner is responsible for replacement of plants not meeting the living and healthy condition requirement during the observation period and in accordance with the dates of planting as stated in the rules in this section.
- (9) After the one-year observation period concludes, the Department shall notify the sign owner if the permit requirement conditions have been met successfully.
- (10) Replanted materials may be pruned according to the International Society of Arboriculture standards; however, topping of trees or other vegetation is not allowed.
- (11) This Paragraph applies to all replanting plans except mitigating replanting plans as specified in 19A NCAC 02E .0609(b)(4). Excess plants or trees furnished and delivered to the Department, shall receive care and handling in accordance with the following: In digging, loading, transporting, unloading, planting, or otherwise handling plants, the permittee shall exercise care to prevent windburn, injury to or drying out of the trunk, branches, or roots; and to prevent freezing of the plant roots. The solidity of the plant ball shall be preserved. Delivery of excess plant material shall be scheduled with the Department, allowing a minimum three days notification for each delivery. The permittee's responsibility for the furnished excess plants or trees ends at the time the plant material is delivered to, inspected by, and accepted by the Department.
- (12) For mitigating replanting plans according to 19A NCAC 02E .0609(b)(4), trees and other plant material for a proposed beautification and replanting plan taken from the Department's landscape design plans and plant lists or prepared and sealed by a North Carolina licensed landscape architect, may be of a projected mature height to reduce visibility limitations to outdoor advertising sign faces.
- (13) Should the outdoor advertising structure related to the selective vegetation permit be sold or transferred, the new owner or permit holder is subject to the requirements in the General Statutes and rules in this Section, including those regarding planting, establishment, replacement or renovation plantings, minimum living and healthy condition, and observation.
- (14) Willful failure to substantially comply with the requirements of Paragraph (g) of this Rule for the beautification and replanting plan shall subject the permittee to penalties prescribed in G.S. 136-133.4.

Authority G.S. 136-93; 136-130; 136-133.4.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 36 - BOARD OF NURSING

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Nursing intends to amend the rule cited as 21 NCAC 36 .0809.

Link to agency website pursuant to G.S. 150B-19.1(c):
www.ncbon.com

Proposed Effective Date: December 1, 2012

Public Hearing:

Date: September 20, 2012

Time: 1:00 p.m.

Location: NC Board of Nursing, 4516 Lake Boone Trail, Raleigh, NC 27607

Reason for Proposed Action: *The Joint Subcommittee approved a proposed rule on May 16, 2012 to prohibit NP's from prescribing controlled substances for themselves, their supervising physicians, their immediate families, any person living in the same residence as the licensee, or anyone with whom the nurse practitioner is having a sexual relationship or significant emotional relationship. Separate but matching rules would bar physicians and PAs from this conduct as well.*

Procedure by which a person can object to the agency on a proposed rule: *Persons may submit objections to these rules by contacting Angela Ellis, APA Coordinator, North Carolina Board of Nursing, Post Office Box 2129, Raleigh, NC 27602-2129, Fax (919)781-9461; email angela@ncbon.com*

Comments may be submitted to: *Angela Ellis, NC Board of Nursing, PO Box 2129, Raleigh, NC 27602-2129, phone (919)782-3211 ext. 259, fax (919)781-9461, angela@ncbon.com*

Comment period ends: September 20, 2012

Procedure for Subjecting a Proposed Rule to Legislative Review:

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

Fiscal impact (check all that apply).

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

SECTION .0800 - APPROVAL AND PRACTICE PARAMETERS FOR NURSE PRACTITIONERS

21 NCAC 36 .0809 PRESCRIBING AUTHORITY

(a) The prescribing stipulations contained in this Rule apply to writing prescriptions and ordering the administration of medications.

(b) Prescribing and dispensing stipulations are as follows:

- (1) Drugs and devices that may be prescribed by the nurse practitioner in each practice site shall be included in the collaborative practice agreement as outlined in Rule .0810(b) of this Section.
- (2) Controlled Substances (Schedules II, IIN, III, IIIN, IV, V) defined by the State and Federal Controlled Substances Acts may be procured, prescribed or ordered as established in the collaborative practice agreement, providing all of the following requirements are met:
 - (A) the nurse practitioner has an assigned DEA number which is entered on each prescription for a controlled substance;
 - (B) dosage units for schedules II, IIN, III, and IIIN are limited to a 30 day supply; and
 - (C) the supervising physician(s) must possess the same schedule(s) of controlled substances as the nurse practitioner's DEA registration.
- (3) The nurse practitioner may prescribe a drug or device not included in the collaborative practice agreement only as follows:
 - (A) upon a specific written or verbal order obtained from a primary or back-up supervising physician before the prescription or order is issued by the nurse practitioner; and
 - (B) the written or verbal order as described in Part (b)(3)(A) of this Rule shall be entered into the patient record with a notation that it is issued on the specific order of a primary or back-up supervising physician and signed by the nurse practitioner and the physician.
- (4) Refills may be issued for a period not to exceed one year.

- (5) Each prescription shall be noted on the patient's chart and include the following information:
- (A) medication and dosage;
 - (B) amount prescribed;
 - (C) directions for use;
 - (D) number of refills; and
 - (E) signature of nurse practitioner.
- (6) Prescription Format:
- (A) all prescriptions issued by the nurse practitioner shall contain the supervising physician(s) name, the name of the patient, and the nurse practitioner's name, telephone number, and approval number;
 - (B) the nurse practitioner's assigned DEA number shall be written on the prescription form when a controlled substance is prescribed as defined in Subparagraph (b)(2) of this Rule.
- (7) A nurse practitioner shall not prescribe controlled substances, as defined by the state and Federal Controlled Substances Acts, for the nurse practitioner's own use nor that of a nurse practitioner's supervising physician, nor that of a member of the nurse practitioner's immediate family, which shall mean a spouse, parent, child, sibling, parent-in-law, son or daughter-in-law, brother or sister-in-law, step-parent, step-child, step-siblings, or any other person living in the same residence as the licensee, or anyone with whom the nurse practitioner is having a sexual relationship and/or has a significant emotional relationship.

(c) The nurse practitioner may obtain approval to dispense the drugs and devices other than samples included in the collaborative practice agreement for each practice site from the Board of Pharmacy, and dispense in accordance with 21 NCAC 36 .1700, that is hereby incorporated by reference including subsequent amendments of the referenced materials.

Authority G.S. 90-8.1; 90-8.2; 90-18(14); 90-18.2; 90-171.23(b)(14).

CHAPTER 46 – BOARD OF PHARMACY

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Board of Pharmacy intends to amend the rules cited as 21 NCAC 46 .1601.

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://www.ncbop.org/lawandrules.htm>

Proposed Effective Date: November 1, 2012

Public Hearing:

Date: September 17, 2012

Time: 5:00 p.m.

Location: NC Board of Pharmacy, 6015 Farrington Road, Suite 201, Chapel Hill, NC 27517

Reason for Proposed Action: To modernize the reference materials that are required to be maintained in a pharmacy, principally (a) to allow for electronic or on-line availability of reference materials; (b) to remove the requirement to maintain particular reference sources that are (or may become) no longer available; and (c) to update the descriptions of the subjects to be covered.

Procedure by which a person can object to the agency on a proposed rule: Any person may object to the proposed amendment by attending the public hearing on September 17, 2012 and/or by submitting a written objection by September 17, 2012 to Jay Campbell, Executive Director, NC Board of Pharmacy, 6015 Farrington Road, Suite 201, Chapel Hill, NC 27517, fax (919) 246-1056, email jcampbell@ncbop.org. The NC Board of Pharmacy is interested in all comments pertaining to the proposed rule. All persons interested and potentially affected by the proposal are strongly encouraged to read this entire notice and make comments on the proposed rule.

Comments may be submitted to: Jay Campbell, 6015 Farrington Road, Suite 201, Chapel Hill, NC 27517; fax (919) 246-1056; email jcampbell@ncbop.org

Comment period ends: September 17, 2012

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

Fiscal impact (check all that apply).

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

SECTION .1600 – LICENSES AND PERMITS

21 NCAC 46 .1601 PHARMACY PERMITS

(a) Applications for pharmacy permits, whether original or renewal, shall be made upon forms provided by the Board. The Board shall not issue any original or annual renewal pharmacy permit until the Board is satisfied that:

- (1) The pharmacist-manager is sure that at all times adequate qualified personnel have been secured by the management of the store to properly render pharmaceutical service in the manner prescribed by law.
- (2) The pharmacy posts in a location conspicuous to the public the specific hours that a pharmacist is on duty in the pharmacy. This requirement does not apply to hospitals, nursing homes, and similar institutions subject to the provisions of Section .1400 of this Chapter.
- (3) The pharmacist-manager shall be responsible for obtaining and maintaining equipment in the pharmacy adequate to meet the pharmaceutical care needs of the pharmacy's patients. ~~The pharmacy's reference library shall include a medical dictionary and current editions of reference books on drug interactions, clinical pharmacology, USP Dispensing Information or its equivalent, and if IV admixture services are provided, a reference on Parenteral Incompatibilities.~~
- (4) The pharmacist-manager shall be responsible for obtaining and maintaining a reference library in the pharmacy. The library shall include current references, either hard copy or electronically accessible, covering:
 - (A) State and federal statutes and rules relating to the practice of pharmacy and the legal distribution of drugs;
 - (B) Drug interactions, adverse effects, therapeutic use, dosing and toxicology;
 - (C) Patient-oriented reference materials for counseling in proper drug usage as specified in 21 NCAC 46 .2504;
 - (D) Equivalent drug products as defined in G.S. 90.85.27; and
 - (E) Any reference materials otherwise required by state or federal law, including any otherwise required in these Rules.
- ~~(4)~~(5) The pharmacy is equipped with sanitary appliances including lavatory facilities with hot and cold running water; is well lighted; and is kept in a clean, orderly, and sanitary condition.
- ~~(5)~~(6) All prescription medications are labeled in accordance with G.S. 106-134 and 106-134.1.

(b) In addition to the requirements for issuance and renewal of a pharmacy permit imposed by statute and rules of the Board, a permit shall not be issued or renewed to any person to operate a pharmacy wherein the prescriptions of medical practitioners are

compounded or dispensed and distributed when such distribution is effected by mail and the practitioner-pharmacist-patient relationship does not exist, until the Board is satisfied that:

- (1) The pharmacy maintains records of prescriptions compounded or dispensed and distributed in manner that is readily retrievable;
- (2) During the pharmacy's regular hours of operation but not less than six days per week, for a minimum of forty hours per week, a toll-free telephone service is provided to facilitate communication between patients and a pharmacist at the pharmacy who has access to the patient's records. This toll-free number must be disclosed on the label affixed to each container of dispensed drugs;
- (3) The pharmacy complies with all lawful orders, directions, and requests for information from the Boards of pharmacy of all states in which it is licensed and all states into which it distributes prescription drugs;
- (4) The pharmacy complies with all United States Pharmacopeia and Food and Drug Administration requirements regarding the storage, packaging, and shipping of prescription medications. The pharmacist-manager and all other pharmacists employed in the pharmacies permitted pursuant to this Paragraph shall be subject to all Federal and State statutes and regulations concerning the dispensing of prescription medications including 21 NCAC 46 .1801 and .1805 and 21 CFR 1306.01, 1306.05, and 1306.21.

(c) The Board shall not issue an original or renewal permit to any person to operate a drugstore or pharmacy as a department in or a part of any other business serving the general public (except hospitals, nursing homes, and similar institutions subject to the provisions of Section .1400 of this Chapter) unless such pharmacy facility:

- (1) is physically separated from such other business;
- (2) is separately identified to the public both as to name and any advertising;
- (3) completes all transactions relative to such pharmacy within the registered facility; and
- (4) meets the same requirements for registration as all other pharmacies.

(d) In addition to all of the other requirements for issuance and renewal of a pharmacy permit imposed by statute and rules of the Board, the Board shall not issue any original or annual renewal pharmacy permit to any Internet pharmacy until the Board is satisfied that:

- (1) The Internet pharmacy is certified by the National Association of Boards of Pharmacy as a Verified Internet Pharmacy Practice Site (VIPPS);
- (2) The Internet pharmacy has certified the percentage of its annual business conducted via the Internet on a form required by the

- Board, when it applies for permit or renewal; and
- (3) The Internet pharmacy has provided the Board with the names, addresses, social security numbers, phone numbers, facsimile numbers, email addresses, and titles of all principal corporate officers of the Internet pharmacy; the names, addresses, social security numbers, phone numbers, facsimile numbers, email addresses, and titles of all principal officers of any company, partnership, association, or other business entity holding any ownership interest in the Internet pharmacy; the names, addresses, social security numbers, phone numbers, facsimile numbers, email addresses, and titles of any individual holding any ownership interest in the Internet pharmacy.

This Paragraph does not relieve an out-of-state pharmacy from compliance with all provisions of 21 NCAC 46 .1607 governing out-of-state pharmacies.

(e) Permits to operate pharmacies, whether original or renewal, shall be issued to the pharmacist-manager of such pharmacy pursuant to a joint application of the owner and pharmacist-manager for the conduct and management of said pharmacy. The issuance of said permit shall not be complete and the permit shall not be valid until it has been countersigned by the pharmacist-manager as represented in the application. The permit so issued is valid only so long as the pharmacist-manager to whom it was issued assumes the duties and responsibilities of pharmacist-manager. Permits may be reissued at any time to a successor pharmacist-manager pursuant to the proper amendment of the application for the permit.

(f) Upon application, the Board may issue and renew separate permits for pharmacies operating at one location. Records for each permitted pharmacy must be maintained separately. Prior to issuance of an original permit, each pharmacy shall submit a plan to the Board that shall assure accountability for the actions of each pharmacy at the location.

Authority G.S. 90-85.6; 90-85.21.

This Section contains information for the meeting of the Rules Review Commission on Thursday July 19, 2012 at 1711 New Hope Church Road, RRC Commission Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-431-3000. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2nd business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.

RULES REVIEW COMMISSION MEMBERS**Appointed by Senate**

Addison Bell
Margaret Currin
Pete Osborne
Bob Rippy
Faylene Whitaker

Appointed by House

Ralph A. Walker
Curtis Venable
George Lucier
Garth K. Dunklin
Stephanie Simpson

COMMISSION COUNSEL

Joe Deluca (919)431-3081
Bobby Bryan (919)431-3079

RULES REVIEW COMMISSION MEETING DATES

July 19, 2012 August 16, 2012
September 20, 2012 October 18, 2012

RULES REVIEW COMMISSION**June 20, 2012****MINUTES**

The Rules Review Commission met on Wednesday, June 20, 2012, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Margaret Currin, Garth Dunklin, George Lucier, Pete Osborne, Stephanie Simpson. Curtis Venable joined via Skype.

Staff members present were: Joe DeLuca and Bobby Bryan, Commission Counsel; Molly Masich; Dana Vojtko; Julie Edwards; and Tammara Chalmers.

The meeting was called to order at 10:03 a.m. with Vice-Chairman Currin presiding. She reminded the Commission members that they have a duty to avoid conflicts of interest and the appearances of conflicts as required by NCGS 138A-15(e).

APPROVAL OF MINUTES

Vice-Chairman Currin asked for any discussion, comments, or corrections concerning the minutes of the May 17, 2012 meeting. There were none and the minutes were approved as distributed.

FOLLOW-UP MATTERS

10A NCAC 41A .0205 – Commission for Public Health. The Commission approved the re-written rule submitted by the agency.

12 NCAC 09E .0102 – The Criminal Justice Education and Training Standards Commission has not yet met and no action was taken.

21 NCAC 22F .0103, .0114 – No action was taken

LOG OF FILINGS

Vice-Chairman Currin presided over the review of the log of permanent rules.

Athletic Trainer Examiners

The Commission reviewed the rules from the Board of Athletic Trainer Examiners first so that other agencies present could hear the concerns the Commission had with the activities of the Board.

Paula Learoyd, Executive Director addressed the Commission.
Ann Christian, Council to the Board addressed the Commission.

Ms. Christian and Ms. Learoyd were questioned by the Commission about information on the agency's website showing that it had already been charging increased fees at least two years and showing that the rule had already been changed.

All rules were approved unanimously with the following exception:

21 NCAC 03 .0201 – The Commission objected to this rule based on ambiguity in accordance with G.S. 150B-21.10. In (4), it is not clear how the Board will determine what is a reasonable charge for duplication services and materials. It is also not clear that the charge will not exceed the "actual cost" for making copies as prohibited by G.S. 132-6.2(b).

The board requested that the Commission waive its rules and review the rewritten rule at the meeting. No motion to that effect was made.

Department of Commerce

All rules and repeals were approved unanimously.

Child Care Commission

All rules and repeals were approved unanimously with the following exceptions:

10A NCAC 09 .0901, .0902, .1702, .1706 and .1718 – The Commission extended the period of review for these rules. It did this at the agency's request in order to allow the agency time to determine whether any legislation enacted during the current legislative session would have any effect on these rules and require or allow any changes. This would pertain in particular to the commission counsel's recommendation to object to rules 09 .0901, 1702 and .1706.

Medical Care Commission

Meghan Lamphere addressed the Commission.

All rules and the repeal were approved with the following exception:

10A NCAC 13D .2701 - The Commission objected to this Rule based on lack of statutory authority and ambiguity. There is no authority cited for the provisions in (b) and (c) requiring certain credentials or training in order to function in certain required capacities in the facility. In (b) the facility must have someone with a certain credential to function as a "director of food service," a position the facility must have in order to be licensed. If the person does not have the credential at the time of hiring, then he or she must begin specified training in order to function in that position. There is no authority cited for the agency to require either a licensed or credentialed individual or someone undergo certain training to continue in that position. In (c) the facility must "employ a licensed dietitian/nutritionist on at least a consultant basis." There is no authority cited for requiring a licensed individual to be employed for a certain position. It is unclear what is required by (d). The rule requires the dietitian to "assure the following parameters of nutrition have been addressed and ... interventions by the facility have been met." However it is unclear how the items in (1) – (6), e.g., "laboratory values," are "parameters of nutrition" and how those parameters would lead to "recommended successful interventions by the facility."

Note that the agency has the authority to require a "food service supervisor" for a nursing home facility. And the agency is free to write the requirements or definition of that person so that under the Chapter 90, Article 25, "Dietetics/Nutrition" the person filling that position would be required to be a licensed individual. But the agency is not free to set the qualifications on its own.

The agency asked the Commission to waive rule 26 NCAC 05 .0112 to submit the waiver request in writing and then to grant the waiver to approve the rule. The motion by Commissioner Osborne failed for lack of a second.

Commission for Mental Health

All rules were approved unanimously.

Commission for the Blind

10A NCAC 63F .0402 was approved unanimously.

Social Services Commission

All the repeals were approved unanimously.

Department of Insurance

All rules and repeals were approved unanimously.

Private Protective Services Board

All rules were approved unanimously.

Environmental Management Commission

All rules were approved unanimously.

Wildlife Resources Commission

Norman Young, counsel for the Wildlife Resources Commission, addressed the Commission.

All rules were approved unanimously.

15A NCAC 10B .0219 and .0223 received more than 10 letters of objection. These rules are now subject to legislative review and delayed effective date.

Commission for Public Health

John Barkley addressed the Commission.

All rules were approved unanimously with the following exceptions:

15A NCAC 18A .2608, .2609, .2610, .2611, .2612 – The Commission extended the period of review for these rules. The Commission extended the period of review at the agency's request to ensure that the objection to 15A NCAC 18A .2653 does not result in a gap in regulation.

15A NCAC 18A .2653 – The Commission objected to this rule based on ambiguity in accordance with G.S. 150B-21.10. Item 11, by using "and" and "or" in a list, is ambiguous on its face. It is not clear if it means (1) (2) and (3), or (4); (1) (2), and (3) or (4); or something different.

Board of Architecture

21 NCAC 02 .0204 – The Commission objected to this rule based on ambiguity in accordance with G.S. 150B-21.10. In Paragraph (c), it is not clear what is meant by "properly described and identified." This objection applies to existing language in the Rule.

The meeting recessed at 11:24 a.m. and reconvened at 11:33 a.m.

Chiropractic Examiners, Board of

All rules were approved unanimously.

Board of Nursing

All rules were approved unanimously.

State Personnel Commission

All rules were approved unanimously with the following exceptions:

25 NCAC 01B .0437, – The Commission objected to this rule based on ambiguity. In Paragraph (c), it is not clear what is meant by "good cause shown." The definition in 25 NCAC 01B is not relevant to the use of the term in this Rule. This objection applies to existing language in the Rule.

25 NCAC 01B .0438 - The Commission objected to this rule based on lack of statutory authority. In Paragraphs (a) and (b), there is no authority cited for and award of costs. G.S. 126-4(11) allows an award of witness fees and attorney fees only. In Part (b)(1)(A), there is no authority cited for the State Personnel Commission to award witness fees or legal fees where an Administrative Law Judge finds discrimination, harassment, or orders reinstatement or back pay. G.S. 150B-33(b)(11) gives that authority to the Administrative Law Judge. For contested cases filed on or after January 1, 2012, the Commission no longer hears cases. G.S. 126-4(11) thus no longer applies once a case reaches the Administrative Law Judge level. This objection applies to existing language in the Rule.

OTHER BUSINESS

Staff updated the Commission on various bills affecting rulemaking working their way through the legislature.
The meeting adjourned at 11:57 p.m.

The next scheduled meeting of the Commission is Wednesday, July 19 at 10:00 a.m.

Respectfully Submitted,

Julie Edwards
Editorial Assistant

RULES REVIEW COMMISSION

Rules Review Commission

Meeting

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JUNE 20, 2012

Name	Agency
Norman Young	NC DOJ / NC WRC
Bareilly Spore	DHSR
Bedard Wertz	DHSR
David Eard	NC DOT 8/5/1 TIRAC
Ann Christman	NCBATE
Paola Leary	NCBATE
Michelle Piette	NCBATE
John Barkley	NC DOJ / DHHS
Judy Daye	NCDHHS / DPH
Donnie S. Sides	DHHS / DHSR / OEMS
Angela Ellis	NC Board of Nursing
David Holbach	NC Board of Nursing
Kristi Nixon	NC DHHS
Larry Michael	NCDHHS
Bob Martin	NC DHHS
Alexi Gruber	NC DOJ
Debra Alst	NC DHHS
Selko Okada	NC DOJ
Bobby White	NC DENTAL BOARD
Glenora Pearie	Social Services Comm.
Catherine E Lee	BON

Rules Review Commission
Meeting
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Name	Agency
Elizabeth Kountis	NC DENR
Amanda Reeder	NC DMH/DDRAS
Jelle Burleson	NC DENR DAQ
Patrick Knawson	NC DENR DAQ
Kate Pippen	NC WRC
David Wobay	NC WRC
Mary Flanagan	NC DSB
Tina Krasner	NC DOT/Commerce
Karin Waddell	NC DOT
Anna Green	OSBM
Jennifer Everett	DENR
Sha Fowler	UNC Extern w/ OAH
Rhysa Bennett	NC DENR
Tracy Turner	WRC
Delores Jognen	OSP/SPC
Megan Lamphere	DHHS/DHS
Betsy Jordan	NC WRC
Andre Pierce	Wake Co. Envr. Svrce.
Chris Hoke	Dir. Public Health
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**LIST OF APPROVED PERMANENT RULES
June 20, 2012 Meeting**

COMMERCE, DEPARTMENT OF

<u>Procedures and Criteria for Allocation of Qualified Energ...</u>	04	NCAC 01H .0501
<u>Background and Objectives</u>	04	NCAC 01I .0101
<u>Background and Objectives</u>	04	NCAC 01J .0101
<u>Definitions</u>	04	NCAC 01J .0102
<u>Designation of Severely Distressed Counties</u>	04	NCAC 01J .0201
<u>Letter of Commitment</u>	04	NCAC 01J .0301
<u>Substantiation of Credit Claimed</u>	04	NCAC 01J .0401
<u>Determination of Eligibility</u>	04	NCAC 01J .0501
<u>Projects not to be Considered for Funding</u>	04	NCAC 01K .0105
<u>Pre-Application Conference</u>	04	NCAC 01K .0202
<u>Discretionary Public Hearing by the Department</u>	04	NCAC 01K .0204
<u>Reimbursement of Department Expense</u>	04	NCAC 01K .0207
<u>Purpose</u>	04	NCAC 14B .0109
<u>Initial Contact</u>	04	NCAC 14B .0110
<u>Staff Presentation</u>	04	NCAC 14B .0111
<u>Entry Form</u>	04	NCAC 14B .0112
<u>Status Report</u>	04	NCAC 14B .0113
<u>Inspection</u>	04	NCAC 14B .0114
<u>Agency Decision</u>	04	NCAC 14B .0115
<u>Governor's Community of Excellence Plaque</u>	04	NCAC 14B .0116
<u>Maximum Size of Community</u>	04	NCAC 14B .0211
<u>Sponsoring Organization</u>	04	NCAC 14B .0212
<u>Community Profile</u>	04	NCAC 14B .0213
<u>Industrial Sites</u>	04	NCAC 14B .0214
<u>Promotion of Materials</u>	04	NCAC 14B .0215
<u>Existing Industry Committee</u>	04	NCAC 14B .0216
<u>Community Planning Requirement</u>	04	NCAC 14B .0217
<u>Livability Requirement: Cleanup-Fixup</u>	04	NCAC 14B .0218
<u>Recreation</u>	04	NCAC 14B .0219
<u>Development Team Requirement</u>	04	NCAC 14B .0220
<u>Description</u>	04	NCAC 19L .1301
<u>Eligibility Requirements</u>	04	NCAC 19L .1302
<u>Selection Criteria</u>	04	NCAC 19L .1303
<u>Federal Personnel Standards</u>	04	NCAC 20B .0402
<u>State Personnel Standards for Subrecipients</u>	04	NCAC 20B .0403
<u>Purpose</u>	04	NCAC 20B .0901
<u>Grant Applications</u>	04	NCAC 20B .0902
<u>Coordination with Other Employment and Training Funds</u>	04	NCAC 20B .0904
<u>Use of Funds</u>	04	NCAC 20B .0906
<u>Cost Limitations/Categories</u>	04	NCAC 20B .0907
<u>Performance Standards</u>	04	NCAC 20B .0909
<u>Monitoring/Oversight</u>	04	NCAC 20B .0910
<u>Fund Availability/Redistribution</u>	04	NCAC 20B .0911

CHILD CARE COMMISSION

<u>Definitions</u>	10A NCAC 09 .0102
<u>Other Staffing Requirements</u>	10A NCAC 09 .0714
<u>Scope</u>	10A NCAC 09 .1501
<u>Medical Examination</u>	10A NCAC 09 .1502
<u>Beds, Cots, Mats and Linens</u>	10A NCAC 09 .1503
<u>Attendance Records</u>	10A NCAC 09 .1504
<u>Outdoor Play Area</u>	10A NCAC 09 .1506
<u>Program Requirements</u>	10A NCAC 09 .2904

MEDICAL CARE COMMISSION

<u>Application Requirements</u>	10A NCAC 13D .2101
<u>Public Access to Department Licensure Records</u>	10A NCAC 13D .2110
<u>Infection Control</u>	10A NCAC 13D .2209
<u>Nurse Aides</u>	10A NCAC 13D .2304
<u>Adult Care Home Personnel Requirements</u>	10A NCAC 13D .2308
<u>Drug Storage and Disposition</u>	10A NCAC 13D .2605
<u>Pharmaceutical Records</u>	10A NCAC 13D .2606
<u>Emergency Drugs</u>	10A NCAC 13D .2607
<u>Patient Transportation Between Hospitals</u>	10A NCAC 13P .0221

MENTAL HEALTH, COMMISSION FOR

<u>Schedule IV</u>	10A NCAC 26F .0105
<u>Schedule V</u>	10A NCAC 26F .0106

PUBLIC HEALTH, COMMISSION FOR

<u>Control Measures Tuberculosis</u>	10A NCAC 41A .0205
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SOCIAL SERVICES COMMISSION

<u>State Public Assistance Equalizing Fund</u>	10A NCAC 67A .0109
<u>Petitions</u>	10A NCAC 68 .0201
<u>Fees</u>	10A NCAC 68 .0207
<u>Definitions</u>	10A NCAC 71E .0101
<u>Availability of the Service</u>	10A NCAC 71E .0102
<u>Definition of the Services</u>	10A NCAC 71E .0103
<u>Target Population</u>	10A NCAC 71E .0104
<u>Resident Evaluation Instrument</u>	10A NCAC 71E .0105
<u>Evaluation and Referral</u>	10A NCAC 71E .0106
<u>Training and Requirements for Resident Evaluators</u>	10A NCAC 71E .0107
<u>Methods of Service Provision</u>	10A NCAC 71E .0108
<u>Case Record</u>	10A NCAC 71E .0109
<u>Coupon Issuance</u>	10A NCAC 71U .0202
<u>Farmer or Day Laborer Income Verification</u>	10A NCAC 71U .0301
<u>Transmittal of ATP Cards</u>	10A NCAC 71U .0304

<u>Funding</u>	10A NCAC 71V .0101
<u>General AFDC Program Procedures</u>	10A NCAC 71W .0102
<u>Optional</u>	10A NCAC 71W .0201
<u>Acceptance of Application</u>	10A NCAC 71W .0301
<u>Age</u>	10A NCAC 71W .0401
<u>School Attendance</u>	10A NCAC 71W .0402
<u>Deprivation</u>	10A NCAC 71W .0406
<u>Need</u>	10A NCAC 71W .0409
<u>State Work Requirement</u>	10A NCAC 71W .0411
<u>Changes in Situation</u>	10A NCAC 71W .0501
<u>Eligibility for Coverage</u>	10A NCAC 71W .0701
<u>Emergencies Covered</u>	10A NCAC 71W .0702
<u>Emergency Not Covered</u>	10A NCAC 71W .0703
<u>Types of Assistance Provided</u>	10A NCAC 71W .0705
<u>Methods of Payment</u>	10A NCAC 71W .0706
<u>Application and Disposition</u>	10A NCAC 71W .0707
<u>Reserve</u>	10A NCAC 71W .0708
<u>Income</u>	10A NCAC 71W .0709
<u>Reserve and Income Services</u>	10A NCAC 71W .0710
<u>Procedures</u>	10A NCAC 71W .0711
<u>General Procedures</u>	10A NCAC 71W .0801
<u>Coverage and Participation</u>	10A NCAC 71W .0802
<u>Eligibility</u>	10A NCAC 71W .0803
<u>General Requirements</u>	10A NCAC 71W .0901
<u>Methods of Providing Child Care</u>	10A NCAC 71W .0902
<u>Sliding Fee Scale</u>	10A NCAC 71W .0903
<u>Child Care Rates and Maximum Payment</u>	10A NCAC 71W .0904
<u>Implementation Schedule</u>	10A NCAC 71X .0101
<u>County Plan</u>	10A NCAC 71X .0102
<u>Optional Components</u>	10A NCAC 71X .0103
<u>Post-Secondary Education</u>	10A NCAC 71X .0104
<u>Participation Rate</u>	10A NCAC 71X .0105
<u>Expenditure Rate</u>	10A NCAC 71X .0106
<u>Applicants</u>	10A NCAC 71X .0107
<u>JOBS Case Management</u>	10A NCAC 71X .0108
<u>Participation of Unemployed Parent in Education</u>	10A NCAC 71X .0201
<u>Conciliation Procedure</u>	10A NCAC 71X .0202
<u>Assignment of 16 and 17 Year Old Custodial Parents</u>	10A NCAC 71X .0203
<u>Assignment of 18 and 19 Year Old Custodial Parents</u>	10A NCAC 71X .0204
<u>Assignment of Participants 20 Years of Age or Older</u>	10A NCAC 71X .0205
<u>Satisfactory Progress in an Educational Component</u>	10A NCAC 71X .0206
<u>Continuation in Program Components After AFDC Termination</u>	10A NCAC 71X .0207
<u>Provision of Case Management and Supportive Services</u>	10A NCAC 71X .0208
<u>Criteria for Self-Initiated Education or Training</u>	10A NCAC 71X .0209
<u>Services During Gaps in Participation</u>	10A NCAC 71X .0210
<u>JOBS Component Expenses</u>	10A NCAC 71X .0301

<u>Work Experience</u>	10A NCAC 71X .0302
<u>Post-Secondary Education</u>	10A NCAC 71X .0303
<u>Alternative Work Experience</u>	10A NCAC 71X .0304
<u>Supportive Services to be Available in JOBS Counties</u>	10A NCAC 71X .0401
<u>Health Support Services</u>	10A NCAC 71X .0402
<u>In-Home Aide Services</u>	10A NCAC 71X .0403
<u>Transportation Services</u>	10A NCAC 71X .0404
<u>Child Care Transportation</u>	10A NCAC 71X .0405
<u>Personal and Family Counseling</u>	10A NCAC 71X .0406
<u>Individual and Family Adjustment Services</u>	10A NCAC 71X .0407
<u>Participation Expenses</u>	10A NCAC 71X .0408
<u>One-Time Work Related Expenses</u>	10A NCAC 71X .0409
<u>Day Care Services for Adults</u>	10A NCAC 71X .0410
<u>Supportive Services to be Available in Non-JOBS Counties</u>	10A NCAC 71X .0411
<u>Supportive Services Limits</u>	10A NCAC 71X .0412
<u>Definition of Family Member</u>	10A NCAC 71X .0413

INSURANCE, DEPARTMENT OF

<u>Facsimile Countersignature Not Valid</u>	11 NCAC 01 .0603
<u>Inquiries and Information</u>	11 NCAC 04 .0116
<u>Provisions of Contracts</u>	11 NCAC 04 .0313
<u>Claims Practices Life Accident and Health Insurance</u>	11 NCAC 04 .0319
<u>Drive-In Claim Service Facilities</u>	11 NCAC 04 .0417
<u>Proof of Mailing Automobile Insurance</u>	11 NCAC 04 .0430
<u>Refund of Excess Premium on Scheduled Items</u>	11 NCAC 04 .0432
<u>Attendance</u>	11 NCAC 06A .0806
<u>Form: Instructions/Requirements/Surplus Lines Company</u>	11 NCAC 10 .0714
<u>Occupational Injuries or Diseases</u>	11 NCAC 12 .0325
<u>Offset of Increased Social Security: Group Disability</u>	11 NCAC 12 .0545
<u>Uniform Claim Forms</u>	11 NCAC 12 .0560
<u>Reinsurance Pool</u>	11 NCAC 12 .1306
<u>Admission Data Guidelines</u>	11 NCAC 14 .0413
<u>Check Sheet and Analysis of Application for Admission</u>	11 NCAC 14 .0414
<u>Standard Questions for Applicant Insurance Co.</u>	11 NCAC 14 .0418
<u>Marketing Questions for Applicant Life Insurance Co.</u>	11 NCAC 14 .0419
<u>Marketing Questions for Applicant Fire/Casualty Insurance...</u>	11 NCAC 14 .0420
<u>Unconditional Guaranty</u>	11 NCAC 14 .0421
<u>Corporate Resolution of Guarantor</u>	11 NCAC 14 .0422
<u>Eligibility Requirements for Surplus Lines Insurance Co.</u>	11 NCAC 14 .0423
<u>Filing Requirements for Surplus Lines Insurance Co.</u>	11 NCAC 14 .0424
<u>Bulletin 87-L-7</u>	11 NCAC 14 .0425
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Chief Administrative Law Judge
JULIAN MANN, III

Senior Administrative Law Judge
FRED G. MORRISON JR.

ADMINISTRATIVE LAW JUDGES

Beecher R. Gray	Randall May
Selina Brooks	A. B. Elkins II
Melissa Owens Lassiter	Joe Webster
Don Overby	

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