

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: North Carolina Industrial Commission

RULE CITATION: All rules

RECOMMENDED ACTION:

- X Note staff's comment
- Object, based on:
- Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
 - Extend the period of review

COMMENT:

These rules have been before the Commission twice before, in fall of 2012 and spring of 2014. Given the active recent history of these rules, staff is providing a brief history of the same, as well as the current posture of the ten rules before you.

The Industrial Commission was exempt from rulemaking under Article 2A until that exemption was repealed in Session Law 2011-287. The session law further stated that any of the existing rules the Industrial Commission published in the North Carolina Administrative Code would expire by December 31, 2012 if not readopted by the Industrial Commission by that date. The Industrial Commission adopted rules in accordance with the law. In October, November and December 2012, the RRC reviewed over 150 rules adopted by the Industrial Commission, and ultimately approved all of them. Of those rules, 42 received the 10 letters of objection pursuant to G.S. 150B-21.3(b2) that subjected them to a delayed effective date and legislative review in the 2013 session. Of those, 28 were disapproved by Session Law 2013-94. In addition, the Industrial Commission was instructed by the 2013 session law to adopt other rules, including forms filed with the agency.

In March and April 2014, the RRC reviewed 35 rules from the Industrial Commission. All were ultimately approved. Of those rules, eight rules received the 10 letters of objection pursuant to G.S. 150B-21.3(b2), and were subjected to legislative review.

In the short session, the legislature passed Session Law 2014-77 (attached). The law disapproved those eight rules, as well as Rules 04 NCAC 10A .0202 and .0702, approved by the RRC in March 2014 and October 2012, respectively. Therefore, there are 10 rules pending the RRC at this time; all of these have been reviewed and approved by this body within the last two years.

Amanda J. Reeder
Commission Counsel

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The Commission's Current Review: The Session Law set forth specific statutory mandates for the changes required to the language of these ten rules. In addition, the law directed the Industrial Commission to amend five rules that contained references to fees. Pursuant to Session Law 2014-77, after July 1, 2015, the Industrial Commission cannot charge fees in Workers Compensation cases. Therefore, the Industrial Commission was told to clarify this in Rules 10E .0202 and .0203, as well as Rules 10L .0101, .0102 and .0103.

Please note, the format of the rules filed by the Industrial Commission is as the rules were last approved by the RRC. These rules, while approved by the RRC, were disapproved legislatively and therefore, never entered into the NC Administrative Code. When the Industrial Commission published the rules, the agency did not fully show all approved language that was removed pursuant to the session law directives because the changes were not to language that was currently in the NC Administrative Code. Prior to submission for this month's review, staff asked the Industrial Commission to show all RRC approved language so the RRC and its staff could ensure that language required to be removed was in fact removed. As such, all rules say they are "with changes" but the majority of the changes are those that show the deletion of language that was done for publication pursuant to the Session Law directives.

Current Procedural Posture: Given the interest of the regulated public, the General Assembly has again sought to tie up the loose ends on these rules to ensure that if any are subject to legislative review, they will be eligible for review at the session beginning in January 2015. To that end, the 2014 session law repeated the mandate of the 2013 session law that the Industrial Commission was required to use the truncated process for temporary rulemaking under G.S. 150B-21.1 to establish the permanent rules. Therefore, the agency had a shorter publication timeframe (30 business days instead of 60 calendar days) before adoption. In addition, the agency was again exempted from certification prior to publication pursuant to G.S. 150B-19.1, and the agency was not required to create a fiscal note under G.S. 150B-21.4.

These rules followed the temporary rulemaking process; however, they are permanent rules. If they are approved, the rules will not be automatically subject to legislative review unless the RRC receives 10 letters of objection the day after approval.

SESSION LAW 2014-77
SENATE BILL 794

AN ACT TO DISAPPROVE CERTAIN RULES ADOPTED BY THE NORTH CAROLINA INDUSTRIAL COMMISSION, TO PROVIDE SPECIFIC DIRECTIONS TO THE INDUSTRIAL COMMISSION TO REPLACE THE RULES, TO AMEND CERTAIN PROVISIONS OF THE WORKERS' COMPENSATION LAW; AND TO ALLOW THE CONFERENCE OF CHIEF DISTRICT JUDGES TO PRESCRIBE UNIFORM STATEWIDE PRESUMPTIVE GUIDELINES FOR THE COMPUTATION OF RETROACTIVE CHILD SUPPORT OBLIGATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Pursuant to G.S. 150B-21.3(b1), 04 NCAC 10A .0605 (Discovery), 04 NCAC 10A .0701 (Review by the Full Commission), 04 NCAC 10C .0109 (Vocational Rehabilitation Services and Return to Work), 04 NCAC 10E .0203 (Fees Set by the Commission), 04 NCAC 10L .0101 (Form 21 – Agreement for Compensation for Disability), 04 NCAC 10L .0102 (Form 26 – Supplemental Agreement as to Payment of Compensation), and 04 NCAC 10L .0103 (Form 26A – Employer's Admission of Employee's Rights to Permanent Partial Disability), as adopted by the Industrial Commission on March 11, 2014, and approved by the Rules Review Commission on March 20, 2014, are disapproved.

SECTION 2. Pursuant to G.S. 150B-21.3(b1), 04 NCAC 10A .0609A (Medical Motions and Emergency Medical Motions), as adopted by the Industrial Commission on March 11, 2014, and approved by the Rules Review Commission on April 17, 2014, is disapproved.

SECTION 3. 04 NCAC 10A .0202 (Hearing Costs or Fees), as adopted by the Industrial Commission on March 11, 2014, and approved by the Rules Review Commission on March 20, 2014, is disapproved; and 04 NCAC 10A .0702 (Review of Administrative Decisions), as adopted by the Industrial Commission on September 20, 2012, and approved by the Rules Review Commission on October 18, 2012, is disapproved.

SECTION 4. G.S. 97-25 reads as rewritten:

"§ 97-25. Medical treatment and supplies.

(a) Medical compensation shall be provided by the employer.

(b) Upon the written request of the employee to the employer, the employer may agree to authorize and pay for a second opinion examination with a duly qualified physician licensed to practice in North Carolina, or licensed in another state if agreed to by the parties or ordered by the Commission. If, within 14 calendar days of the receipt of the written request, the request is denied or the parties, in good faith, are unable to agree upon a health care provider to perform a second opinion examination, the employee may request that the Industrial Commission order a second opinion examination. The expense thereof shall be borne by the employer upon the same terms and conditions as provided in this section for medical compensation.

(c) Provided, however, if the employee so desires, an injured employee may select a health care provider of the employee's own choosing to attend, prescribe, and assume the care and charge of the employee's case subject to the approval of the Industrial Commission. In addition, in case of a controversy arising between the employer and the employee, the Industrial Commission may order necessary treatment. In order for the Commission to grant an employee's request to change treatment or health care provider, the employee must show by a preponderance of the evidence that the change is reasonably necessary to effect a cure, provide relief, or lessen the period of disability. When deciding whether to grant an employee's request to change treatment or health care provider, the Commission may disregard or give less weight to the opinion of a health care provider from whom the employee sought evaluation, diagnosis,



4 or treatment before the employee first requested authorization in writing from the employer, insurer, or Commission.

(d) The refusal of the employee to accept any medical compensation when ordered by the Industrial Commission shall bar the employee from further compensation until such refusal ceases, and no compensation shall at any time be paid for the period of suspension unless in the opinion of the Industrial Commission the circumstances justified the refusal. Any order issued by the Commission suspending compensation pursuant to G.S. 97-18.1 shall specify what action the employee should take to end the suspension and reinstate the compensation.

(e) If in an emergency on account of the employer's failure to provide medical compensation, a physician other than provided by the employer is called to treat the injured employee, the reasonable cost of such service shall be paid by the employer if so ordered by the Industrial Commission.

(f) In claims subject to G.S. 97-18(b) and (d), a party may file ~~an expedited, emergency, or other medical motion with the Office of the Chief Deputy Commissioner. The nonmoving party shall have the right to contest the motion. Motions and responses shall be submitted via electronic mail to the Commission, the opposing party and the opposing party's attorney, simultaneously. The Commission shall conduct an informal telephonic pretrial conference to determine if the motion warrants an expedited or emergency hearing. If the Commission determines that the motion does not warrant an expedited or emergency hearing, the motion shall be decided administratively within 60 days of the date the motion was filed pursuant to rules governing motions practices in contested cases. If the Commission determines that any party has acted unreasonably by initiating or objecting to a medical motion, the Commission may assess costs associated with any proceeding, including reasonable attorneys' fees and deposition costs, against the offending party.~~

~~(g) If the Commission determines that a medical motion should be expedited, each party shall be afforded an opportunity to state its position and to submit documentary evidence at an informal telephonic hearing. The medical motion shall contain documentation and support of the request, including the most relevant medical records and a representation that informal means of resolving the issue have been attempted in good faith, and the opposing parties' position, if known. The Commission shall determine whether deposition testimony of medical and other experts is necessary and if so shall order that the testimony be taken within 35 days of the date the motion is filed. For good cause shown, the Commission may reduce or enlarge the time to complete depositions of medical and other experts. Transcripts of depositions shall be expedited and paid for by the administrator, carrier, or employer. Transcripts shall be submitted electronically to the Commission within 40 days of the date the motion is filed unless the Commission has reduced or enlarged the time to complete the depositions. The Commission shall render a decision on the motion within five days of the date transcripts are due to the Commission.~~

~~(h) If the Commission determines that a medical motion is an emergency, the Commission shall make a determination on the motion within five days of receipt by the Commission of the medical motion. Motions requesting emergency medical relief shall contain the following: a motion as set forth in this subsection regarding a request for medical compensation or a dispute involving medical issues. The nonmoving party shall have the right to contest the motion. Motions and responses shall be submitted contemporaneously via electronic mail to the Commission and to the opposing party or the opposing party's attorney.~~

(1) A party may file a motion with the Executive Secretary for an administrative ruling regarding a request for medical compensation or a dispute involving medical issues. The motion shall be decided administratively pursuant to rules governing motions practices in contested cases. The Commission shall decide the motion within 30 days of the filing of the motion unless an extension of time to respond to the motion has been granted for good cause shown. Either party may file a motion for reconsideration of the administrative order with the Executive Secretary. Either party may request an expedited formal hearing pursuant to G.S. 97-84 and subdivision (2) of this subsection to appeal the decision of the Executive Secretary approving or denying the original motion or the motion for reconsideration. Within five days of the filing of a request for an expedited formal hearing pursuant to G.S. 97-84 and subdivision (2) of this subsection to appeal the decision of the Executive Secretary, the Commission shall assign a Deputy

Commissioner to conduct the formal hearing. The decision shall not be stayed during the pendency of an appeal pursuant to G.S. 97-84 and subdivision (2) of this subsection except under those circumstances set out in subdivision (4) of this subsection. A motion to stay shall be filed with the Deputy Commissioner scheduled to conduct the formal hearing pursuant to G.S. 97-84. Either party may appeal the decision of the Deputy Commissioner pursuant to G.S. 97-84 to the Full Commission pursuant to G.S. 97-85. The decision of the Deputy Commissioner shall not be stayed during the pendency of an appeal except under those circumstances set out in subdivision (4) of this subsection. A motion to stay the decision of the Deputy Commissioner pursuant to G.S. 97-84 shall be directed to the Chair of the Commission. The Full Commission shall render a decision on the appeal of the Deputy Commissioner's decision on the motion within 60 days of the filing of the notice of appeal.

(2) In lieu of filing a motion with the Executive Secretary for an administrative ruling pursuant to subdivision (1) of this subsection, when appealing a ruling made pursuant to subdivision (1) of this subsection or when appealing an administrative ruling of the Chief Deputy or the Chief Deputy's designee on an emergency motion, a party may request a full evidentiary hearing pursuant to G.S. 97-84 on an expedited basis, limited to a request for medical compensation or a dispute involving medical issues, by filing a motion with the Office of the Chief Deputy Commissioner. The case will not be ordered into mediation based upon a party's request for hearing on the motion or appeal under this subdivision, except upon the consent of the parties. The Commission shall set the date of the expedited hearing, which shall be held within 30 days of the filing of the motion or appeal and shall notify the parties of the time and place of the hearing on the motion or appeal. Upon request, the Commission may order expedited discovery. The record shall be closed within 60 days of the filing of the motion, or in the case of an appeal pursuant to subdivisions (1) and (3) of this subsection, within 60 days of the filing of the appeal, unless the parties agree otherwise or the Commission so orders. Transcripts of depositions shall be expedited if necessary and paid pursuant to rules promulgated by the Commission related to depositions and shall be submitted electronically to the Commission. The Commission shall decide the issue in dispute and make findings of fact based upon the preponderance of the evidence in view of the entire record. The award, together with a statement of the findings of fact, rulings of law, and other matters pertinent to the questions at issue shall be filed with the record of the proceedings within 15 days of the close of the hearing record, and a copy of the award shall immediately be sent to the parties. Either party may appeal the decision of the Deputy Commissioner pursuant to G.S. 97-84 to the Full Commission pursuant to G.S. 97-85. The decision of the Deputy Commissioner pursuant to G.S. 97-84 shall not be stayed during the pendency of an appeal except under those circumstances set out in subdivision (4) of this subsection. A motion to stay the decision of the Deputy Commissioner pursuant to G.S. 97-84 shall be directed to the Chair of the Commission. The Full Commission shall render a decision on the appeal of the Deputy Commissioner's decision on the motion within 60 days of the filing of the notice of appeal.

(3) An emergency medical motion filed by either party shall be filed with the Office of the Chief Deputy Commissioner. The Chief Deputy or Chief Deputy's designee shall rule on the motion within five days of receipt unless the Chief Deputy or Chief Deputy's designee determines that the motion is not an emergency, in which case the motion shall be referred to the Executive Secretary for an administrative ruling pursuant to subdivision (1) of this subsection. Motions requesting emergency medical relief shall contain all of the following:

- (1)a. An explanation of the medical diagnosis and treatment recommendation of the health care provider that requires emergency attention.
- (2)b. A specific statement detailing the time-sensitive nature of the request to include relevant dates and the potential for adverse consequences to the employee-movant if the recommended treatment-relief is not provided emergently.
- (3)c. An explanation of opinions known and in the possession of the employee-movant of additional medical or other relevant experts, independent medical examiners, and second opinion examiners.
- (4)d. Documentation known and in the possession of the employee-movant in support of the request, including relevant medical records.
- (5)e. A representation that informal means of resolving the issue have been attempted.

Either party may appeal the decision of the Chief Deputy or the Chief Deputy's designee on the emergency motion by requesting an expedited formal hearing pursuant to G.S. 97-84 and subdivision (2) of this subsection to appeal the administrative decision of the Chief Deputy or the Chief Deputy's designee on the emergency motion. Within five days of the filing of a request for an expedited formal hearing pursuant to G.S. 97-84 and subdivision (2) of this subsection, the Commission shall assign a Deputy Commissioner to conduct the formal hearing. The decision of the Chief Deputy or the Chief Deputy's designee shall not be stayed during the pendency of an appeal of the administrative decision except under those circumstances set out in subdivision (4) of this subsection. Any motion to stay shall be filed with the Deputy Commissioner scheduled to conduct the expedited formal hearing pursuant to G.S. 97-84 and subdivision (2) of this subsection. Either party may appeal the decision of the Deputy Commissioner pursuant to G.S. 97-84 to the Full Commission pursuant to G.S. 97-85. If so, the decision of the Deputy Commissioner shall not be stayed during the pendency of an appeal except under those circumstances set out in subdivision (4) of this subsection. Any motion to stay the decision of the Deputy Commissioner pursuant to G.S. 97-84 shall be directed to the Chair of the Commission. The Full Commission shall render a decision on the appeal of the Deputy Commissioner's decision on the motion within 60 days of the filing of the notice of appeal.

- (4) The Commission shall consider, among other factors, all of the following when determining whether to grant a motion to stay filed pursuant to this subsection:
 - a. Whether there would be immediate and irreparable injury, harm, loss, or damage to either party.
 - b. The nature and cost of the medical relief sought.
 - c. The risk for further injury or disability to the employee inherent in the treatment or its delay.
 - d. Whether it has been recommended by an authorized physician.
 - e. Whether alternative therapeutic modalities are available and reasonable.
- (5) If the Commission determines that any party has acted unreasonably by initiating or objecting to a motion filed pursuant to this section, the Commission may assess costs associated with any proceeding, including any reasonable attorneys' fees and deposition costs, against the offending party."

SECTION 5. G.S. 97-78(g)(2) reads as rewritten:

- "(2) The total number of requests for, and disputes involving, medical compensation under G.S. 97-25 in which final disposition was not made within 45-75 days of the filing of the motion with the Commission, and, for each such request or dispute, the date the motion or other initial pleading was filed, the date on which final disposition was made and, where reasonably ascertainable, the date on which any ordered medical treatment was actually provided."

SECTION 6. The Industrial Commission shall adopt rules to replace the rules disapproved by Sections 1, 2, and 3 of this act, in accordance with the following directions: 7

- (1) With regard to 04 NCAC 10A .0605 (Discovery), the Commission shall amend subsection (6) of the rule by deleting the following sentence: "Until a matter is calendared for a hearing, parties may serve requests for production of documents without leave of the Commission" and by inserting the following sentence: "The parties may serve requests for production of documents without leave of the Commission until 35 days prior to the date of hearing"; and by changing the word "shall" to "may" in subsection (7) of the rule.
- (2) With regard to 04 NCAC 10A .0609A (Medical Motions and Emergency Medical Motions), the Commission shall amend subsection (a) of the rule by adding the word "either" between the word "before" and "the"; adding the phrase "or the Executive Secretary" after the word "Commissioner"; changing the word "simultaneously" to "contemporaneously"; and changing the word "and" that appears between the words "party" and "opposing" to "or". Subsection (b) of the rule shall be amended by deleting the phrase "Once notification has been received by the parties that a medical motion has been assigned to a Deputy Commissioner, subsequent"; adding the word "Subsequent" before the word "filings"; adding the word "electronically" between the words "submitted" and "directly"; and adding the phrase "either the Executive Secretary or" between the words "to" and "the". The Commission shall amend subsection (c) of the rule by deleting the sentence "Upon receipt of a medical motion, carriers, third-party administrators, and employers shall immediately send notification of the name, email address, telephone number and fax number of the attorney appearing on their behalf to medicalmotions@ic.nc.gov." and deleting the word "also" from the subsection. The Commission shall amend subsection (d)(2) of the rule by substituting the word "employee" for the word "claimant" throughout. The Commission shall amend subsection (d)(6) of the rule by substituting the following phrase "if an attorney has been retained for the employer or carrier, the attorney's" for the phrase "the counsel for employer and carrier's." The Commission shall amend subsection (d)(8) of the rule by adding the word "the" between the words "of" and "claimant"; by substituting the word "employee" for "claimant"; by deleting the phrase "and the treatment recommendation"; by adding the word "the" between the words "and" and "name"; and by substituting the word "any" for the word "the" that appears between the words "of" and "health". The Commission shall add the phrase ", if any" after the word "request" in subsection (d)(10) of the rule. The Commission shall amend subsection (d)(11) of the rule by substituting the word "movant" for the word "employee"; and by substituting the phrase "of additional medical or other" with the phrase "by any". In subsection (d)(12) of the rule, the Commission shall substitute the word "employee" for "plaintiff". The Commission shall substitute the word "employee" for the word "claimant" throughout subsection (e)(2) of the rule. The Commission shall amend subsection (e)(3) of the rule by adding the phrase ", if known" after the word "code". The Commission shall amend subsection (e)(8) of the rule by substituting the word "relief" for the word "treatment". The Commission shall amend subsection (e)(9) of the rule by substituting the word "movant" for the word "employee"; and substituting the phrase "of additional medical or other" with the phrase "by any". The Commission shall amend subsection (e)(11) of the rule by substituting the word "documents" for the word "documentation"; and substituting the phrase "employee in support of" with the phrase "movant relevant to". The Commission shall amend the rule by deleting subsections (f), (g), and (i) of the rule; former subsection (j) of the rule shall become new subsection (f) of the rule; former subsection (k) of the rule shall become new subsection (i) of the rule. The Commission shall amend subsection (h) of the rule by deleting the phrase "deemed necessary by the Deputy Commissioner"; by adding the

phrase "pursuant to G.S. 97-25" between the words "order" and "within"; and by deleting the phrase "within 35 days of the date the motion is filed. Transcripts of depositions shall be submitted electronically to the Commission within 40 days of the date of the filing of the motion"; and by adding the phrase "or upon agreement of the parties" after the phrase "for good cause shown". The Commission shall amend the rule by adding a new subsection (g) that shall read as follows: "(g) A party may appeal an order of the Executive Secretary on a motion brought pursuant to G.S. 97-25(f)(1) or receipt of a ruling on a motion to reconsider filed pursuant to Rule .0702(b) of the Subchapter by giving notice of appeal to the Docket Section within 15 calendar days. A letter expressing an intent to appeal a decision of the Executive Secretary shall be considered a request for an expedited hearing pursuant to G.S. 97-25 and G.S. 97-84. The letter shall specifically identify the order from which appeal is taken. After receipt of a notice of appeal, the appeal shall be assigned to a Deputy Commissioner by the Docket Section, and an order under the name of the Deputy Commissioner to which the appeal is assigned shall be issued within three days of receipt of the notice of appeal." The Commission shall amend the rule by adding a new subsection (j) that shall read as follows: "(j) A party may appeal the administrative decision of the Chief Deputy or the Chief Deputy's designee filed pursuant to G.S. 97-25(f)(3) by giving notice of appeal to the Docket Section within 15 calendar days of receipt of the Order. A letter expressing an intent to appeal the Chair or the Chair's designee's Order filed pursuant to G.S. 97-25(f)(3) shall be considered a notice of appeal, provided that the letter specifically identifies 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 Deputy Commissioner to which the appeal is assigned. The appeal of the administrative decision of the Chair or the Chair's designee shall be subject to G.S. 97-25(f)(2) and G.S. 97-84." The Commission shall amend new subsection (i) of the rule by substituting the phrase "the decision of a Deputy Commissioner, Chief Deputy, or Chief Deputy's designee filed" for the phrase "a Deputy Commissioner's Order on a motion brought"; by adding the phrase "(f)(2)" between the words "G.S. 97-25" and "by"; by deleting the phrase "or receipt of the ruling on a Motion to Reconsider the Order filed pursuant to Rule .0702(b) of this Subchapter"; by substituting the word "filed" for the phrase "on a motion brought"; by substituting the phrase "briefs and set the schedule for filing." for the phrase "briefs and the schedule for filing them. At the time the motion is set for informal hearing, the Chair of the Panel shall also indicate to the parties if oral arguments are to be by telephone, in person, or waived."; and by adding "A Full Commission hearing on an appeal of a medical motion filed pursuant to G.S. 97-25(f)(1), 97-25(f)(2), and 97-25(f)(3) shall be held telephonically and shall not be recorded unless unusual circumstances arise and the Commission so orders."

- (3) With regard to 04 NCAC 10A .701 (Review by the Full Commission), the Commission shall amend subsection (b) of the rule by inserting the sentences "Parties represented by counsel shall sign a joint certification acknowledging receipt of the Form 44 Application for Review and the official transcript and exhibits and submit the certification within ten days of receipt of the Form 44 Application for Review and the official transcript and exhibits. The certification shall stipulate the date the Form 44 Application for Review and the official transcript and exhibits were received by the parties and shall note the date the appellant's brief is due." after the sentence that reads "The e-mail shall also provide instructions for the submission of the parties' acknowledgement of receipt of the Form 44 Application for Review and the official transcript and exhibits to the Commission."
- (4) With regard to 04 NCAC 10C .0109 (Vocational Rehabilitation Services and Return to Work), the Commission shall amend subsection (b) of the rule by deleting the phrase "only toward prospective employers offering the

opportunity for suitable employment". The Commission shall change the word "shall" to "should" in subsection (c) of the rule. The Commission shall change subsection (d)(3) of the rule by substituting the phrase "the likely duration until completion of the requested retraining or education, the number of credits needed to complete the retraining or education, the course names and schedules for the retraining or education, and which courses are available on-line versus in person" for the phrase "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". The Commission shall substitute the phrase "initiate or continue placement activities" for the phrase "place the worker in suitable employment" within subsection (j) of the rule.

- (5) With regard to 04 NCAC 10E .0202 (Hearing Costs), the Commission shall amend subsection (a) of the rule to insert the following phrase "other than workers' compensation cases" after the word "Commission" effective July 1, 2015. The Commission shall amend the rule by deleting the following sentence from subsection (a) of the rule effective July 1, 2015: "In workers' compensation cases, these fees shall be paid by the employer unless the Commission orders otherwise, except as specified in subsection (2) above."
- (6) With regard to 04 NCAC 10E .0203 (Fees Set by the Commission), the Commission shall delete subsection (a)(2) of the rule effective July 1, 2015.
- (7) With regard to 04 NCAC 10L .0101 (Form 21 – Agreement for Compensation for Disability), 04 NCAC 10L .0102 (Form 26 – Supplemental Agreement as to Payment of Compensation), and 04 NCAC 10L .0103 (Form 26A – Employer's Admission of Employee's Rights to Permanent Partial Disability), the Commission shall delete any references to fees for processing agreements and the party responsible for payment of fees effective July 1, 2015.
- (8) With regard to 04 NCAC 10A .0702 (REVIEW OF ADMINISTRATIVE DECISIONS), the Commission shall amend the rule by striking subdivision (3) from subsection (a); by renumbering existing subdivisions (a)(4) and (a)(5) as new subdivisions (a)(3) and (a)(4) respectively; and by adding a new subsection (e) that reads, "This rule shall not apply to medical motions filed pursuant to G.S. 97-25; provided, however, that a party may request reconsideration of an administrative ruling on a medical motion, or may request a stay, or may request an evidentiary hearing de novo, all as set forth in G.S. 97-25."

SECTION 7. Notwithstanding G.S. 150B-21.2, the Industrial Commission shall adopt permanent rules in accordance with the provisions of this act using the procedure and time lines for temporary rules set forth in G.S. 150B-21.1(a3). Rules adopted by the Industrial Commission in accordance with this section shall be subject to review by the Rules Review Commission as provided by G.S. 150B-21.1(b); provided, however, that if the rules are approved by the Rules Review Commission, they shall become effective as provided by G.S. 150B-21.3(b). Rules adopted pursuant to this section shall not be subject to G.S. 150B-19.1(h) or G.S. 150B-21.4. The Industrial Commission shall consult with the Office of Administrative Hearings to ensure that rules adopted in accordance with this section are submitted to the Rules Review Commission in time to be eligible for legislative disapproval in the 2015 Regular Session of the 2015 General Assembly. The rules of the Industrial Commission that were in effect on the effective date of S.L. 2011-287 shall remain in effect with regard to rules disapproved by Sections 1, 2, and 3 of this act until rules adopted to replace the disapproved rules become effective pursuant to this section.

SECTION 8. G.S. 50-13.4(c1) reads as rewritten:

"(c1) Effective July 1, 1990, the Conference of Chief District Judges shall prescribe uniform statewide presumptive guidelines for the computation of child support ~~obligations~~ obligations, including retroactive support obligations, of each parent as provided in Chapter 50 or elsewhere in the General Statutes and shall develop criteria for determining when, in a particular case, application of the guidelines would be unjust or inappropriate. Prior to May 1, 1990 these guidelines and criteria shall be reported to the General Assembly by the Administrative Office of the Courts by delivering copies to the President Pro Tempore of the

10 Senate and the Speaker of the House of Representatives. The purpose of the guidelines and criteria shall be to ensure that payments ordered for the support of a minor child are in such amount as to meet the reasonable needs of the child for health, education, and maintenance, having due regard to the estates, earnings, conditions, accustomed standard of living of the child and the parties, the child care and homemaker contributions of each party, and other facts of the particular case. The guidelines shall include a procedure for setting child support, if any, in a joint or shared custody arrangement which shall reflect the other statutory requirements herein.

Periodically, but at least once every four years, the Conference of Chief District Judges shall review the guidelines to determine whether their application results in appropriate child support award amounts. The Conference may modify the guidelines accordingly. The Conference shall give the Department of Health and Human Services, the Administrative Office of the Courts, and the general public an opportunity to provide the Conference with information relevant to the development and review of the guidelines. Any modifications of the guidelines or criteria shall be reported to the General Assembly by the Administrative Office of the Courts before they become effective by delivering copies to the President Pro Tempore of the Senate and the Speaker of the House of Representatives. The guidelines, when adopted or modified, shall be provided to the Department of Health and Human Services and the Administrative Office of the Courts, which shall disseminate them to the public through local IV-D offices, clerks of court, and the media.

Until July 1, 1990, the advisory guidelines adopted by the Conference of Chief District Judges pursuant to this subsection as formerly written shall operate as presumptive guidelines and the factors adopted by the Conference of Chief District Judges pursuant to this subsection as formerly written shall constitute criteria for varying from the amount of support determined by the guidelines."

SECTION 9. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 15th day of July, 2014.

s/ Phil E. Berger
Presiding Officer of the Senate

s/ Tim Moore
Presiding Officer of the House of Representatives

s/ Pat McCrory
Governor

Approved 12:06 p.m. this 22nd day of July, 2014

REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 04 NCAC 10A .0605

DEADLINE FOR RECEIPT: Friday, October 10, 2014

NOTE WELL: This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On Page 1, in Item 4, when may the Commission issue an order with sanctions? When will it not?

On Page 2, line 12, did you intend to strike "Industrial" as you have elsewhere?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: October 1, 2014

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

3
4 **04 NCAC 10A .0605 DISCOVERY**

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

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

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

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

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

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

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

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

11 ~~(3)(7)~~ Additional methods of discovery as provided by the North Carolina Rules of Civil Procedure may
 12 be used only upon motion and approval by the Industrial Commission or by agreement of the
 13 parties. The Commission [shall] may approve the motion if it is shown to be in the interests of
 14 justice or to promote judicial economy.

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

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

22 ~~(a) notices of depositions;~~

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

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

26 ~~(d) post-hearing discovery requests and responses.~~

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

29 ~~(5)(9)~~ Sanctions ~~may~~ shall be imposed under this Rule for failure to comply with a Commission order
 30 compelling ~~discovery.~~ discovery, unless the Commission excuses the failure based on an inability
 31 to comply with the order. A motion by a party or its attorney to compel discovery under this Rule
 32 and ~~4 NCAC 10A .607~~ Rule .0607 of this Subchapter shall represent that informal means of
 33 resolving the discovery dispute have been attempted in good faith and state ~~briefly~~ the opposing
 34 parties' position or that there has been a reasonable attempt to contact the opposing party and
 35 ascertain its position.

36
 37 *History Note:* Authority G.S. 97-80(a); 97-80(f); S.L. 2014-77;

1

Eff. January 1, 1990;

2

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

REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 04 NCAC 10A .0609A

DEADLINE FOR RECEIPT: Friday, October 10, 2014

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On Page 2, Paragraph (b), I note that you did not exactly follow the mandate of the Session Law in Section 6, Subsection 2. Why is reference to the Executive Secretary not in the new sentence?

On Page 3, line 13, delete or define "to the extent available." Do you mean "the employee's email address and fax number if available."?

In (d)(8), do you believe you can include the language "or treatment recommendation" given the mandate of the Session Law to remove it from the line above? If so, why do you believe that?

On Page 4, in (e)(2) and (4), delete or define "to the extent available." Do you mean "the employee's email address and fax number if available."?

On Page 5, Paragraph (g), line 5, I note that the Session Law instructed you to state the appeal would go to the Docket Section, but you are requiring they go to medicalmotions@ic.nc.gov. Is that the appropriate way to contact the Docket Section, such that the Rule is giving specific instructions for the statutory directive?

I also note you added "or motion" after "letter" throughout Paragraph (g); I assume that is to ensure that any motion submitted would not be dismissed as not meeting the Rule?

On line 8 of Paragraph (g), I take it the addition "and shall indicate that the appeal is from an administrative Order by the Executive Secretary entered pursuant to G.S. 97-25(f)(1)" is to make sure you are ensuring the correct appeal path is taken? And did the same in Paragraphs (i), lines 30-31 and (j), lines 6-7 for that reason?

In (h), what is your authority to add the language on lines 15-18?

On lines 23 and 24, please remove the underline from the struck through text.

In Paragraph (i), the Session Law instructed you to state on lines 25 – 26, "the decision of a Deputy Commissioner, Chief Deputy or Chief Deputy's designee filed" and you only refer to a Deputy Commissioner. Why is that?

Amanda J. Reeder
Commission Counsel

Date submitted to agency: October 1, 2014

Also in Paragraph (i), I know the Session Law instructed you to add the language on lines 34 – 36. However, how is this affected by G.S. 97-85(b), which states:

§ 97-85. Review of award.

(b) Unless waived by consent of the parties, all hearings of the full Commission shall be recorded. Court reporters, transcription personnel, or electronic or other mechanical devices may be utilized. If an electronic or other mechanical device is utilized, it shall be the duty of some person designated by the Commission to operate the device while a hearing is in progress, and the recording shall be preserved and may be transcribed, as required. If stenotype, shorthand, or stenomask equipment is used, the original tapes, notes, discs, or other records are the property of the State and the Commission shall keep them in its custody. The compensation and allowances of reporters shall be fixed by the Commission in a manner that is consistent with policies set by the Administrative Office of the Courts for the General Court of Justice. (1929, c. 120, s. 59; 1963, c. 402; 1977, cc. 390, 431; 2013-163, s. 1.)

On Page 6 in Paragraph (j), I note that the Session Law instructed you to state the appeal would go to the Docket Section, but you are requiring they go to medicalmotions@ic.nc.gov. Is that the appropriate way to contact the Docket Section, such that the Rule is giving specific instructions for the statutory directive?

I also note you added “or motion” after “letter” I assume that is to ensure that any motion submitted would not be dismissed as not meeting the Rule?

On line 7, is the acknowledgement of the appeal by the Docket Section?

In the History Note, please add S.L. 2014-77

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: North Carolina Industrial Commission

RULE CITATION: 04 NCAC 10A .0609

RECOMMENDED ACTION:

- X Note staff's comment
- Object, based on:
- Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
 - Extend the period of review

COMMENT:

Session Law 2014-77 set forth extensive revisions required for this Rule. In the review, staff noted that the Industrial Commission made several of the changes as specified. However, there are some instances where the Industrial Commission did not follow the law exactly; most of those are noted in the Request for Technical Corrections. However, there a discrepancy that the Commission may wish to consider, as it affects the authority of the Industrial Commission to adopt the rule as written.

It is staff's understanding that medical motions are primarily governed by G.S. 97-25, "Medical Treatment and Supplies." That law was amended by S.L. 2014-77, Section 4.

In Paragraphs (g) and (j) of the Rule, the Industrial Commission was instructed by the Session Law to send the name of the Deputy Commissioner assigned to the appeal within three days of receipt of the notice of appeal in Section 6, Subsection 2.

With regard to 04 NAC 10A .0609 ... The Commission shall amend the rule by adding a new subsection (g) that shall read as follows: "(g) A party may appeal an order of the Executive Secretary on a motion brought pursuant to G.S. 97-25(f)(1) or receipt of a ruling on a motion to reconsider filed pursuant to Rule .0702(b) of the Subchapter by giving notice of appeal to the Docket Section within 15 calendar days. A letter expressing an intent to appeal a decision of the Executive Secretary shall be considered a request for an expedited hearing pursuant to G.S. 97-25 and G.S. 97-84. The letter shall specifically identify the order from which appeal is taken. After receipt of a notice of appeal, the appeal shall be assigned to a Deputy Commissioner by the Docket Section, and an order under the name of the Deputy Commissioner to which the appeal is assigned shall be issued within three days of receipt of the notice of appeal."

Amanda J. Reeder
Commission Counsel

The Commission shall amend the rule by adding a new subsection (j) that shall read as follows: "(j) A party may appeal the administrative decision of the Chief Deputy or the Chief Deputy's designee filed pursuant to G.S. 97-25(f)(3) by giving notice of appeal to the Docket Section within 15 calendar days of receipt of the Order. A letter expressing an intent to appeal the Chair or the Chair's designee's Order filed pursuant to G.S. 97-25(f)(3) shall be considered a notice of appeal, provided that the letter specifically identifies 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 Deputy Commissioner to which the appeal is assigned. The appeal of the administrative decision of the Chair or the Chair's designee shall be subject to G.S. 97-25(f)(2) and G.S. 97-84."

The Industrial Commission stated in both Paragraphs that the notice would be sent within five days. (See Page 5, line 11, and Page 6, line 7 of the text.) Staff is aware that this does not follow the requirements of S.L. 2014-77, Section 6, Subsection 2. However, the amendments to G.S. 97-25 made by that session law tells the Industrial Commission to assign these motions "within five days."

(1) A party may file a motion with the Executive Secretary for an administrative ruling regarding a request for medical compensation or a dispute involving medical issues. The motion shall be decided administratively pursuant to rules governing motions practices in contested cases. The Commission shall decide the motion within 30 days of the filing of the motion unless an extension of time to respond to the motion has been granted for good cause shown. Either party may file a motion for reconsideration of the administrative order with the Executive Secretary. Either party may request an expedited formal hearing pursuant to G.S. 97-84 and subdivision (2) of this subsection to appeal the decision of the Executive Secretary approving or denying the original motion or the motion for reconsideration. Within five days of the filing of a request for an expedited formal hearing pursuant to G.S. 97-84 and subdivision (2) of this subsection to appeal the decision of the Executive Secretary, the Commission shall assign a Deputy Commissioner to conduct the formal hearing. The decision shall not be stayed during the pendency of an appeal pursuant to G.S. 97-84 and subdivision (2) of this subsection except under those circumstances set out in subdivision (4) of this subsection. A motion to stay shall be filed with the Deputy Commissioner scheduled to conduct the formal hearing pursuant to G.S. 97-84. Either party may appeal the decision of the Deputy Commissioner pursuant to G.S. 97-84 to the Full Commission pursuant to G.S. 97-85. The decision of the Deputy Commissioner shall not be stayed during the pendency of an appeal except under those circumstances set out in subdivision (4) of this subsection. A motion to stay the decision of the Deputy Commissioner pursuant to G.S. 97-84 shall be directed to the Chair of the Commission. The Full Commission shall render a decision on the appeal of the Deputy Commissioner's decision on the motion within 60 days of the filing of the notice of appeal.

(3) ... Either party may appeal the decision of the Chief Deputy or the Chief Deputy's designee on the emergency motion by requesting an expedited formal hearing pursuant to G.S. 97-84 and subdivision (2) of this subsection to appeal the administrative decision of the Chief Deputy or the Chief Deputy's designee on the emergency motion. Within five days of the filing of a request for an expedited formal hearing pursuant to G.S. 97-84 and subdivision (2) of this subsection, the Commission shall assign a Deputy Commissioner to conduct the formal hearing. The decision of the Chief Deputy or the Chief Deputy's designee shall not be stayed during the pendency of an appeal of the administrative decision except under those circumstances set out in subdivision (4) of this subsection. Any motion to stay shall be filed with the Deputy Commissioner scheduled to conduct the expedited formal hearing pursuant to G.S. 97-84 and subdivision (2) of this subsection. Either party may appeal the decision of the Deputy Commissioner pursuant to G.S. 97-84 to the Full Commission pursuant to G.S. 97-85. If so, the decision of the Deputy Commissioner shall not be stayed during the pendency of an appeal except under those circumstances set out in subdivision (4) of this subsection. Any motion to stay the decision of the Deputy Commissioner pursuant to G.S. 97-84 shall be directed to the Chair of the Commission. The Full Commission shall render a decision on the appeal of the Deputy Commissioner's decision on the motion within 60 days of the filing of the notice of appeal.

Staff is aware that the Rules Review Commission may say that three days is within five days, and therefore Section 6 of the Session Law controls. However, given the inconsistencies within the Session Law, staff believes the Industrial Commission within its statutory authority to state in the Rule that it will send the notice within five days.

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

3
4 **04 NCAC 10A .0609A MEDICAL MOTIONS AND EMERGENCY MEDICAL MOTIONS**

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

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

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

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

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

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

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

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

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

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

3 ~~(b) Emergency Medical Motions:~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 7 (1) a designation as a "Medical Motion" brought pursuant to G.S. 97-25 ~~and~~ ~~[shall include]~~ a
 8 statement directly underneath the case caption clearly indicating the request is for either an
 9 administrative ruling by the Executive Secretary or an expedited full evidentiary hearing before a
 10 Deputy Commissioner;
- 11 (2) the ~~[claimant's]~~ employee's name. If the ~~[claimant]~~ employee is unrepresented, ~~[claimant's]~~ the
 12 employee's ~~[email address, telephone number, and fax number.]~~ telephone number and, to the
 13 extent available, the employee's email address and fax number. If the ~~[claimant]~~ employee is
 14 represented, the name, email address, telephone number and fax number of ~~[claimant's]~~
 15 employee's counsel;
- 16 (3) the employer's name and employer code;
- 17 (4) the carrier or third party administrator's name, carrier code, ~~[email address,]~~ telephone ~~[number~~
 18 ~~and]~~ number, fax ~~[number,]~~ number, and, to the extent available, email address;
- 19 (5) the adjuster's name, email address, telephone number and fax number if counsel for the employer
 20 and carrier has not been retained;
- 21 (6) ~~[the counsel for employer and carrier's]~~ if an attorney has been retained for the employer or
 22 carrier, the attorney's name, email address, telephone number and fax number;
- 23 (7) a statement of the treatment or relief requested;
- 24 (8) a statement of the medical diagnosis of the ~~[claimant]~~ employee ~~[and the treatment~~
 25 ~~recommendation]~~ and the name of ~~[the]~~ any health care provider ~~having made a diagnosis or~~
 26 ~~treatment recommendation~~ that is the basis for the motion;
- 27 (9) a statement as to whether the claim has been admitted on a Form 60, Form 63, Form 21 or is
 28 subject to a prior Commission Opinion and Award or Order finding compensability, with
 29 supporting documentation attached;
- 30 (10) a statement of the time-sensitive nature of the request, if any;
- 31 (11) an explanation of opinions known and in the possession of the ~~[employee]~~ movant ~~[of additional~~
 32 ~~medical or other]~~ by any relevant experts, independent medical examiners, and second opinion
 33 examiners;
- 34 (12) if the motion requests a second opinion examination pursuant to G.S. 97-25, the motion shall
 35 specify whether the ~~[plaintiff]~~ employee has made a prior written request to the defendants for the
 36 examination, as well as the date of the request and the date of the denial, if any;

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

3 (14) a proposed Order.

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

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

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

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

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

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

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

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

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

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

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

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

29 (12) a proposed Order.

30 ~~[(f) The parties shall receive notice of the date and time of an initial informal telephonic conference to be conducted~~
 31 ~~by a Deputy Commissioner to determine whether the motion warrants an expedited or emergency hearing and to~~
 32 ~~clarify the issues presented. During the initial informal telephonic conference each party shall be afforded an~~
 33 ~~opportunity to state its position and discuss documentary evidence which shall be submitted electronically to the~~
 34 ~~Deputy Commissioner prior to the initial informal telephone conference.~~

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

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

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

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

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

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

25 ~~(k)(i) A party may appeal a Deputy Commissioner's Order on a motion brought the decision of a Deputy~~
26 ~~Commissioner filed pursuant to G.S. 97-25(f)(2) by giving notice of appeal to the Full Commission within 15~~
27 ~~calendar days of receipt of the decision. Order or receipt of the ruling on a Motion to Reconsider the Order filed~~
28 ~~pursuant to Rule .0703(b) of this Subchapter. A letter expressing an intent to appeal a Deputy Commissioner's~~
29 ~~Order on a motion brought decision filed pursuant to G.S. 97-25 shall be considered notice of appeal to the Full~~
30 ~~Commission, provided that the letter specifically identifies the decision from which appeal is taken and indicates~~
31 ~~that the appeal is taken from a decision by a Deputy Commissioner pursuant to G.S. 97-25(f)(2). After receipt of~~
32 ~~notice of appeal, the appeal shall be acknowledged by the Docket Section within three days by sending an Order~~
33 ~~under the name of the Chair of the Panel to which the appeal is assigned. The Order shall ~~indicate whether the~~~~
34 ~~parties may file briefs and~~ set the schedule for filing ~~briefs.~~ A Full Commission hearing on an appeal of a medical
35 motion filed pursuant to G.S. 97-25 shall be held telephonically and shall not be recorded unless unusual
36 circumstances arise and the Commission so orders. All correspondence, briefs, and motions related to the appeal
37 shall be addressed to the Chair of the Panel with a copy to his or her law clerk.

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

11 ~~(k)~~ The Commission shall accept the filing of documents by non-electronic methods if electronic transmission is
12 unavailable to the party.

13
14 *History Note: Authority G.S. 97-25; 97-78(f)(2); 97-78(g)(2); 97-80(a);*
15 *Eff. January 1, 2011;*
16 *Amended Eff. November 1, 2014.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 04 NCAC 10A .0701

DEADLINE FOR RECEIPT: Friday, October 10, 2014

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On Page 2, Paragraph (b), line 24, change "can" to "may"

On lines 27, 28 and 29, shouldn't "Application for Review" be italicized?

On Page 3, Paragraph (c), line 5, please change "expressing a request for" to "requesting"

In (f), line 30, the use of "including but not limited to" is not preferred. Unless you have a compelling reason to retain the language, please just state "including"

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

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

3
4 **SECTION .0700 - APPEALS**

5
6 **04 NCAC 10A .0701 REVIEW BY THE FULL COMMISSION**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 *Eff. January 1, 1990;*

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

REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 04 NCAC 10A .0702

DEADLINE FOR RECEIPT: Friday, October 10, 2014

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In Paragraph (a), lines 25 and 26, shouldn't "decisions" be singular?

On Page 1, line 36 and Page 2, 12, italicize "de novo"

On Page 2, what is your authority for Paragraph (d), lines 3 through 6?

In Paragraph (e), line 10, capitalize "Rule"

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13

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

15 *Eff. January 1, 1990;*

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

REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 04 NCAC 10C .0109

DEADLINE FOR RECEIPT: Friday, October 10, 2014

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On Page 1, lines 23 and 24, you refer to employee. On Page 2, lines 2, 8 and 12, you state "worker." Assuming you are referring to the same individual, shouldn't the term be the same throughout?

On Page 2, line 12, job availability is critical to the employee or the employer or both? Does your regulated public understand this?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: North Carolina Industrial Commission

RULE CITATION: 04 NCAC 10C .0109

RECOMMENDED ACTION:

- X Note staff's comment
- Object, based on:
- Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
 - Extend the period of review

COMMENT:

On Page 1, line 13 of this Rule, the Industrial Commission replaced "shall" with "should." Ordinarily, "should" is not acceptable rule language, as that verb does not set standards. It is instead part of an aspirational statement.

However, the Industrial Commission is implementing the requirements of the Session Law, Section 6, Subsection 4.

With regard to 04 NCAC 10C .0109 (Vocational Rehabilitation Services and Return to Work)... The Commission shall change the word "shall" to "should" in subsection (c) of the rule.

1 Rule 04 NCAC 10C .0109 is amended as published on the OAH website for the public comment period beginning
2 August 20 through September 15, 2014, with changes as follows:

3
4 **04 NCAC 10C .0109 VOCATIONAL REHABILITATION SERVICES AND RETURN TO WORK**

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

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

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

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

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

- 25 (1) the retraining or education requested;
- 26 (2) the availability, location, cost, and identity of providers of the requested retraining or education;
- 27 (3) [the likely duration until completion of the requested retraining or education and the likely class
28 schedules, class attendance requirements, and out of class time required for homework and study]
29 the likely duration until completion of the requested retraining or education, the number of credits
30 needed to complete the retraining or education, the course names and schedules for the retraining
31 or education, and which courses are available on-line versus in person;
- 32 (4) the current or projected availability of employment upon completion; and
- 33 (5) the anticipated pay range for employment upon completion.

34 ~~(a)(c)~~ The RP shall obtain from the medical provider work restrictions which fairly address the demands of any
35 proposed employment. If ordered by a physician, the RP should obtain a Functional Capacity Evaluation (FCE) or
36 Physical Capacity Evaluation (PCE). Any FCE or PCE obtained should measure the worker's capacities and
37 impairments. The rehabilitation professional shall obtain work restrictions from the health care provider that address

1 the demands of any proposed employment. If ordered by a physician, the rehabilitation professional shall schedule
 2 an appointment with a third party provider to evaluate an injured worker's functional capacity, physical capacity, or
 3 impairments to work.

4 ~~(b)(f)~~ The RP rehabilitation professional shall refer the worker only to opportunities for suitable employment, as
 5 defined ~~herein~~, by Item (5) of Rule .0103 of this Subchapter or by applicable statute.

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

14 ~~(d)(h)~~ In preparing written job descriptions, the RP rehabilitation professional shall utilize standards including, but
 15 not limited to, recognized standards which may include but not be limited to the Dictionary of Occupational Titles
 16 ~~and/or and~~ the Handbook for Analyzing Jobs published by the U.S. United States Department of Labor, Labor,
 17 ~~which are recognized as national standard references for use in vocational rehabilitation.~~ These standards can be
 18 accessed at no cost at <http://www.oalj.dol.gov/LIBDOT.HTM> and www.woprs.net/etc/dot/RHAJ.pdf, respectively.
 19 The Handbook for Analyzing Jobs may also be purchased from major online booksellers for approximately \$85.00.

20 ~~(e)~~ ~~In identifying proposed employment for the injured worker, the RP should consider the worker's transportation~~
 21 ~~requirements.~~

22 ~~(f)(i)~~ The rehabilitation professional may conduct follow-up after job placement ~~may be carried out~~ to verify the
 23 appropriateness of the job placement.

24 ~~(g)(j)~~ The RP, rehabilitation professional shall not initiate or continue placement activities ~~which that~~ do not appear
 25 reasonably likely to result in placement of the injured worker in suitable employment. The RP rehabilitation
 26 professional shall report to the parties when efforts to ~~place the worker in suitable employment~~ initiate or continue
 27 placement activities do not appear reasonably likely to result in placement of the injured worker in suitable
 28 employment.

30 *History Note: Authority G.S. 97-2(22); 97-25.4; 97-25.5; 97-32.2; S.L. 2014-77, Section 6.(4);*

31 *Eff. January 1, 1996;*

32 *Amended Eff. November 1, 2014; June 1, 2000.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 04 NCAC 10E .0202

DEADLINE FOR RECEIPT: Friday, October 10, 2014

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

Please underline (Effective until July 1, 2015) on line 5.

On line 21, change "subsection (2)" to "Subparagraph (a)(2)"

Since this is all new language, please underline lines 22 through 36 on Page 1.

How is your ability to collect the fees in Subparagraphs (a)(1) and (4) after July 1, 2015 affected by S.L. 2014-100, which amends G.S. 97-73 and states:

SECTION 15.16B.(a) G.S. 97-73 reads as rewritten:

"§ 97-73. Fees.

(a) Claims. – ~~The~~ Except as provided in subsection (e) of this section, the Industrial Commission may establish by rule a schedule of fees for examinations conducted, reports made, documents filed, and agreements reviewed under this Article. The fees shall be collected in accordance with rules adopted by the Industrial Commission.

(b), (c) Repealed by Session Laws 2003-284, s. 10.33(d), effective July 1, 2003.

(d) Safety. – A fee in the amount set by the Industrial Commission is imposed on an employer for whom the Industrial Commission provides an educational training program on how to prevent or reduce accidents or injuries that result in workers' compensation claims or a person for whom the Industrial Commission provides other educational services. The fees are departmental receipts.

(e) Exceptions. – Notwithstanding subsection (a) of this section, the Industrial Commission may not charge fees for any of the following:

(1) A hearing before a Deputy Commissioner under this Chapter.

Amanda J. Reeder
Commission Counsel

Date submitted to agency: October 1, 2014

- (2) A hearing before the full Commission under this Chapter.
- (3) Processing of an agreement for compensation of disability, an employer's admission of employee's right to permanent partial disability, or a supplemental agreement as to payment of compensation."

SECTION 15.16B.(b) This section becomes effective July 1, 2015.

Is it the Commission's interpretation that because the Session Law only amends Chapter 97 (governing workers compensation cases) that this will not affect the text of this Rule in the Paragraph (a) language effective July 1, 2015?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

1 Rule 04 NCAC 10E .0202 is adopted as published on the OAH website for the public comment period beginning
2 August 20 through September 15, 2014, with changes as follows:

3
4 **04 NCAC 10E .0202 HEARING COSTS OR FEES**

5 (a) **(Effective until July 1, 2015)** The following hearing costs or fees apply to all subject areas within the authority
6 of the Commission:

- 7 (1) one hundred twenty dollars (\$120.00) for a hearing before a Deputy Commissioner to be charged
8 after the hearing has been held;
- 9 (2) one hundred twenty dollars (\$120.00) if a case is continued after the case is calendared for a
10 specific hearing date, to be paid by the requesting party or parties;
- 11 (3) one hundred twenty dollars (\$120.00) if a case is withdrawn, removed, or dismissed after the case
12 is calendared for a specific hearing date;
- 13 (4) two hundred twenty dollars (\$220.00) for a hearing before the Full Commission to be charged
14 after the hearing has been held; and
- 15 (5) one hundred twenty dollars (\$120.00) if one of the following occurs after an appeal or request for
16 review is scheduled for a specific hearing date before the Full Commission:
 - 17 (A) the appeal or request for review is withdrawn; or
 - 18 (B) the appeal or request for review is dismissed for failure to prosecute or perfect the appeal
19 or request for review.

20 In workers' compensation cases, these fees shall be paid by the employer unless the Commission orders otherwise,
21 except as specified in subsection (2) above.

22 (a) **(Effective July 1, 2015)** The following hearing costs or fees apply to all subject areas within the authority of the
23 Commission other than workers' compensation cases:

- 24 (1) one hundred twenty dollars (\$120.00) for a hearing before a Deputy Commissioner to be charged
25 after the hearing has been held;
- 26 (2) one hundred twenty dollars (\$120.00) if a case is continued after the case is calendared for a
27 specific hearing date, to be paid by the requesting party or parties;
- 28 (3) one hundred twenty dollars (\$120.00) if a case is withdrawn, removed, or dismissed after the case
29 is calendared for a specific hearing date;
- 30 (4) two hundred twenty dollars (\$220.00) for a hearing before the Full Commission to be charged
31 after the hearing has been held; and
- 32 (5) one hundred twenty dollars (\$120.00) if one of the following occurs after an appeal or request for
33 review is scheduled for a specific hearing date before the Full Commission:
 - 34 (A) the appeal or request for review is withdrawn; or
 - 35 (B) the appeal or request for review is dismissed for failure to prosecute or perfect the appeal
36 or request for review.

1 ~~[In workers' compensation cases, these fees shall be paid by the employer unless the Commission orders otherwise,~~
2 ~~except as specified in subsection (2) above.]~~

3 (b) The Commission may waive fees set forth in Paragraph (a) of this Rule, or assess such fees against a party or
4 parties pursuant to G.S. 97-88.1 if the Commission determines that the hearing has been brought, prosecuted, or
5 defended without reasonable ground.

6

7 *History Note:* Authority G.S. 97-73; 97-80; 97-88.1; 143-291.1; 143-291.2; 143-300; S.L. 2014-77;
8 *Eff. November 1, 2014.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 04 NCAC 10E .0203

DEADLINE FOR RECEIPT: Friday, October 10, 2014

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

Please underline (Effective until July 1, 2015) on line 5.

Since this is all new language, please underline the new language on Page 1, line 30 through Page 2, line 18.

Is it the agency's interpretation that S.L. 2014-100 will not affect this Rule, given that it only amends G.S. 97-73 and not other cases heard by the Industrial Commission?

In Paragraph (b), does your regulated public know where to find the fees?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

1 Rule 04 NCAC 10E .0203 is adopted as published on the OAH website for the public comment period beginning
2 August 20 to September 15, 2014, with changes as follows:

3
4 **04 NCAC 10E .0203 FEES SET BY THE COMMISSION**

5 (a) **(Effective until July 1, 2015)** In workers' compensation cases, the Commission sets the following fees:

- 6 (1) four hundred dollars (\$400.00) for the processing of a compromise settlement agreement to be
7 paid 50% by the employee and 50% by the employer(s) or the employer's carrier(s). [~~Unless the~~
8 ~~parties agree otherwise, the~~ The employer(s) or the employer's carrier(s) shall pay such fee in full
9 when submitting the agreement to the [~~Commission, and~~ Commission and, unless the parties
10 agree otherwise, shall [~~then~~] be entitled to a credit for the employee's 50% share of such fee
11 against settlement proceeds;
- 12 (2) three hundred dollars (\$300.00) for the processing of a Form 21 *Agreement for Compensation for*
13 *Disability*, Form 26 *Supplemental Agreement as to Payment of Compensation*, or Form 26A
14 *Employer's Admission of Employee's Right to Permanent Partial Disability* to be paid by the
15 employee and the employer or the employer's carrier in equal shares. The employer or the
16 employer's carrier shall pay such fee in full when submitting the agreement to the Commission.
17 Unless the parties agree otherwise or the award totals \$3,000 or less, the employer and the
18 employer's carrier shall be entitled to a credit for the employee's 50% share of such fee against the
19 award;
- 20 (3) two hundred dollars (\$200.00) for the processing of a I.C. Form MSC5, *Report of Mediator*, to be
21 paid 50% by the employee and 50% by the employer(s) or the employer's carrier(s). The
22 employer(s) or the employer's carrier(s) shall pay such fee in full upon receipt of an invoice from
23 the Commission and, unless the parties agree otherwise, shall be reimbursed for the employee's
24 share of such fees when the case is concluded from any compensation that may be determined to
25 be due to the employee. The employer(s) or the employer's carrier(s) may withhold funds from
26 any award for this purpose; and
- 27 (4) a fee equal to the filing fee required to file of a civil action in the Superior Court division of the
28 General Court of Justice for the processing of a Form 33I *Intervenor's Request that Claim be*
29 *Assigned for Hearing*, to be paid by the intervenor.

30 (a) **(Effective July 1, 2015)** In workers' compensation cases, the Commission sets the following fees:

- 31 (1) four hundred dollars (\$400.00) for the processing of a compromise settlement agreement to be
32 paid 50% by the employee and 50% by the employer(s) or the employer's carrier(s). [~~Unless the~~
33 ~~parties agree otherwise, the~~ The employer(s) or the employer's carrier(s) shall pay such fee in full
34 when submitting the agreement to the [~~Commission, and~~ Commission and, unless the parties
35 agree otherwise, shall [~~then~~] be entitled to a credit for the employee's 50% share of such fee
36 against settlement proceeds;

1 ~~[(2) three hundred dollars (\$300.00) for the processing of a Form 21 *Agreement for Compensation for*~~
2 ~~*Disability*, Form 26 *Supplemental Agreement as to Payment of Compensation*, or Form 26A~~
3 ~~*Employer's Admission of Employee's Right to Permanent Partial Disability* to be paid by the~~
4 ~~employee and the employer or the employer's carrier in equal shares. The employer or the~~
5 ~~employer's carrier shall pay such fee in full when submitting the agreement to the Commission.~~
6 ~~Unless the parties agree otherwise or the award totals \$3,000 or less, the employer and the~~
7 ~~employer's carrier shall be entitled to a credit for the employee's 50% share of such fee against the~~
8 ~~award;]~~

9 [(3)](2) two hundred dollars (\$200.00) for the processing of a I.C. Form MSC5, *Report of Mediator*, to be
10 paid 50% by the employee and 50% by the employer(s) or the employer's carrier(s). The
11 employer(s) or the employer's carrier(s) shall pay such fee in full upon receipt of an invoice from
12 the Commission and, unless the parties agree otherwise, shall be reimbursed for the employee's
13 share of such fees when the case is concluded from any compensation that may be determined to
14 be due to the employee. The employer(s) or the employer's carrier(s) may withhold funds from
15 any award for this purpose; and

16 [(4)](3) a fee equal to the filing fee required to file of a civil action in the Superior Court division of the
17 General Court of Justice for the processing of a Form 331 *Intervenor's Request that Claim be*
18 *Assigned for Hearing*, to be paid by the intervenor.

19 (b) In tort claims cases, the filing fee is an amount equal to the filing fee required to file a civil action in the
20 Superior Court division of the General Court of Justice.

21
22 *History Note:* Authority G.S. 7A-305; 97-17; 97-26(i); 97-73; 97-80; 143-291.2; 143-300; S.L 2014-77;
23 *Eff. November 1, 2014.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 04 NCAC 10L .0101

DEADLINE FOR RECEIPT: Friday, October 10, 2014

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On Page 1, line 13, please insert "Rule" before the citation.

On Page 2, in order to be consistent, please end lines 16, 18, 22, 28 and 30 with a period.

On Page 3, lines 10 and 11, I know this is a Rule and the form may be longer, so I just wanted to check – is the "Important Notice to Employee" the notice beginning on Page 2, line 31? Does it spill over on the physical form from page 1 to 2? Or are you referring to other Important Notices that are later in the Rule?

On Page 3, line 11, delete "the" before "Pages 1 and 2"

On Page 4, on line 10, does Form 18M not have a title?

On line 16, does your regulated public know when it may be subjected to a penalty?

On Page 5, line 5, please insert "Rule" before the citation.

On Page 6, in order to be consistent, please end line 8, 10, 14, 20 and 22 with a period.

On Page 7, lines 1 and 2, what Important Notice are you referring to? The one on Page 6 was deleted, so I'm not sure what will be printed on the form.

On Page 8, line 1, does Form 18M not have a title?

On line 8, does your regulated public know when it may be subjected to a penalty?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel

Date submitted to agency: October 1, 2014

46

1 Rule 04 NCAC 10L .0101 is adopted as published on the OAH website for the public comment period beginning
2 August 20 through September 15, 2014, with changes as follows:

3
4 **SUBCHAPTER 10L – INDUSTRIAL COMMISSION FORMS**
5 **SECTION .0100 – WORKERS’ COMPENSATION FORMS**

6
7 **04 NCAC 10L .0101 FORM 21 – AGREEMENT FOR COMPENSATION FOR DISABILITY**

8
9 (a) **Effective until July 1, 2015** The parties to a workers’ compensation claim shall use the following Form 21,
10 *Agreement for Compensation for Disability*, for agreements regarding disability and payment of compensation
11 therefor pursuant to G.S. 97-29 and 97-30. Additional issues agreed upon by the parties such as payment of
12 compensation for permanent partial disability may also be included on the form. This form is necessary to comply
13 with 04 NCAC 10A .0501, where applicable. The Form 21, *Agreement for Compensation for Disability*, shall read
14 as follows:

15
16 North Carolina Industrial Commission
17 Agreement for Compensation for Disability
18 (G.S. 97-82)

19
20 IC File # _____
21 Emp. Code # _____
22 Carrier Code # _____
23 Carrier File # _____
24 Employer FEIN _____

25
26 The Use Of This Form Is Required Under The Provisions of The Workers' Compensation Act

27
28 _____
29 Employee’s Name

30 _____
31 Address

32 _____
33 City State Zip

34 _____
35 Home Telephone Work Telephone

36 Social Security Number: _____ Sex: M F Date of Birth: _____

1 _____

2 Employer's Name Telephone Number

3 _____

4 Employer's Address City State Zip

5 _____

6 Insurance Carrier

7 _____

8 Carrier's Address City State Zip

9 _____

10 Carrier's Telephone Number Carrier's Fax Number

11

12 We, The Undersigned, Do Hereby Agree And Stipulate As Follows:

13 1. All parties hereto are subject to and bound by the provisions of the Workers' Compensation Act and
14 _____ is the carrier/administrator for the employer.

15 2. The employee sustained an injury by accident or the employee contracted an occupational disease arising
16 out of and in the course of employment on or by _____

17 3. The injury by accident or occupational disease resulted in the following injuries: _____
18 _____

19 4. The employee was/ was not paid for the entire day when the injury occurred.

20 5. The average weekly wage of the employee at the time of the injury, including overtime and all allowances,
21 was \$_____, subject to verification unless otherwise agreed upon in Item 9 below.

22 6. Disability resulting from the injury or occupational disease began on _____

23 7. The employer and carrier/administrator hereby undertake to pay compensation to the employee at the rate
24 of \$_____ per week beginning _____, and continuing for _____ weeks.

25 8. The employee has / has not returned to work for _____
26 on _____, at an average weekly wage of \$_____.

27 9. State any further matters agreed upon, including disfigurement, permanent partial, or temporary partial
28 disability: _____

29 10. If applicable, the Second Injury Fund Assessment is \$_____. Check is is not attached.

30 11. The date of this agreement is _____. Date of first payment: _____ Amount: _____

31 12. IMPORTANT NOTICE TO EMPLOYEE: The Industrial Commission's fee for processing this agreement
32 is \$300.00 to be paid in equal shares by the employee and the employer. You are not required to pay your portion of
33 the fee in advance, and if your award is \$3,000.00 or less, you are not responsible for any portion of the fee. If your
34 award is more than \$3,000.00, the employer shall deduct \$150.00 from your award, unless you and your employer
35 agree otherwise.

36 Check one of the boxes below if the award is more than \$3,000.00:

37 The employer will deduct \$150.00 from the amount to be paid pursuant to this agreement.

1 If your injury occurred before July 5, 1994, you are entitled to medical compensation as long as it is reasonably
2 necessary, related to your workers' compensation case, and authorized by the carrier or the Industrial Commission.

3
4 **IMPORTANT NOTICE TO EMPLOYEE INJURED ON OR AFTER JULY 5, 1994 CLAIMING ADDITIONAL**
5 **MEDICAL BENEFITS**

6 If your injury occurred on or after July 5, 1994, your right to future medical compensation will depend on several
7 factors. Your right to payment of future medical compensation will terminate two years after your employer or
8 carrier/administrator last pays any medical compensation or other compensation, whichever occurs last. If you think
9 you will need future medical compensation, you must apply to the Industrial Commission in writing within two
10 years, or your right to these benefits may be lost. To apply you may also use Industrial Commission Form 18M,
11 available at <http://www.ic.nc.gov/forms.html>.

12
13 **IMPORTANT NOTICE TO EMPLOYER**

14
15 The employee must be provided a copy when the agreement is signed by the employee. Failure to file Form 28B,
16 *Report Of Compensation And Medical Compensation Paid*, within 16 days after last payment pursuant to this
17 agreement may subject the employer or carrier/administrator to a penalty. Pursuant to Rule 04 NCAC 10A .0501,
18 within 20 days after receipt of the agreement executed by the employee, the employer or carrier/administrator must
19 submit the agreement to the Industrial Commission, or show cause for not submitting the agreement.

20
21 **NEED ASSISTANCE?**

22
23 If you have questions or need help and you do not have an attorney, you may contact the Industrial Commission at
24 (800) 688-8349.

25
26 Form 21

27 11/2014

28
29 Self-Insured Employer or Carrier, Mail to:

30 NCIC - Claims Section

31 4335 Mail Service Center

32 Raleigh, NC 27699-4335

33 Telephone: (919) 807-2502

34 Helpline: (800) 688-8349

35 **Website:** <http://www.ic.nc.gov/>

36

50

(a) (Effective July 1, 2015) The parties to a workers' compensation claim shall use the following Form 21, Agreement for Compensation for Disability, for agreements regarding disability and payment of compensation therefor pursuant to G.S. 97-29 and 97-30. Additional issues agreed upon by the parties such as payment of compensation for permanent partial disability may also be included on the form. This form is necessary to comply with 04 NCAC 10A .0501, where applicable. The Form 21, Agreement for Compensation for Disability, shall read as follows:

North Carolina Industrial Commission
Agreement for Compensation for Disability
(G.S. 97-82)

IC File #
Emp. Code #
Carrier Code #
Carrier File #
Employer FEIN

The Use Of This Form Is Required Under The Provisions of The Workers' Compensation Act

Employee's Name

Address

City State Zip

Home Telephone Work Telephone

Social Security Number: Sex: M F Date of Birth:

Employer's Name Telephone Number

Employer's Address City State Zip

Insurance Carrier

Carrier's Address City State Zip

1 _____
 2 Carrier's Telephone Number Carrier's Fax Number
 3

4 We, The Undersigned, Do Hereby Agree And Stipulate As Follows:

5 1. All parties hereto are subject to and bound by the provisions of the Workers' Compensation Act and
 6 _____ is the carrier/administrator for the employer.

7 2. The employee sustained an injury by accident or the employee contracted an occupational disease arising
 8 out of and in the course of employment on or by _____

9 3. The injury by accident or occupational disease resulted in the following injuries: _____
 10 _____

11 4. The employee was/ was not paid for the entire day when the injury occurred.

12 5. The average weekly wage of the employee at the time of the injury, including overtime and all allowances,
 13 was \$ _____, subject to verification unless otherwise agreed upon in Item 9 below.

14 6. Disability resulting from the injury or occupational disease began on _____

15 7. The employer and carrier/administrator hereby undertake to pay compensation to the employee at the rate
 16 of \$ _____ per week beginning _____, and continuing for _____ weeks.

17 8. The employee has / has not returned to work for _____
 18 on _____, at an average weekly wage of \$ _____.

19 9. State any further matters agreed upon, including disfigurement, permanent partial, or temporary partial
 20 disability: _____

21 10. If applicable, the Second Injury Fund Assessment is \$ _____. Check is is not attached.

22 11. The date of this agreement is _____. Date of first payment: _____ Amount: _____

23 12. IMPORTANT NOTICE TO EMPLOYEE: The Industrial Commission's fee for processing this agreement
 24 is \$300.00 to be paid in equal shares by the employee and the employer. You are not required to pay your portion of
 25 the fee in advance, and if your award is \$3,000.00 or less, you are not responsible for any portion of the fee. If your
 26 award is more than \$3,000.00, the employer shall deduct \$150.00 from your award, unless you and your employer
 27 agree otherwise.

28 Check one of the boxes below if the award is more than \$3,000.00:

29 The employer will deduct \$150.00 from the amount to be paid pursuant to this agreement.

30 The employee and employer have agreed that the employer will pay the entire fee.

31
 32 _____
 33 Name Of Employer Signature Title

34 _____
 35 Name Of Carrier / Administrator Signature Title

36

52

1 By signing I enter into this agreement and certify that I have read the "Important Notices to Employee" printed on
2 the Pages 1 and Page 2 of this form.

3 _____
4 Signature of Employee _____ Address

5 _____
6 Signature of Employee's Attorney _____ Address

7
8 North Carolina Industrial Commission

9 The Foregoing Agreement Is Hereby Approved:

10 _____
11 Claims Examiner _____ Date

12 _____
13 Attorney's Fee Approved

14
15 Check Box If No Attorney Retained.

16 Check Box If Employee Is In Managed Care.

17
18 IMPORTANT NOTICE TO EMPLOYEE CLAIMING ADDITIONAL WEEKLY CHECKS OR LUMP SUM
19 PAYMENTS

20
21 Once your compensation checks have been stopped, if you claim further compensation, you must notify the
22 Industrial Commission in writing within two years from the date of receipt of your last compensation check or your
23 rights to these benefits may be lost.

24
25 IMPORTANT NOTICE TO EMPLOYEE INJURED BEFORE JULY 5, 1994 CLAIMING ADDITIONAL
26 MEDICAL BENEFITS

27
28 If your injury occurred before July 5, 1994, you are entitled to medical compensation as long as it is reasonably
29 necessary, related to your workers' compensation case, and authorized by the carrier or the Industrial Commission.

30
31 IMPORTANT NOTICE TO EMPLOYEE INJURED ON OR AFTER JULY 5, 1994 CLAIMING ADDITIONAL
32 MEDICAL BENEFITS

33 If your injury occurred on or after July 5, 1994, your right to future medical compensation will depend on several
34 factors. Your right to payment of future medical compensation will terminate two years after your employer or
35 carrier/administrator last pays any medical compensation or other compensation, whichever occurs last. If you think
36 you will need future medical compensation, you must apply to the Industrial Commission in writing within two

1 years, or your right to these benefits may be lost. To apply you may also use Industrial Commission Form 18M,
2 available at <http://www.ic.nc.gov/forms.html>.

3
4 IMPORTANT NOTICE TO EMPLOYER

5
6 The employee must be provided a copy when the agreement is signed by the employee. Failure to file Form 28B,
7 *Report Of Compensation And Medical Compensation Paid*, within 16 days after last payment pursuant to this
8 agreement may subject the employer or carrier/administrator to a penalty. Pursuant to Rule 04 NCAC 10A .0501,
9 within 20 days after receipt of the agreement executed by the employee, the employer or carrier/administrator must
10 submit the agreement to the Industrial Commission, or show cause for not submitting the agreement.

11
12 NEED ASSISTANCE?

13
14 If you have questions or need help and you do not have an attorney, you may contact the Industrial Commission at
15 (800) 688-8349.

16
17 Form 21

18 7/2015

19
20 Self-Insured Employer or Carrier, Mail to:

21 NCIC - Claims Section

22 4335 Mail Service Center

23 Raleigh, NC 27699-4335

24 Telephone: (919) 807-2502

25 Helpline: (800) 688-8349

26 Website: <http://www.ic.nc.gov/>

27
28 (b) The copy of the form described in Paragraph (a) of this Rule can be accessed at
29 <http://www.ic.nc.gov/forms/form21.pdf>. The form may be reproduced only in the format available at
30 <http://www.ic.nc.gov/forms/form21.pdf> and may not be altered or amended in any way.

31
32 *History Note: Authority G.S. 97-73; 97-80(a); 97-81(a); 97-82; S.L. 2014-77;*

33 *Eff. November 1, 2014;*

34 *Amended Eff. July 1, 2015, pursuant to S.L. 2014-77, by deleting Item 12. of subsection (a).*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 04 NCAC 10L .0102

DEADLINE FOR RECEIPT: Friday, October 10, 2014

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On Page 1, line 10, please delete the comma between "additional" and "subsequent"

On line 11, delete "therefor"

On line 13, please insert "Rule" before the citation.

On Page 2, to be consistent, please end lines 19, 21 and 23 with periods.

On Page 3, lines 4 and 5, I know this is a Rule and the form may be longer, so I just wanted to check – is the "Important Notice to Employee" the notice beginning on Page 2, line 31? Does it spill over on the physical form from page 1 to 2? Or are you referring to other Important Notices that are later in the Rule?

On Page 4, line 1, does Form 18M not have a title?

Do you need the extra line space on line 4?

On line 7, replace "is to be used" with "shall be used"

On line 11, does the regulated public know when they may be subjected to penalty?

On line 34, delete the comma between "additional" and "subsequent"

On line 35, delete "therefor"

On Page 5, line 1, please insert "Rule" before the citation.

On Page 6, to be consistent, I believe lines 1, 7, 9 and 11 should end with a period.

On lines 27 and 28, what Important Notice are you referring to? The one on Page 6 was deleted, so I'm not sure what you are referring to.

On Page 7, line 23, does Form 18M not have a title?

Amanda J. Reeder
Commission Counsel

Date submitted to agency: October 1, 2014

On line 29, replace "is to be used" with "shall be used"

On line 33, does your regulated public know when it will be subjected to a penalty?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

56

1 Rule 04 NCAC 10L .0102 is adopted as published on the OAH website for the public comment period beginning
2 August 20 through September 15, 2014, with changes as follows:

3
4 **04 NCAC 10L .0102 FORM 26 – SUPPLEMENTAL AGREEMENT AS TO PAYMENT OF**
5 **COMPENSATION**

6
7 (a) **Effective until July 1, 2015** If the parties to a workers' compensation claim have previously entered into an
8 approved agreement on a Form 21, *Agreement for Compensation for Disability*, or a Form 26A, *Employer's*
9 *Admission of Employee's Right to Permanent Partial Disability*, they shall use the following Form 26, *Supplemental*
10 *Agreement as to Payment of Compensation*, for agreements regarding subsequent, additional disability and payment
11 of compensation therefor pursuant to G.S. 97-29 and 97-30. Additional issues agreed upon by the parties such as
12 payment of compensation for permanent partial disability may also be included on the form. This form is necessary
13 to comply with 04 NCAC 10A .0501, where applicable. The Form 26, *Supplemental Agreement as to Payment of*
14 *Compensation*, shall read as follows:

15
16 North Carolina Industrial Commission
17 Supplemental Agreement as to Payment
18 of Compensation (G.S. §97-82)

19
20 IC File # _____
21 Emp. Code # _____
22 Carrier Code # _____
23 Carrier File # _____
24 Employer FEIN _____

25
26 The Use Of This Form Is Required Under The Provisions of The Workers' Compensation Act

27
28 _____

29 Employee's Name

30 _____

31 Address

32 _____

33 City State Zip

34 _____

35 Home Telephone Work Telephone

36 Social Security Number: _____ Sex: M F Date of Birth: _____

37

1 _____

2 Employer's Name Telephone Number

3 _____

4 Employer's Address City State Zip

5 _____

6 Insurance Carrier

7 _____

8 Carrier's Address City State Zip

9 _____

10 Carrier's Telephone Number Carrier's Fax Number

11

12 We, The Undersigned, Do Hereby Agree and Stipulate As Follows:

13 1. Date of injury: _____

14 2. The employee returned to work / was rated on _____ (date), at a weekly wage of \$_____.

15 3. The employee became totally disabled on _____.

16 4. Employee's average weekly wage was reduced / was increased on _____, from \$_____ per week to \$_____ per week.

18 5. The employer and carrier/administrator hereby undertake to pay compensation to the employee at the rate of \$_____ per week

20 Beginning _____, and continuing for _____ weeks. The type of disability compensation is

21 _____

22 6. State any further matters agreed upon, including disfigurement or temporary partial disability:

23 _____

24 7. IMPORTANT NOTICE TO EMPLOYEE: The Industrial Commission's fee for processing this agreement is \$300.00 to be paid in equal shares by the employee and the employer. You are not required to pay your portion of the fee in advance, and if your award is \$3,000.00 or less, you are not responsible for any portion of the fee. If your award is more than \$3,000.00, the employer shall deduct \$150.00 from your award, unless you and your employer agree otherwise.

29 Check one of the boxes below if the award is more than \$3,000.00:

30 The employer will deduct \$150.00 from the amount to be paid pursuant to this agreement.

31 The employee and employer have agreed that the employer will pay the entire fee.

32 ~~THE INDUSTRIAL COMMISSION WILL NOT CHARGE A FEE FOR PROCESSING FORM 26~~
33 ~~AGREEMENTS FILED ON OR AFTER JULY 1, 2015.~~

34

35 8. The date of this agreement is _____.

36 _____

37 Name Of Employer

Signature

Title

1 years, or your right to these benefits may be lost. To apply you may also use Industrial Commission Form 18M,
2 available at <http://www.ic.nc.gov/forms.html>.

3
4
5 **IMPORTANT NOTICE TO EMPLOYER**

6
7 This form is to be used only to supplement Form 21, *Agreement for Compensation for Disability* (G.S. 97-82), or an
8 award in cases in which subsequent conditions require a modification of a former agreement or award. The
9 employee must be provided a copy of the form when the agreement is signed by the employee. Failure to file Form
10 28B, *Report of Compensation and Medical Compensation Paid*, within 16 days after last payment pursuant to this
11 agreement may subject the employer or carrier/administrator to a penalty. Pursuant to Rule 04 NCAC 10A .0501,
12 within 20 days after receipt of the agreement executed by the employee, the employer or carrier/administrator must
13 submit the agreement to the Industrial Commission, or show cause for not submitting the agreement.

14
15 **NEED ASSISTANCE?**

16
17 If you have questions or need help and you do not have an attorney, you may contact the Industrial Commission at
18 (800) 688-8349.

19
20 Form 26

21 11/2014

22
23 Self-Insured Employer or Carrier Mail to:

24 NCIC - Claims Administration

25 4335 Mail Service Center

26 Raleigh, North Carolina 27699-4335

27 Main Telephone: (919) 807-2500

28 Helpline: (800) 688-8349

29 Website: <http://www.ic.nc.gov/>

30
31 (a) (Effective July 1, 2015) If the parties to a workers' compensation claim have previously entered into an
32 approved agreement on a Form 21, *Agreement for Compensation for Disability*, or a Form 26A, *Employer's*
33 *Admission of Employee's Right to Permanent Partial Disability*, they shall use the following Form 26, *Supplemental*
34 *Agreement as to Payment of Compensation*, for agreements regarding subsequent, additional disability and payment
35 of compensation therefor pursuant to G.S. 97-29 and 97-30. Additional issues agreed upon by the parties such as
36 payment of compensation for permanent partial disability may also be included on the form. This form is necessary

60

1 to comply with 04 NCAC 10A .0501, where applicable. The Form 26, Supplemental Agreement as to Payment of
2 Compensation, shall read as follows:

3
4 North Carolina Industrial Commission
5 Supplemental Agreement as to Payment
6 of Compensation (G.S. §97-82)

7
8 IC File #
9 Emp. Code #
10 Carrier Code #
11 Carrier File #
12 Employer FEIN

13
14 The Use Of This Form Is Required Under The Provisions of The Workers' Compensation Act

15
16 _____
17 Employee's Name

18 _____
19 Address
20 _____
21 City _____ State _____ Zip

22 _____
23 Home Telephone _____ Work Telephone
24 Social Security Number: _____ Sex: M F Date of Birth: _____

25
26 _____
27 Employer's Name _____ Telephone Number

28 _____
29 Employer's Address _____ City State Zip

30 _____
31 Insurance Carrier

32 _____
33 Carrier's Address _____ City State Zip

34 _____
35 Carrier's Telephone Number _____ Carrier's Fax Number

36
37 We, The Undersigned, Do Hereby Agree and Stipulate As Follows:

1 1. Date of injury: _____

2 2. The employee returned to work / was rated on _____ (date), at a weekly wage of \$ _____.

3 3. The employee became totally disabled on _____.

4 4. Employee's average weekly wage was reduced / was increased on _____, from \$ _____
5 per week to \$ _____ per week.

6 5. The employer and carrier/administrator hereby undertake to pay compensation to the employee at the rate
7 of \$ _____ per week

8 Beginning _____, and continuing for _____ weeks. The type of disability compensation is

9 _____

10 6. State any further matters agreed upon, including disfigurement or temporary partial disability:

11 _____

12 7. IMPORTANT NOTICE TO EMPLOYEE: The Industrial Commission's fee for processing this agreement
13 is \$300.00 to be paid in equal shares by the employee and the employer. You are not required to pay your portion of
14 the fee in advance, and if your award is \$3,000.00 or less, you are not responsible for any portion of the fee. If your
15 award is more than \$3,000.00, the employer shall deduct \$150.00 from your award, unless you and your employer
16 agree otherwise.

17 Check one of the boxes below if the award is more than \$3,000.00:

18 The employer will deduct \$150.00 from the amount to be paid pursuant to this agreement.

19 The employee and employer have agreed that the employer will pay the entire fee.

20

21 ~~8.~~7. The date of this agreement is _____.

22 _____

23 Name Of Employer _____ Signature _____ Title _____

24 _____

25 Name Of Carrier/Administrator _____ Signature _____ Title _____

26

27 By signing I enter into this agreement and certify that I have read the "Important Notices to Employee" printed on
28 Pages 1 and Page 2 of this form.

29 _____

30 Signature of Employee _____ Address _____

31 _____

32 Signature of Employee's Attorney _____ Address _____

33

34 Check box if no attorney retained.

35

36 North Carolina Industrial Commission

37 The Foregoing Agreement Is Hereby Approved:

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37

Claims Examiner Date

Attorney's fee approved

IMPORTANT NOTICE TO EMPLOYEE CLAIMING ADDITIONAL WEEKLY CHECKS OR LUMP SUM PAYMENTS

Once your compensation checks have been stopped, if you claim further compensation, you must notify the Industrial Commission in writing within two years from the date of receipt of your last compensation check or your rights to these benefits may be lost.

IMPORTANT NOTICE TO EMPLOYEE INJURED BEFORE 5 JULY 1994 CLAIMING ADDITIONAL MEDICAL BENEFITS

If your injury occurred before 5 July 1994, you are entitled to medical compensation as long as it is reasonably necessary, related to your workers' compensation case, and authorized by the carrier or the Industrial Commission.

IMPORTANT NOTICE TO EMPLOYEE INJURED ON OR AFTER 5 JULY 1994 CLAIMING ADDITIONAL MEDICAL BENEFITS

If your injury occurred on or after 5 July 1994, your right to future medical compensation will depend on several factors. Your right to payment of future medical compensation will terminate two years after your employer or carrier/administrator last pays any medical compensation or other compensation, whichever occurs last. If you think you will need future medical compensation, you must apply to the Industrial Commission in writing within two years, or your right to these benefits may be lost. To apply you may also use Industrial Commission Form 18M, available at <http://www.ic.nc.gov/forms.html>.

IMPORTANT NOTICE TO EMPLOYER

This form is to be used only to supplement Form 21, *Agreement for Compensation for Disability (G.S. 97-82)*, or an award in cases in which subsequent conditions require a modification of a former agreement or award. The employee must be provided a copy of the form when the agreement is signed by the employee. Failure to file Form 28B, *Report of Compensation and Medical Compensation Paid*, within 16 days after last payment pursuant to this agreement may subject the employer or carrier/administrator to a penalty. Pursuant to Rule 04 NCAC 10A .0501, within 20 days after receipt of the agreement executed by the employee, the employer or carrier/administrator must submit the agreement to the Industrial Commission, or show cause for not submitting the agreement.

NEED ASSISTANCE?

1
2 If you have questions or need help and you do not have an attorney, you may contact the Industrial Commission at
3 (800) 688-8349.

4
5 Form 26
6 7/2015

7
8 Self-Insured Employer or Carrier Mail to:
9 NCIC - Claims Administration
10 4335 Mail Service Center
11 Raleigh, North Carolina 27699-4335
12 Main Telephone: (919) 807-2500
13 Helpline: (800) 688-8349
14 Website: <http://www.ic.nc.gov/>

15
16 (b) The copy of the form described in Paragraph (a) of this Rule can be accessed at
17 <http://www.ic.nc.gov/forms/form26.pdf>. The form may be reproduced only in the format available at
18 <http://www.ic.nc.gov/forms/form26.pdf> and may not be altered or amended in any way.

19
20 *History Note: Authority G.S. 97-73; 97-80(a); 97-81(a); 97-82; S.L. 2014-77;*
21 *Eff. November 1, 2014;*
22 *Amended Eff. July 1, 2015, pursuant to S.L. 2014-77, by deleting Item 7. of subsection (a).*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 04 NCAC 10L .0103

DEADLINE FOR RECEIPT: Friday, October 10, 2014

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On Page 1, line 10, please replace "including, but not limited to" with either "including" or "such as" (which is the language in Rules .0101 and .0102).

On line 12, please insert "Rule" before the citation.

On Page 3, line 15, please replace "his" with "his or her"

On line 16, what is "Industrial Commission Rule 501(3)", and where can one find that? Do you need to reference another citation here?

Please confirm that on line 24, you are referring to the Important Notice referenced on line 3 of Page 3.

On Page 4, line 20, does Form 18M not have a title?

On line 26, does your regulated public know when they may be subjected to the penalty?

On Page 5, line 11, please replace "including, but not limited to" with either "including" or "such as" (which is the language in Rules .0101 and .0102).

On line 13, please insert "Rule" before the citation.

On Page 7, line 13, please state "his or her"

On line 14, what is "Industrial Commission Rule 501(3)", and where can one find that? Do you need to reference another citation here?

On line 22, what "Important Notices to Employee" are you referencing?

On Page 8, line 18, does Form 18M not have a title?

On line 24, does your regulated public know when it will be subjected to a penalty?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: October 1, 2014

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

66

1 Rule 04 NCAC 10L .0103 is adopted as published on the OAH website for the public comment period beginning
2 August 20 through September 15, 2014, with changes as follows:

3
4 **04 NCAC 10L .0103 FORM 26A – EMPLOYER’S ADMISSION OF EMPLOYEE’S RIGHT TO**
5 **PERMANENT PARTIAL DISABILITY**

6
7 (a) **Effective until July 1, 2015** The parties to a workers’ compensation claim shall use the following Form 26A,
8 *Employer’s Admission of Employee’s Right to Permanent Partial Disability*, for agreements regarding the
9 employee’s entitlement to and the employer’s payment of compensation for permanent partial disability pursuant to
10 G.S. 97-31. Additional issues agreed upon by the parties, including, but not limited to, election of payment of
11 temporary partial disability pursuant to G.S. 97-30 may also be included on the form. This form is necessary to
12 comply with 04 NCAC 10A .0501, where applicable. The Form 26A, *Employer’s Admission of Employee’s Right to*
13 *Permanent Partial Disability*, shall read as follows:

14
15 North Carolina Industrial Commission
16 Employer’s Admission of Employee’s Right to Permanent Partial Disability
17 (G.S. §97-31)

18
19 IC File # _____
20 Emp. Code # _____
21 Carrier Code # _____
22 Carrier File # _____
23 Employer FEIN _____

24
25 The Use Of This Form Is Required Under The Provisions of The Workers' Compensation Act

26
27 _____

28 Employee’s Name
29 _____

30 Address
31 _____

32 City State Zip
33 _____

34 Home Telephone Work Telephone
35 Social Security Number: _____ Sex: M F Date of Birth: _____

36
37 _____

1 Employer's Name Telephone Number

2 _____

3 Employer's Address City State Zip

4 _____

5 Insurance Carrier

6 _____

7 Carrier's Address City State Zip

8 _____

9 Carrier's Telephone Number Carrier's Fax Number

10

11 WE, THE UNDERSIGNED, DO HEREBY AGREE AND STIPULATE AS FOLLOWS:

12 1. All the parties hereto are subject to and bound by the provisions of the Workers' Compensation Act and
13 _____ is the Carrier/Administrator for the Employer.

14 2. The employee sustained an injury by accident or the employee contracted an occupational disease arising
15 out of and in the course of employment on _____.

16 3. The injury by accident or occupational disease resulted in the following injuries:

17 _____.

18 4. The employee was was not paid for the 7 day waiting period.

19 If not, was salary continued? yes no. Was employee paid for the date of injury? yes no

20 5. The average weekly wage of the employee at the time of the injury, including overtime and all allowances,
21 was \$_____. This results in a weekly compensation rate of \$_____.

22 6. The employee has has not returned full time to work for _____
23 on _____, at an average weekly wage of \$_____.

24 7. Claimant was released with permanent restrictions without permanent restrictions.

25 8. Permanent partial disability compensation will be paid to the injured worker as follows:

26 ____ weeks of compensation at rate of \$_____ per week for ____% rating to _____ (body part)

27 ____ weeks of compensation at rate of \$_____ per week for ____% rating to _____ (body part)

28 ____ weeks of compensation at rate of \$_____ per week for ____% rating to _____ (body part)

29 Total amount of permanent partial disability compensation is \$_____. Date of first
30 payment:_____.

31 9. State any further matters agreed upon, including disfigurement, loss of teeth, election of temporary partial
32 disability, waiting period or other:

33 _____.

34 10. An overpayment is claimed in the amount of \$_____. Overpayment was calculated as
35 follows:_____.

36 If overpayment claimed, a Form 28B is attached. yes no

1 Attorney's fee approved

2

3 IMPORTANT NOTICE TO EMPLOYEE CLAIMING ADDITIONAL WEEKLY CHECKS OR LUMP SUM
4 PAYMENTS

5 Once your compensation checks have been stopped, if you claim further compensation, you must notify the
6 Industrial Commission in writing within two years from the date of receipt of your last compensation check or your
7 rights to these benefits may be lost.

8

9 IMPORTANT NOTICE TO EMPLOYEE INJURED BEFORE JULY 5,1994 CLAIMING ADDITIONAL
10 MEDICAL BENEFITS

11 If your injury occurred before July 5, 1994, you are entitled to medical compensation as long as it is reasonably
12 necessary, related to your workers' compensation case, and authorized by the carrier or the Industrial Commission.

13

14 IMPORTANT NOTICE TO EMPLOYEE INJURED ON OR AFTER JULY 5, 1994 CLAIMING ADDITIONAL
15 MEDICAL BENEFITS

16 If your injury occurred on or after July 5, 1994, your right to future medical compensation will depend on several
17 factors. Your right to payment of future medical compensation will terminate two years after your employer or
18 carrier/administrator last pays any medical compensation or other compensation, whichever occurs last. If you think
19 you will need future medical compensation, you must apply to the Industrial Commission in writing within two
20 years, or your right to these benefits may be lost. To apply you may also use Industrial Commission 18M, available
21 at <http://www.ic.nc.gov/forms.html>.

22

23 IMPORTANT NOTICE TO EMPLOYER

24 The employee must be provided a copy when the agreement is signed by the employee. Failure to file Form 28B,
25 *Report Of Compensation And Medical Compensation Paid*, within 16 days after last payment pursuant to this
26 agreement may subject the employer or carrier/administrator to a penalty. Pursuant to Rule 04 NCAC 10A .0501,
27 within 20 days after receipt of the agreement executed by the employee, the employer or carrier/administrator must
28 submit the agreement to the Industrial Commission, or show cause for not submitting the agreement.

29

30 NEED ASSISTANCE?

31 If you have questions or need help and you do not have an attorney, you may contact the Industrial Commission at
32 (800) 688-8349.

33

34 Form 26A

35 11/2014

36

37 Self-Insured Employer or Carrier Mail to:

70

1 NCIC - Claims Administration
2 4335 Mail Service Center
3 Raleigh, North Carolina 27699-4335
4 Main Telephone: (919) 807-2500
5 Helpline: (800) 688-8349
6 Website: http://www.ic.nc.gov/
7

8 (a) (Effective July 1, 2015) The parties to a workers' compensation claim shall use the following Form 26A,
9 Employer's Admission of Employee's Right to Permanent Partial Disability, for agreements regarding the
10 employee's entitlement to and the employer's payment of compensation for permanent partial disability pursuant to
11 G.S. 97-31. Additional issues agreed upon by the parties, including, but not limited to, election of payment of
12 temporary partial disability pursuant to G.S. 97-30 may also be included on the form. This form is necessary to
13 comply with 04 NCAC 10A .0501, where applicable. The Form 26A, Employer's Admission of Employee's Right to
14 Permanent Partial Disability, shall read as follows:

15
16 North Carolina Industrial Commission
17 Employer's Admission of Employee's Right to Permanent Partial Disability
18 (G.S. §97-31)

19
20 IC File # _____
21 Emp. Code # _____
22 Carrier Code # _____
23 Carrier File # _____
24 Employer FEIN _____

25
26 The Use Of This Form Is Required Under The Provisions of The Workers' Compensation Act

27
28 _____
29 Employee's Name
30 _____
31 Address
32 _____
33 City _____ State _____ Zip _____
34 _____
35 Home Telephone _____ Work Telephone _____
36 Social Security Number: _____ Sex: M F Date of Birth: _____
37

1 _____
2 Employer's Name _____ Telephone Number _____

3 _____
4 Employer's Address _____ City State Zip _____

5 _____
6 Insurance Carrier _____

7 _____
8 Carrier's Address _____ City State Zip _____

9 _____
10 Carrier's Telephone Number _____ Carrier's Fax Number _____

11
12 WE, THE UNDERSIGNED, DO HEREBY AGREE AND STIPULATE AS FOLLOWS:

- 13 1. All the parties hereto are subject to and bound by the provisions of the Workers' Compensation Act and
- 14 _____ is the Carrier/Administrator for the Employer.
- 15 2. The employee sustained an injury by accident or the employee contracted an occupational disease arising
- 16 out of and in the course of employment on _____.
- 17 3. The injury by accident or occupational disease resulted in the following injuries:
- 18 _____.
- 19 4. The employee was was not paid for the 7 day waiting period.

20 If not, was salary continued? yes no. Was employee paid for the date of injury? yes no

- 21 5. The average weekly wage of the employee at the time of the injury, including overtime and all allowances,
- 22 was \$ _____ . This results in a weekly compensation rate of \$ _____ .
- 23 6. The employee has has not returned full time to work for _____
- 24 on _____ , at an average weekly wage of \$ _____ .

25 7. Claimant was released with permanent restrictions without permanent restrictions.

- 26 8. Permanent partial disability compensation will be paid to the injured worker as follows:
- 27 _____ weeks of compensation at rate of \$ _____ per week for _____ % rating to _____ (body part)
- 28 _____ weeks of compensation at rate of \$ _____ per week for _____ % rating to _____ (body part)
- 29 _____ weeks of compensation at rate of \$ _____ per week for _____ % rating to _____ (body part)

30 Total amount of permanent partial disability compensation is \$ _____ . Date of first
31 payment: _____ .

32 9. State any further matters agreed upon, including disfigurement, loss of teeth, election of temporary partial
33 disability, waiting period or other:
34 _____

35 10. An overpayment is claimed in the amount of \$ _____ . Overpayment was calculated as
36 follows: _____ .

37 If overpayment claimed, a Form 28B is attached. yes no

1 11. If applicable, the Second Injury Fund Assessment is \$ _____ . A check is is not
2 included.

3 ~~12. IMPORTANT NOTICE TO EMPLOYEE: The Industrial Commission's fee for processing this agreement~~
4 ~~is \$300.00 to be paid in equal shares by the employee and the employer. You are not required to pay your portion of~~
5 ~~the fee in advance, and if your award is \$3,000.00 or less, you are not responsible for any portion of the fee. If your~~
6 ~~award is more than \$3,000.00, the employer shall deduct \$150.00 from your award, unless you and your employer~~
7 ~~agree otherwise.~~

8 ~~Check one of the boxes below if the award is more than \$3,000.00:~~

9 ~~The employer will deduct \$150.00 from the amount to be paid pursuant to this agreement.~~

10 ~~The employee and employer have agreed that the employer will pay the entire fee.~~

11
12 The undersigned hereby certify that the material medical and vocational reports related to the injury have been
13 provided to the employee or his attorney and have been filed with the Industrial Commission for consideration
14 pursuant to G.S. 97-82(a) and Industrial Commission Rule 501(3).

15
16 _____
17 Name Of Employer Signature Title Date

18 _____
19 Name Of Carrier/Administrator Signature Direct Phone Number Title Date

20
21 By signing I enter into this agreement and certify that I have read the "Important Notices to Employee"
22 printed on pages 2 and Page 3 of this form.

23
24 _____
25 Signature of Employee Address Date

26 _____
27 Signature of Employee's Attorney Address Date

28
29 Check box if no attorney retained.

30
31 North Carolina Industrial Commission
32 The Foregoing Agreement Is Hereby Approved:

33 _____
34 Claims Examiner Date

35 _____
36 Attorney's fee approved

1 IMPORTANT NOTICE TO EMPLOYEE CLAIMING ADDITIONAL WEEKLY CHECKS OR LUMP SUM
2 PAYMENTS

3 Once your compensation checks have been stopped, if you claim further compensation, you must notify the
4 Industrial Commission in writing within two years from the date of receipt of your last compensation check or your
5 rights to these benefits may be lost.

6
7 IMPORTANT NOTICE TO EMPLOYEE INJURED BEFORE JULY 5, 1994 CLAIMING ADDITIONAL
8 MEDICAL BENEFITS

9 If your injury occurred before July 5, 1994, you are entitled to medical compensation as long as it is reasonably
10 necessary, related to your workers' compensation case, and authorized by the carrier or the Industrial Commission.

11
12 IMPORTANT NOTICE TO EMPLOYEE INJURED ON OR AFTER JULY 5, 1994 CLAIMING ADDITIONAL
13 MEDICAL BENEFITS

14 If your injury occurred on or after July 5, 1994, your right to future medical compensation will depend on several
15 factors. Your right to payment of future medical compensation will terminate two years after your employer or
16 carrier/administrator last pays any medical compensation or other compensation, whichever occurs last. If you think
17 you will need future medical compensation, you must apply to the Industrial Commission in writing within two
18 years, or your right to these benefits may be lost. To apply you may also use Industrial Commission 18M, available
19 at <http://www.ic.nc.gov/forms.html>.

20
21 IMPORTANT NOTICE TO EMPLOYER

22 The employee must be provided a copy when the agreement is signed by the employee. Failure to file Form 28B,
23 Report Of Compensation And Medical Compensation Paid, within 16 days after last payment pursuant to this
24 agreement may subject the employer or carrier/administrator to a penalty. Pursuant to Rule 04 NCAC 10A .0501,
25 within 20 days after receipt of the agreement executed by the employee, the employer or carrier/administrator must
26 submit the agreement to the Industrial Commission, or show cause for not submitting the agreement.

27
28 NEED ASSISTANCE?

29 If you have questions or need help and you do not have an attorney, you may contact the Industrial Commission at
30 (800) 688-8349.

31
32 Form 26A

33 7/2015

34
35 Self-Insured Employer or Carrier Mail to:

36 NCIC - Claims Administration

37 4335 Mail Service Center

74

1 Raleigh, North Carolina 27699-4335

2 Main Telephone: (919) 807-2500

3 Helpline: (800) 688-8349

4 Website: <http://www.ic.nc.gov/>

5

6 (b) A copy of the form described in Paragraph (a) of this Rule can be accessed at
7 <http://www.ic.nc.gov/forms/form26a.pdf>. The form may be reproduced only in the format available at
8 <http://www.ic.nc.gov/forms/form26a.pdf> and may not be altered or amended in any way.

9

10 *History Note: Authority G.S. 97-30; 97-31; 97-73; 97-80(a); 97-81(a); 97-82; S.L. 2014-77;*
11 *Eff. November 1, 2014;*
12 *Amended Eff. July 1, 2015, pursuant to S.L. 2014-77, by deleting Item 12. of subsection (a).*