

CHAPTER 23 - INDUSTRIAL COMMISSION

SUBCHAPTER 23A - WORKERS' COMPENSATION RULES

SECTION .0100 - ADMINISTRATION

11 NCAC 23A .0101 LOCATION OF MAIN OFFICE AND HOURS OF BUSINESS

The main office of the North Carolina Industrial Commission is located in the Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina. Documents that may be filed via hand-delivery in accordance with Rule .0108 of this Section may be filed at the main office between the hours of 8:00 a.m. and 5:00 p.m. only. Documents permitted to be filed electronically may be filed until 11:59 p.m. on the required filing date.

*History Note: Authority G.S. 97-80(a);
Eff. January 1, 1990;
Amended Eff. January 1, 2016; November 1, 2014; January 1, 2011; June 1, 2000;
Recodified from 04 NCAC 10A .0101 Eff. June 1, 2018;
Amended Eff. December 1, 2018.*

11 NCAC 23A .0102 OFFICIAL FORMS

(a) Copies of the Commission's rules and forms may be obtained by:

- (1) contacting the Commission in person at the address in Rule .0101 of this Section, by written request mailed to North Carolina Industrial Commission, 1236 Mail Service Center, Raleigh, NC 27699-1236, Attn.: Office of the Clerk, or
- (2) accessing or downloading the rules or forms from the Commission's website at <http://www.ic.nc.gov/abtrules.html> and <http://www.ic.nc.gov/forms.html>.

(b) Insurance carriers, self-insured employers, attorneys, and other parties may reproduce current Commission forms for their own use, provided:

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

*History Note: Authority G.S. 97-80(a); 97-81(a);
Eff. January 1, 1990;
Amended Eff. November 1, 2014; June 1, 2000;
Recodified from 04 NCAC 10A .0102 Eff. June 1, 2018;
Amended Eff. December 1, 2018.*

11 NCAC 23A .0103 NOTICE OF ACCIDENT AND CLAIM OF INJURY OR OCCUPATIONAL DISEASE

To give notice of an accident or occupational disease and to make a workers' compensation claim, an employee may complete a Form 18 Notice of Accident to Employer and Claim of Employee, Representative, or Dependent and file it in accordance with Rule .0108 of this Section.

*History Note: Authority G.S. 97-22; 97-24; 97-58; 97-80(a); 97-81;
Eff. January 1, 1990;
Amended Eff. November 1, 2014;
Recodified from 04 NCAC 10A .0103 Eff. June 1, 2018;
Amended Eff. December 1, 2018.*

11 NCAC 23A .0104 EMPLOYER'S REQUIREMENT TO FILE FIRST REPORT OF INJURY

(a) The form required to be provided by G.S. 97-92(a) is the Form 19 Employer's Report of Employee's Injury or Occupational Disease to the Industrial Commission. The Form 19 shall be used when the injury causes the employee to be absent from work for more than one day or when the charges for medical compensation exceed four thousand dollars (\$4,000). The Form 19 shall be filed with the Commission in accordance with Rule .0108(d) of this Section.

(b) The employer, carrier, or administrator shall provide the employee with a copy of the completed Form 19 Employer's Report of Employee's Injury or Occupational Disease to the Industrial Commission, along with a blank

Form 18 Notice of Accident to Employer and Claim of Employee, Representative, or Dependent for use by the employee in making a claim.

History Note: Authority G.S. 97-80(a); 97-92;
Eff. March 15, 1995;
Amended Eff. November 1, 2014; January 1, 2011; August 1, 2006; March 1, 2001; June 1, 2000;
Recodified from 04 NCAC 10A .0104 Eff. June 1, 2018;
Amended Eff. December 1, 2020.

11 NCAC 23A .0105 ELECTRONIC PAYMENT OF COSTS

History Note: Authority G.S. 97-80(a);
Eff. January 1, 2011;
Rule Expired July 18, 2013 (see S.L. 2013-294, s. 1);
Recodified from 04 NCAC 10A .0105 Eff. June 1, 2018.

11 NCAC 23A .0106 FILING OF ANNUAL REPORT REQUIREMENT

Every carrier, individual self-insurer, group self-insurer, and member self-insurer as defined by G.S. 97-130 shall submit on a yearly basis a Form 51 *Annual Consolidated Fiscal Report of "Medical Only" and "Lost Time" Cases*.

History Note: Authority G.S. 97-80(a); 97-92; 97-93; 97-130;
Eff. November 1, 2014;
Recodified from 04 NCAC 10A .0106 Eff. June 1, 2018.

11 NCAC 23A .0107 COMPUTATION OF TIME AND NOTICE BY THE COMMISSION

(a) Except as otherwise provided by statute or rule, in computing any period of time prescribed or allowed by the Commission Rules, order of the Commission, or any applicable statute, the day of the act, event, or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a holiday established by the State Human Resources Commission pursuant to 25 NCAC 01E .0901 and any subsequent amendments thereto, in which event the period runs until the end of the next State business day. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation. Whenever a party has the right to do some act or take some proceedings within a prescribed period after the service of any document by mail, three days shall be added to the prescribed period.

(b) If service is provided by electronic mail, notice pursuant to G.S. 97-86 is complete one hour after it is sent by the Commission, provided that:

- (1) notice sent after 5:00 p.m. shall be complete at 8:00 a.m. the following State business day; and
- (2) notice sent by electronic mail that is not readable by the recipient is not complete. Within five State business days of receipt of an unreadable document, the receiving party shall notify the Commission of the unreadability of the document.

(c) If service is provided by U.S. Mail, notice pursuant to G.S. 97-86 shall be complete upon the Commission's placing the item to be served, enclosed in a wrapper addressed to the party to be served, in the custody of the Mail Service Center or an official depository of the United States Postal Service.

History Note: Authority G.S. 97-80; 97-81; 97-86;
Eff. November 1, 2014;
Amended Eff. May 1, 2018;
Recodified from 04 NCAC 10A .0107 Eff. June 1, 2018.

11 NCAC 23A .0108 ELECTRONIC FILINGS WITH THE COMMISSION; HOW TO FILE

(a) All documents filed with the Commission in workers' compensation cases shall be submitted electronically in accordance with this Rule. Any document transmitted to the Commission in a manner not in accordance with this Rule shall not be accepted for filing. Any document filed with the Commission that requires contemporaneous payment of a processing fee pursuant to Rule 11 NCAC 23E .0203 shall not be deemed filed until the fee has been paid in full. The electronic filing requirements of this Rule shall not apply to employees or non-insured employers without legal representation. Employees and non-insured employers without legal representation may file all

documents with the Commission via the Commission's Electronic Document Filing Portal ("EDFP") or by sending the documents to the Clerk of the Industrial Commission via electronic mail (dockets@ic.nc.gov), facsimile, U.S. Mail, private courier service, or hand delivery.

(b) Except as set forth in Paragraphs (d) and (e) of this Rule, all documents required to be submitted electronically to the Commission shall be filed via EDFP. Information regarding how to use EDFP is available at <http://www.ic.nc.gov/training.html>. In the event EDFP is inoperable, all documents required to be filed via EDFP shall be transmitted to the Commission via electronic mail to edfp@ic.nc.gov. Documents required to be filed via EDFP that are sent to the Commission via electronic mail when EDFP is operable shall not be accepted for filing.

(c) Transcripts of depositions shall be filed with the Commission pursuant to this Rule by the court reporting service. Transcripts filed with the Commission shall have only one page of text per page and shall include all exhibits. The parties shall provide the Commission's court reporting service with the information necessary to effectuate filing of the deposition transcripts and attached exhibits via EDFP. If an exhibit to a deposition is in a form that makes submission of an electronic copy impracticable, counsel for the party offering the exhibit shall make arrangements with the Commission to facilitate the submission of the exhibit. Condensed transcripts and paper copies of deposition transcripts shall not be accepted for filing.

(d) A Form 19 shall be filed as the first report of injury (FROI) via electronic data interchange (EDI), except in claims involving non-insured employers, in claims for lung disease, in claims with multiple employers or multiple carriers, or in claims with six-character IC file numbers, in which case the Form 19 shall be filed electronically via EDFP or as otherwise permitted pursuant to Paragraph (a) of this Rule. Information regarding how to register for and use EDI is available at www.ncicedi.info.

(e) Documents to be filed with the Criminal Investigations & Employee Classification Division regarding fraud complaints shall be submitted electronically to fraudcomplaints@ic.nc.gov. Documents to be filed with the Criminal Investigations & Employee Classification Division regarding employee misclassification shall be submitted electronically to emp.classification@ic.nc.gov. Safety rules to be filed with the Commission under 11 NCAC 23A .0411 shall be submitted electronically to safety@ic.nc.gov.

(f) A self-insured employer, carrier or guaranty association, third-party administrator, court reporting service, medical provider, or law firm may apply to the Commission for an emergency temporary waiver of the electronic filing requirement set forth in Paragraph (a) of this Rule when it is unable to comply because of temporary technical problems or lack of electronic mail or internet access. The request for an emergency temporary waiver shall be included with any filing submitted via facsimile, U.S. Mail, or hand delivery due to such temporary technical or access issues.

(g) A Notice of Appeal to the North Carolina Court of Appeals shall be accepted for filing by the Commission via EDFP, U.S. Mail, hand delivery, or any other means allowed by the Rules of Appellate Procedure or applicable statutes governing appeals from the General Courts of Justice. Notwithstanding the foregoing, employees and non-insured employers without legal representation may file all documents with the Commission as provided in Paragraph (a) of this Rule.

*History Note: Authority G.S. 97-80; 97-81; 97-86;
Eff. February 1, 2016;
Amended Eff. February 1, 2017;
Recodified from 04 NCAC 10A .0108 Eff. June 1, 2018;
Amended Eff. March 1, 2021; December 1, 2018.*

11 NCAC 23A .0109 CONTACT INFORMATION

(a) "Contact information" for purposes of this Rule shall include telephone number, facsimile number, email address, and mailing address.

(b) All attorneys of record with matters before the Commission shall provide and maintain current contact information via the Commission's Electronic Document Filing Portal ("EDFP").

(c) All unrepresented persons or entities with matters before the Commission shall inform the Commission upon any change to their contact information in the following manner:

- (1) All employees who are not represented by counsel shall inform the Commission of any change in contact information by filing a written notice via EDFP, email to contactinfo@ic.nc.gov, facsimile to (919) 715-0282, U.S. mail sent to Office of the Clerk, 1236 Mail Service Center, Raleigh North Carolina 27699-1236, private courier service in accordance with Rule .0101 of this Section, or hand delivery in accordance with Rule .0101 of this Section.

- (2) All non-insured employers that are not represented by counsel shall inform the Commission of any change in contact information by filing a written notice via EDPF, email to contactinfo@ic.nc.gov, facsimile to (919) 715-0282, U.S. mail sent to Office of the Clerk, 1236 Mail Service Center, Raleigh North Carolina 27699-1236, private courier service in accordance with Rule .0101 of this Section, or hand delivery in accordance with Rule .0101 of this Section.
- (d) All carriers, third party administrators, and self-insured employers shall provide the Commission, by sending an email to contactinfo@ic.nc.gov, with an email address for service of claim-related documents in cases where the Commission does not have email contact information for a specific representative assigned to the claim.
- (e) Instructions on how to provide and update contact information via EDPF are available at <https://www.ic.nc.gov/docfiling.html>.

History Note: Authority G.S. 97-80;
Eff. January 1, 2019;
Amended Eff. March 1, 2021.

SECTION .0200 – NOTICE OF ACT

11 NCAC 23A .0201 POSTING REQUIREMENT FOR EMPLOYERS

- (a) The form required to be posted by G.S. 97-93(e) is the Form 17 *Workers' Compensation Notice to Injured Workers and Employers*, that includes the following:
- (1) name of insurer;
 - (2) policy number; and
 - (3) dates of coverage.
- (b) If there is a change in coverage, the Form 17 *Workers' Compensation Notice to Injured Workers and Employers* shall be amended within five working days.

History Note: Authority G.S. 97-80(a); 97-93;
Eff. January 1, 1990;
Amended Eff. November 1, 2014; March 15, 1995;
Recodified from 04 NCAC 10A .0201 Eff. June 1, 2018.

SECTION .0300 - INSURANCE

11 NCAC 23A .0301 PROOF OF INSURANCE COVERAGE

- (a) Every employer, either personally or through its carrier or third party administrator, subject to the provisions of the Workers' Compensation Act shall file with the Commission proof that it has obtained workers' compensation insurance, and shall post notice of proof of insurance to employees consistent with Rule .0201 of this Subchapter.
- (b) Upon actual notice of a workers' compensation claim or upon reporting a workers' compensation claim to a carrier, third party administrator, servicing agent, professional employer organization as defined in G.S. 58-89A-5(14), or the Commission, all employers shall provide the injured worker with the name of their insurance carrier and policy number or shall inform the injured worker of their self-insured status, membership in a self-insurance group or relationship with a professional employer organization that provides the insurance coverage.
- (c) Every carrier, third party administrator, servicing agent, or other entity filing a Form 19 *Employer's Report of Employee's Injury or Occupational Disease to the Industrial Commission* shall identify by name and address any professional employer organization and the name of the client company employing the employee who is the subject of the Form 19 *Employer's Report of Employee's Injury or Occupational Disease to the Industrial Commission*.
- (d) A professional employer organization shall, within 30 days of initiation or termination of the professional employer organization's relationship with any client company, notify the Commission of either the initiation or termination of the relationship and the status of the client company's workers' compensation coverage.
- (e) Upon notice from the Commission that an employer is non-insured, coverage has lapsed or been canceled, or coverage or self-insured status cannot be verified, an employer shall show proof of coverage to the Commission by:
- (1) a certificate of insurance issued by the insurance agent who procured workers' compensation insurance on behalf of the employer;
 - (2) submitting a copy of the letter of approval, license or amended license with subsidiary information, if applicable, from the North Carolina Department of Insurance notifying or

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

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

History Note: Authority G.S. 97-19; 97-80(a); 97-93;
 Eff. January 1, 1990;
 Amended Eff. January 1, 2013; June 1, 2000;
 Recodified from 04 NCAC 10A .0301 Eff. June 1, 2018.

11 NCAC 23A .0302 REQUIRED CONTACT INFORMATION FROM CARRIERS

All insurance carriers, third party administrators, and self-insured employers shall designate a primary contact person for workers' compensation issues in North Carolina and shall maintain and provide annually on July 1 to the Director of Claims Administration of the Commission via the Commission's Electronic Document Filing Portal ("EDFP") the primary contact person's current contact information, including direct telephone and facsimile numbers, mailing addresses, and email addresses. Contact information shall be updated within 30 days of any change.

History Note: Authority G.S. 97-80(a); 97-94;
 Eff. January 1, 2011;
 Amended Eff. November 1, 2014;
 Recodified from 04 NCAC 10A .0302 Eff. June 1, 2018;
 Amended Eff. December 1, 2018;
 Amended Eff. March 1, 2021.

SECTION .0400 – DISABILITY, COMPENSATION, FEES

11 NCAC 23A .0401 CALCULATING THE SEVEN-DAY WAITING PERIOD

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

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

Eff. January 1, 1990;
Amended Eff. November 1, 2014;
Recodified from 04 NCAC 10A .0401 Eff. June 1, 2018.

11 NCAC 23A .0402 SUBMISSION OF EARNINGS STATEMENT REQUIRED

- (a) Within 30 days of a request by the employee or the Commission, the employer shall submit a verified statement of the specific days worked and the earnings of the employee during the 52-week period immediately preceding the injury to the Commission and the employee's attorney of record or the employee, if not represented.
- (b) In all cases involving a fractional part of a week, the average weekly wage shall be computed based upon the applicable fractional portion of the week worked.

History Note: Authority G.S. 97-2(5); 97-18(b); 97-80(a); 97-81;
Eff. January 1, 1990;
Amended Eff. November 1, 2014;
Recodified from 04 NCAC 10A .0402 Eff. June 1, 2018.

11 NCAC 23A .0403 MANNER OF PAYMENT OF COMPENSATION

- (a) All payments of compensation shall be made directly to the employee, dependent, guardian or personal representative. Payment of compensation shall be mailed by first class mail, postage pre-paid, to an address specified by the employee, unless another method is specified by and agreed upon by the parties.
- (b) All payments of compensation shall be made in accordance with the award issued by the Commission.

History Note: Authority G.S. 97-18; 97-80(a);
Eff. January 1, 1990;
Amended Eff. November 1, 2014; June 1, 2000;
Recodified from 04 NCAC 10A .0403 Eff. June 1, 2018.

11 NCAC 23A .0404 TERMINATION AND SUSPENSION OF COMPENSATION

- (a) No application to terminate or suspend compensation shall be approved by the Commission without a formal hearing if the effect of the approval is to set aside the provisions of an award of the Commission.
- (b) When an employer, carrier, or administrator seeks to terminate or suspend temporary total disability compensation being paid pursuant to G.S. 97-29 for a reason other than those specified in G.S. 97-18(d) (payment without prejudice), G.S. 97-18.1(b) (trial return to work), or G.S. 97-29(b) (expiration of 500-week limit on disability compensation (only for claims arising on or after June 24, 2011)), the employer, carrier, or administrator shall notify the employee's attorney of record or the employee, if not represented, on Form 24, *Application to Terminate or Suspend Payment of Compensation*. This form requests:
- (1) the date of injury or accident and date the disability began;
 - (2) the nature and extent of injury;
 - (3) the number of weeks of compensation paid and the date range(s) during which such compensation was paid;
 - (4) the total amount of indemnity compensation paid to date;
 - (5) whether one of the following events has occurred:
 - (A) an agreement was approved by the Commission and the date;
 - (B) an employer admitted employee's right to compensation pursuant to G.S. 97-18(b);
 - (C) an employer paid compensation to the employee without contesting the claim within the statutory period provided under G.S. 97-18(d); or
 - (D) any other event related to the termination or suspension of compensation;
 - (6) whether the application is made to terminate or suspend compensation and the grounds; and
 - (7) whether the employee is in managed care.
- (c) The employer, carrier, or administrator shall specify the grounds and the alleged facts supporting the application and shall complete the blank space in the "Important Notice to Employee" portion of Form 24 *Application to Terminate or Suspend Payment of Compensation* by inserting a date 17 days from the date the employer, carrier, or administrator serves the completed Form 24 *Application to Terminate or Suspend Payment of Compensation* on the employee's attorney of record by e-mail or facsimile, or the employee, if not represented, by first class mail. The Form 24 *Application to Terminate or Suspend Payment of Compensation* and attached documents shall be sent to the Commission via upload to the Electronic Document Filing Portal in accordance with Rule .0108 of this Subchapter,

and shall be contemporaneously served on employee's counsel by e-mail or facsimile, or on the employee, if unrepresented, by first class mail.

(d) The Form 24 *Application to Terminate or Suspend Payment of Compensation* shall specify the number of pages of documents attached which are to be considered by the Commission. If the employee or the employee's attorney of record objects by the date inserted on the employer's Form 24 *Application to Terminate or Suspend Payment of Compensation*, the Commission shall set the case for an informal hearing, unless waived by the parties in favor of a formal hearing. The objection shall be filed in accordance with Rule .0108 and shall be accompanied by all currently available supporting documentation. A copy of any objection shall be contemporaneously served on the employer, carrier, or administrator. The Form 24 *Application to Terminate or Suspend Payment of Compensation* or objection may be supplemented with any additional relevant documentation received after the initial filing. The term "carrier" or "administrator" also includes any successor in interest in the pending claim.

(e) If an employee does not object within the allowed time, the Commission shall review the Form 24 *Application to Terminate or Suspend Payment of Compensation* and any attached documentation, and an Administrative Decision and Order shall be rendered without an informal hearing as to whether there is a sufficient basis under the Workers' Compensation Act to terminate or suspend compensation, except as provided in Paragraph (g) of this Rule. Either party may seek review of the Administrative Decision and Order as provided by Rule .0702 of this Subchapter.

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

(g) Either party may appeal the Administrative Decision and Order of the Commission as provided by Rule .0702 of this Subchapter. A Deputy Commissioner shall conduct a hearing which shall be a hearing de novo. The hearing shall be peremptorily set and shall not require a Form 33 *Request that Claim be Assigned for Hearing*. The employer has the burden of producing evidence on the issue of the employer's application for termination or suspension of compensation. If the Deputy Commissioner reverses an order previously granting a Form 24 *Application to Terminate or Suspend Payment of Compensation* motion, the employer, carrier, or administrator shall promptly resume compensation or otherwise comply with the Deputy Commissioner's decision, notwithstanding any appeal or application for review to the Full Commission pursuant to G.S. 97-85.

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

(i) The Commission shall send a copy of the Administrative Decision and Order to a non-prevailing party who is without legal representation by certified mail.

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

(k) Any Administrative Decision and Order or other Commission decision allowing the suspension of compensation on the grounds of noncompliance with medical treatment pursuant to G.S. 97-25 or G.S. 97-27, noncompliance with

vocational rehabilitation pursuant to G.S. 97-25 or G.S. 97-32.2, or unjustified refusal to return to work pursuant to G.S. 97-32 must specify what action the employee must take to end the suspension and reinstate the compensation.

*History Note: Authority G.S. 97-18.1(c); 97-18.1(d); 97-32.2(g); 97-80(a);
Eff. January 1, 1990;
Amended Eff. February 1, 2016; November 1, 2014; June 1, 2000; March 15, 1995;
Recodified from 04 NCAC 10A .0404 Eff. June 1, 2018.*

11 NCAC 23A .0404A TRIAL RETURN TO WORK

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

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

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

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

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

(f) Upon resumption of payment of compensation for total disability, the employer, carrier, or administrator shall complete and file a Form 62 *Notice of Reinstatement or Modification of Compensation* or such other forms as may be required by the Workers' Compensation Act or by Commission rule. A copy of the Form 62 *Notice of*

Reinstatement or Modification of Compensation shall be sent to the employee's attorney of record or the employee, if unrepresented.

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

- (1) cases in which the employee is not absent from work for more than one day or in which medical expenses are less than two thousand dollars (\$2,000);
- (2) cases in which the employee has missed fewer than eight days from work;
- (3) cases in which the employee has been released to return to work by an authorized treating physician as specified in Paragraph (b) of this Rule without restriction or limitation except that if the physician, within 45 days of the employee's return to work date, determines that the employee is not able to perform the job duties assigned, then the employer, carrier, or administrator shall resume benefits. If within the same time period, the physician determines that the employee may work only with restrictions, then the employee is entitled to a resumption of benefits commencing as of the date of the report, unless the employer is able to offer employment consistent with the restrictions, in which case a trial return to work period shall be deemed to have commenced at the time of the employee's initial return to work;
- (4) cases in which the employee has accepted or agreed to accept compensation for permanent partial disability pursuant to G.S. 97-31, unless the trial return to work follows reinstatement of compensation for total disability under G.S. 97-29; and
- (5) claims pending on or filed after 1 January 1995, when the employer, carrier, or administrator contests a claim pursuant to G.S. 97-18(d) within the time allowed thereunder.

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

History Note: Authority G.S. 97-18(h); 97-29; 97-32.1; 97-80(a);
Eff. February 15, 1995;
Amended Eff. November 1, 2014; August 1, 2006; June 1, 2000;
Recodified from 04 NCAC 10A .0404A Eff. June 1, 2018.

11 NCAC 23A .0405 REINSTATEMENT OF COMPENSATION

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

(b) When reinstatement is sought by the filing of a Form 23 *Application to Reinstate Payment of Disability Compensation*, the original Form 23 *Application to Reinstate Payment of Disability Compensation* and the attached documents shall be filed with the Commission in accordance with Rule .0108 of this Subchapter, and a copy of the Form 23 and attached documents shall contemporaneously be sent to the employer, carrier, or administrator and the employer's, carrier's, or administrator's attorney of record. The employee shall specify the grounds and the alleged facts supporting the application and shall complete the blank space in the "Important Notice to Employer" portion of Form 23 *Application to Reinstate Payment of Disability Compensation* by inserting a date 17 days from the date the employee serves the completed Form 23 *Application to Reinstate Payment of Disability Compensation* on the employer, carrier, or administrator and the attorney of record, if any. The Form 23 *Application to Reinstate Payment of Disability Compensation* shall specify the number of pages of documents attached that are to be considered by the Commission. Within 17 days from the date the employee serves the completed Form 23 *Application to Reinstate Payment of Disability Compensation* on the employer, carrier, or administrator and the attorney of record, if any, the employer, carrier, or administrator shall complete Section B of the Form 23 *Application to Reinstate Payment of Disability Compensation* and file it with the Commission in accordance with Rule .0108 of this Subchapter and send a copy contemporaneously to the employee or the employee's attorney of record.

(c) If the employer, carrier, or administrator does not object within the time allowed, the Commission shall review the Form 23 *Application to Reinstate Payment of Disability Compensation* and the attached documentation and, without an informal hearing, issue an Administrative Decision and Order as to whether there is sufficient basis under the Workers' Compensation Act to reinstate compensation. This Administrative Decision and Order shall be issued within five days of the expiration of the time within which the employer, carrier, or administrator could have filed a response to the Form 23 *Application to Reinstate Payment of Disability Compensation*. Either party may seek review of the Administrative Decision and Order as provided by Rule .0702 of this Subchapter.

(d) If the employer, carrier, or administrator timely objects to the Form 23 *Application to Reinstate Payment of Disability Compensation*, the Commission shall conduct an informal hearing within 25 days of the receipt by the Commission of the Form 23 *Application to Reinstate Payment of Disability Compensation* unless the time is extended for good cause shown. The informal hearing may be conducted with the parties or their attorneys of record personally present with the Commission. The Commission shall make arrangements for the informal hearing with a view toward conducting the hearing in the most expeditious manner. The informal hearing shall be no more than 30 minutes, with each side being given 10 minutes to present its case and five minutes for rebuttal. Notwithstanding the foregoing, the employee may waive the right to an informal hearing and proceed to a formal hearing by filing a request for hearing on a Form 33 *Request that Claim be Assigned for Hearing*. Either party may appeal the Administrative Decision and Order of the Commission as provided by Rule .0702 of this Subchapter. A Deputy Commissioner shall conduct a hearing which shall be a hearing de novo. The hearing shall be peremptorily set and shall not require a Form 33 *Request that Claim be Assigned for Hearing*. The employee has the burden of producing evidence on the issue of the employee's application to reinstate compensation. If the Deputy Commissioner reverses an order previously granting a Form 23 *Application to Reinstate Payment of Disability Compensation* motion, the employer shall promptly terminate compensation or otherwise comply with the Deputy Commissioner's decision, notwithstanding any appeal or application for review to the Full Commission under G.S. 97-85.

(e) If the Commission is unable to render a decision after the informal hearing, the Commission shall issue an order to that effect, which shall be in lieu of a Form 33 *Request that Claim be Assigned for Hearing*, and the case shall be placed on the formal hearing docket. If additional issues are to be addressed, the employee, employer, carrier, or administrator shall file a Form 33 *Request that Claim be Assigned for Hearing* or notify the Commission that a formal hearing is not currently necessary within 30 days of the date of the Administrative Decision or Order. The effect of placing the case on the docket shall be the same as if the Form 23 *Application to Reinstate Payment of Disability Compensation* was denied, and compensation shall not be reinstated until such time as the case is decided by a Commissioner or a Deputy Commissioner following a formal hearing.

History Note: Authority G.S. 97-18(k); 97-80(a);
Eff. January 1, 1990;
Amended Eff. February 1, 2016; November 1, 2014;
Recodified from 04 NCAC 10A .0405 Eff. June 1, 2018.

11 NCAC 23A .0406 DISCOUNT RATE TO BE USED IN DETERMINING COMMUTED VALUES

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

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

History Note: Authority G.S. 97-40; 97-44; 97-80(a);
Eff. January 1, 1990;
Amended Eff. November 1, 2014;
Recodified from 04 NCAC 10A .0406 Eff. June 1, 2018;
Amended Eff. October 1, 2019.

11 NCAC 23A .0407 FEES FOR MEDICAL COMPENSATION

History Note: Authority G.S. 97-18(i); 97-25.6; 97-26; 97-80(a); 138-6;
Eff. January 1, 1990;
Amended Eff. June 1, 2000; March 15, 1995;
Repealed Eff. November 1, 2014;
Recodified from 04 NCAC 10A .0407 Eff. June 1, 2018.

11 NCAC 23A .0408 APPLICATION FOR OR STIPULATION TO ADDITIONAL MEDICAL COMPENSATION

- (a) An employee may file an application for additional medical compensation with the Office of the Executive Secretary for an order for payment of additional medical compensation within two years of the date of the last payment of medical or indemnity compensation, whichever occurs last. An application may be made on a Form 18M Employee's Application for Additional Medical Compensation or by written request. In the alternative, an employee may file an application for additional medical compensation by filing a Form 33 Request that Claim be Assigned for Hearing with the Commission pursuant to Rule .0602 of this Subchapter.
- (b) Upon receipt of a Form 18M Employee's Application for Additional Medical Compensation or a written request, the Commission shall notify the employer, carrier, or administrator that the claim has been received by providing a copy of the Form 18M Employee's Application for Additional Medical Compensation or the written request. Within 30 days, the employer, carrier, or administrator may send to the Commission and the employee's attorney of record or the employee, if unrepresented, a written statement as to whether the request is accepted or denied. If the request is denied, the employer, carrier, or administrator may state in writing the grounds for the denial and shall attach any supporting documentation to the statement of denial.
- (c) The parties may, by agreement or stipulation consistent with the Workers' Compensation Act, provide for additional medical compensation.
- (d) This Rule applies to injuries occurring on or after July 5, 1994.

*History Note: Authority G.S. 97-25.1; 97-80(a);
Eff. March 15, 1995;
Amended Eff. November 1, 2014; June 1, 2000;
Recodified from 04 NCAC 10A .0408 Eff. June 1, 2018;
Amended Eff. December 1, 2020.*

11 NCAC 23A .0409 CLAIMS FOR DEATH BENEFITS

- (a) An employer shall notify the Commission of the occurrence of a death resulting from an injury or occupational disease allegedly arising out of and in the course of employment by filing a Form 19 Employer's Report of Employee's Injury or Occupational Disease to the Industrial Commission within five days of knowledge of the death.
- (b) An employer, carrier, or administrator shall conduct an investigation to determine the names and addresses of decedent's potential beneficiaries under G.S. 97-38 and identify them on the Form 29 Supplemental Report for Fatal Accidents. The Form 29 Supplemental Report for Fatal Accidents shall be filed with the Commission within 45 days of notification of a death or allegation of death resulting from an injury or occupational disease arising out of and in the course of employment.
- (c) If the employer, carrier, or administrator disputes that an employee's death is compensable or denies it has liability for the claim, the employer, carrier, or administrator shall notify the Commission on a Form 61 Denial of Workers' Compensation Claim. When the employer, carrier, or administrator denies liability for a claim involving an employee's death, the employer, carrier, or administrator shall send the form to all known potential beneficiaries, their attorneys of record, if any, all health care providers that have submitted bills to the employer, carrier, or administrator, and the Commission.
- (d) If the employer, carrier, or administrator accepts liability for a claim involving an employee's death and there are no issues necessitating a hearing for determination of beneficiaries or their respective rights, the parties shall submit either a Form 30 Agreement for Compensation for Death as set forth in Rule .0501 of this Subchapter or a proposed Opinion and Award.
- (e) If the parties submit a Form 30 Agreement for Compensation for Death, the agreement shall be filed in accordance with Rule .0108 of this Subchapter with the following:
- (1) a stipulation as to average weekly wage;
 - (2) any affidavits regarding dependents;
 - (3) the employee's death certificate;
 - (4) a Form 29 Supplemental Report for Fatal Accidents;
 - (5) a Form 42 Application for Appointment of Guardian ad Litem, if any beneficiary is a minor or incompetent;
 - (6) proof of beneficiary status, such as marriage license, birth certificate, or divorce decree;
 - (7) a funeral bill or stipulation as to payment of the funeral benefit;

- (8) a Form 30D Award Approving Agreement for Compensation for Death; and
 - (9) an affidavit or itemized statement in support of an award of attorney's fees if an attorney is seeking fees for representation of one or more beneficiaries.
- (f) If the parties seek a written Opinion and Award from the Commission regarding the payment of death benefits in lieu of submitting a Form 30 Agreement for Compensation for Death, the parties shall file, in accordance with Rule .0108 of this Subchapter, a proposed Opinion and Award with the following:
- (1) a stipulation regarding all jurisdictional matters;
 - (2) the decedent's name, social security number, employer, insurance carrier or servicing agent, and the date of the injury giving rise to this claim;
 - (3) a stipulation as to average weekly wage;
 - (4) any affidavits regarding dependents;
 - (5) the employee's death certificate;
 - (6) a Form 29 Supplemental Report for Fatal Accidents;
 - (7) a Form 42 Application for Appointment of Guardian ad Litem, if any beneficiary is a minor or incompetent;
 - (8) proof of beneficiary status, such as marriage license, birth certificate, or divorce decree;
 - (9) medical records, if any;
 - (10) a statement of payment of medical expenses incurred, if any;
 - (11) a funeral bill or stipulation as to payment of the funeral benefit; and
 - (12) an affidavit or itemized statement in support of an award of attorney's fees if an attorney is seeking fees for representation of one or more beneficiaries.
- (g) If an issue exists as to whether a person is a beneficiary pursuant to G.S. 97-38 or if any other disputed issue exists in an accepted claim, the employer, carrier, administrator, potential beneficiary, or any person asserting a claim for benefits may request a hearing by filing a Form 33 Request that Claim be Assigned for Hearing in accordance with Rule .0602 of this Subchapter.
- (h) Upon approval by the Commission of a Form 30 Agreement for Compensation for Death or upon the issuance of a final order of the Commission directing payment of death benefits pursuant to G.S. 97-38, payment shall be made by the employer, carrier, or administrator directly to the beneficiaries, with the following exceptions:
- (1) any applicable award of attorney's fees shall be paid directly to the attorney; and
 - (2) benefits due to a minor or incompetent.
- (i) In all cases involving minors and incompetent persons who are potential beneficiaries, a guardian ad litem shall be appointed pursuant to Rule .0604 of this Subchapter.
- (j) Any benefits due to a minor pursuant to G.S. 97-38 shall be paid directly to the minor's parent, legal guardian, or legal custodian, if the minor remains in the physical custody of such person, or another person if ordered by the Commission for good cause shown. The benefits shall be for the exclusive use and benefit of the minor. When a beneficiary reaches the age of 18, any remaining benefits shall be paid directly to the beneficiary.
- (k) The Commission shall order that the benefits for an incompetent beneficiary shall be paid to the person or entity authorized to receive funds on behalf of the beneficiary pursuant to a federal or state court order, or to the Clerk of Court in the county in which the beneficiary resides, for the beneficiary's exclusive use and benefit.
- (l) Upon a change in circumstances, any interested party may request that the Commission amend the terms of any award with respect to a minor or incompetent person to direct payment to another party on behalf of the minor or incompetent person.
- (m) In the case of benefits commuted to present value, only those sums that have not accrued at the time of the approval of a Form 30 Agreement for Compensation for Death or entry of a final order of the Commission directing payment of death benefits pursuant to G.S. 97-38 are subject to commutation pursuant to Rule .0406 of this Subchapter.

History Note: Authority G.S. 97-38; 97-39; 97-80(a);
 Eff. June 1, 2000;
 Amended Eff. November 1, 2014; January 2, 2011;
 Recodified from 04 NCAC 10A .0409 Eff. June 1, 2018;
 Amended Eff. December 1, 2020.

11 NCAC 23A .0410 COMMUNICATION FOR MEDICAL INFORMATION

- (a) When an employer seeks to communicate pursuant to G.S. 97-25.6(c)(2) with an employee's authorized health care provider in writing, without the express authorization of the employee, to obtain relevant medical information

not available in the employee's medical records under G.S. 97-25.6(c)(1), the employer may use the Commission's Medical Status Questionnaire.

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

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

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

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

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

History Note: Authority G.S. 97-25.6; 97-80(a);
Eff. November 1, 2014;
Recodified from 04 NCAC 10A .0410 Eff. June 1, 2018.

11 NCAC 23A .0411 SAFETY RULES

The process for the Commission to approve safety rules or regulations adopted by an employer as set forth in G.S. 97-12 is as follows:

- (1) The rules shall comply with the general provisions of the safety rules outlined by the American National Standards Institute and the Occupational Safety and Health Act. These standards can be purchased at <http://ansi.org/> and accessed free of charge at <https://www.osha.gov/law-regs.html>, respectively.
- (2) The rules shall be filed by the employer in writing with the Commission in accordance with Rule .0108 of this Subchapter.
- (3) The rules shall be reviewed by the Commission or the Commission's designee and approved if they are found to be in compliance with Item (1) of this Rule. The Commission shall return to the employer a copy of the rules bearing a certificate of approval from the Commission indicating that the rules have been approved by the Commission pursuant to G.S. 97-12. An employer may revise and resubmit the rules if not approved by the Commission.

History Note: Authority G.S. 97-12; 97-80(a);
Eff. November 1, 2014;
Recodified from 04 NCAC 10A .0411 Eff. June 1, 2018;
Amended Eff. December 1, 2018.

SECTION .0500 – AGREEMENTS

11 NCAC 23A .0501 AGREEMENTS FOR PROMPT PAYMENT OF COMPENSATION

(a) To facilitate the payment of compensation within the time prescribed in G.S. 97-18, the Commission shall accept memoranda of agreement on Commission forms. These forms include the Form 21 Agreement for Compensation for Disability, Form 26 Supplemental Agreement as to Payment of Compensation, Form 26A Employer's Admission of Employee's Right to Permanent Partial Disability, Form 26D Agreement for Payment of Unpaid Compensation in Unrelated Death Cases, and Form 30 Agreement for Compensation for Death.

(b) No agreement for permanent disability shall be approved until the relevant medical and vocational records, including a job description if the employee has permanent work restrictions and has returned to work for the employer of injury, known to exist in the case have been filed with the Commission. When requested by the Commission, the parties shall file any additional documentation necessary to determine whether the employee is

receiving the disability compensation to which he or she is entitled and that an employee qualifying for disability compensation under G.S. 97-29 or G.S. 97-30, and G.S. 97-31 has the benefit of the more favorable remedy.

(c) After the employer, carrier, or administrator has received a memorandum of agreement that has been signed by the employee and the employee's attorney of record, if any, the employer, carrier, or administrator shall submit the memorandum of agreement within 20 days to the Commission for review and approval. Agreements conforming to the provisions of the Workers' Compensation Act shall be approved by the Commission and a copy returned to the employer, carrier, or administrator, and a copy sent to the employee.

(d) Upon submission to the Commission of the executed agreement, the employer, carrier, administrator, or the attorney of record, if any, shall provide the employee, beneficiary, or attorney of record, if any, with a copy of the executed agreement that was submitted to the Commission.

(e) All memoranda of agreement for cases that are calendared for hearing before a Commissioner or Deputy Commissioner shall be addressed to that Commissioner or Deputy Commissioner, and filed in accordance with Rule .0108 of this Subchapter. Before a case is calendared, or once a case has been continued or removed, or after the filing of an Opinion and Award, all memoranda of agreement shall be addressed to the Claims Section of the Commission, and filed in accordance with Rule .0108 of this Subchapter.

*History Note: Authority G.S. 97-18; 97-80(a); 97-82;
Eff. January 1, 1990;
Amended Eff. November 1, 2014; August 1, 2006;
Recodified from 04 NCAC 10A .0501 Eff. June 1, 2018;
Amended Eff. December 1, 2020.*

11 NCAC 23A .0502 COMPROMISE SETTLEMENT AGREEMENTS

(a) The Commission shall not approve a compromise settlement agreement unless it contains the following:

- (1) The employee knowingly and intentionally waives the right to further benefits under the Workers' Compensation Act for the injury that is the subject of this agreement.
- (2) The parties' agreement, if any, as to the payment of the costs due to the Commission pursuant to 11 NCAC 23E .0203, and any mediation costs pursuant to 11 NCAC 23G .0107. If there is no agreement as to the payment of some or all of these costs, the compromise settlement agreement shall include the credits, including the amounts, to be applied by the employer or carrier against the settlement proceeds.
- (3) An affirmative statement that no rights other than those arising under the provisions of the Workers' Compensation Act are compromised or released by this agreement.
- (4) Whether the employee has, or has not, returned to work.
- (5) If the employee has returned to work, whether the employee is earning the same or greater average weekly wage.
- (6) If the employee has returned to work at a lower average weekly wage, a description of the specific job or position, the name of the employer, and the average weekly wage earned. This Subparagraph does not apply if the employee is represented by counsel or if the employee certifies that partial wage loss due to an injury or occupational disease is not being claimed.
- (7) If the employee has not returned to work, a summary of the employee's age, educational level, past vocational training, past work experience, and any emotional, mental, or physical impairment that predates the current injury or occupational disease. This Subparagraph does not apply if:
 - (A) it places an unreasonable burden upon the parties;
 - (B) the employee is represented by counsel; or
 - (C) the employee certifies that total wage loss due to an injury or occupational disease is not being claimed.

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

- (1) The relevant medical, vocational, and rehabilitation reports known to exist, including those pertinent to the employee's future earning capacity, are submitted with the agreement to the Commission by the employer, carrier, administrator, or the attorney for the employer.
- (2) The employee, the employee's attorney of record, if any, and an attorney of record or other representative who has been given the authority to sign for the employer, carrier and administrator, have signed the agreement.

- (3) In a claim where liability is admitted or otherwise has been established, the employer, carrier, or administrator has undertaken to pay all medical expenses for the compensable injury to the date of the settlement agreement.
 - (4) In a claim in which the employer, carrier, or administrator has not agreed to pay all medical expenses of the employee related to the injury up to the date of the settlement agreement, the settlement agreement contains a list of all known medical expenses of the employee related to the injury to the date of the settlement agreement. This list of known medical expenses shall include:
 - (A) All expenses that have been paid by the employer, carrier, or administrator;
 - (B) All expenses that the employer, carrier, or administrator disputes;
 - (C) All expenses that have been paid by the employee;
 - (D) All expenses that have been paid by a health benefit plan;
 - (E) All unpaid expenses that will be paid by the employer, carrier, or administrator; and
 - (F) All unpaid expenses that will be paid by the employee.
 - (5) The settlement agreement provides that a party who has agreed to pay a disputed unpaid medical expense will notify the unpaid health care provider in writing of the party's responsibility to pay the unpaid medical expense. Other unpaid health care providers will be notified in writing of the completion of the settlement by the party specified in the settlement agreement:
 - (A) when the employee or the employee's attorney has notified the unpaid health care provider in writing under G.S. 97-90(e) not to pursue a private claim against the employee for the costs of medical treatment; or
 - (B) when the unpaid health care provider has notified the employee or the employee's attorney in writing of its claim for payment for the costs of medical treatment and has requested notice of a settlement.
 - (6) Any obligation of any party to pay an unpaid disputed medical expense pursuant to a settlement agreement does not require payment of any medical expense in excess of the maximum allowed under G.S. 97-26.
 - (7) The settlement agreement contains a finding that the positions of the parties to the agreement are reasonable as to the payment of medical expenses.
- (c) When a settlement has been reached, the written agreement shall be submitted to the Commission upon execution in accordance with Rule .0108 of this Subchapter. All compromise settlement agreements shall be distributed for review in accordance with Paragraphs (a) through (c) of Rule .0609 of this Subchapter. Any changes or addenda to the agreement submitted to the Commission shall be served upon the opposing party contemporaneously with submission to the Commission.
- (d) The employer, carrier, or administrator shall furnish an executed copy of the agreement to the employee's attorney of record or the employee, if unrepresented.
- (e) An employee's attorney who seeks fees in connection with a compromise settlement agreement shall submit a copy of the fee agreement with the employee. Further, if the employee's attorney is aware of a fee being claimed by a prior attorney for the employee, the employee's attorney shall advise the Commission at the time of the submission of a compromise settlement agreement whether an agreement has been reached with the prior attorney regarding a division of the fee and, if so, the division proposed.

History Note: Authority G.S. 97-17; 97-80(a); 97-82;
 Eff. January 1, 1990;
 Amended Eff. February 1, 2016; November 1, 2014; August 1, 2006; June 1, 2000; March 15, 1995;
 Recodified from 04 NCAC 10A .0502 Eff. June 1, 2018;
 Amended Eff. January 1, 2019.

11 NCAC 23A .0503 NOTICE OF LAST PAYMENT FILING REQUIREMENT

The form(s) required to be provided by G.S. 97-18(h) include the following:

- (1) Form 28B Report of Employer or Carrier/Administrator of Compensation and Medical Compensation Paid and Notice of Right to Additional Medical Compensation; and
- (2) Form 28C Report of Employer or Carrier/Administrator of Compensation and Medical Compensation Paid Pursuant to a Compromise Settlement Agreement.

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

Eff. January 1, 1990;
Amended Eff. November 1, 2014;
Recodified from 04 NCAC 10A .0503 Eff. June 1, 2018;
Amended Eff. December 1, 2018.

SECTION .0600 – CLAIMS ADMINISTRATION AND PROCEDURES

11 NCAC 23A .0601 EMPLOYER'S OBLIGATIONS UPON NOTICE; DENIAL OF LIABILITY; AND SANCTIONS

(a) Upon the employee's filing of a claim for compensation with the Commission, the Commission may order sanctions pursuant to G.S. 97-18(j) against the employer or its insurance carrier if it does not, within 30 days following notice from the Commission of the filing of the claim, or 90 days when a disease is alleged to be from exposure to chemicals, fumes, or other materials or substances in the workplace, do one of the following:

- (1) File a Form 60 *Employer's Admission of Employee's Right to Compensation* to notify the Commission and the employee in writing that the employer is admitting the employee's right to compensation and, if applicable, satisfy the requirements for payment of compensation under G.S. 97-18(b);
- (2) File a Form 61 *Denial of Workers' Compensation Claim* to notify the Commission and the employee that the employer denies the employee's right to compensation consistent with G.S. 97-18(c);
- (3) File a Form 63 Notice to Employee of Payment of Compensation Without Prejudice consistent with G.S. 97-18(d).

For purposes of this Rule, sanctions ordered pursuant to G.S. 97-18(j) shall not prohibit the employer or its insurance carrier from contesting the compensability of and its liability for the claim.

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

(b) When liability in any case is denied, the employer or insurance carrier shall provide a detailed statement of the basis of denial that shall be set forth in a letter of denial or Form 61 *Denial of Workers' Compensation Claim*, and that shall be sent to the employee's attorney of record or the employee, if unrepresented, all known health care providers who have submitted bills and provided medical records to the employer or carrier, and the Commission.

History Note: Authority G.S. 97-18; 97-80(a); 97-81(a);
Eff. January 1, 1990;
Amended Eff. November 1, 2014; August 1, 2006; June 1, 2000;
Recodified from 04 NCAC 10A .0601 Eff. June 1, 2018.

11 NCAC 23A .0602 REQUEST FOR HEARING

(a) Contested claims shall be set on the hearing docket only upon the written request of one of the parties for a hearing or rehearing of the case in dispute. Any request for hearing shall contain the following:

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

(b) A Form 33 Request that Claim be Assigned for Hearing, completed in full, shall constitute compliance with this Rule. The request for a hearing shall be filed with the Office of the Clerk in accordance with Rule .0108 of this Subchapter. A copy of the Form 33 Request that Claim be Assigned for Hearing shall be forwarded to the attorneys for all opposing parties, or to the opposing parties themselves, if unrepresented.

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

Eff. January 1, 1990;
Amended Eff. November 1, 2014; June 1, 2000;
Recodified from 04 NCAC 10A .0602 Eff. June 1, 2018;
Amended Eff. December 1, 2018.

11 NCAC 23A .0603 RESPONDING TO A PARTY'S REQUEST FOR HEARING

(a) No later than 45 days from receipt of a request for hearing from a party, the opposing party or parties shall file with the Commission a response to the request for hearing.

(b) The response shall contain the following:

- (1) the basis of the disagreement between the parties, including a statement of the issues raised by the moving party that are conceded and the issues raised by the moving party that are denied;
- (2) the date of the injury, if it is contended to be different than that alleged by the moving party;
- (3) the part of the body injured, if it is contended to be different than that alleged by the moving party;
- (4) the city and county where the injury occurred, if they are contended to be different than that alleged by the moving party;
- (5) an estimate of the time required for the hearing of the case; and
- (6) the telephone number(s), email address(es), and mailing address(es) of the party or parties responding to the request for hearing and their legal counsel.

(c) A Form 33R Response to Request that Claim be Assigned for Hearing, completed in full and filed with the Office of the Clerk in accordance with Rule .0108 of this Subchapter, shall constitute compliance with this Rule. A copy of the Form 33R Response to Request that Claim be Assigned for Hearing shall be forwarded to the attorneys for all opposing parties or the opposing parties themselves, if unrepresented.

History Note: Authority G.S. 97-80(a); 97-83;
Eff. January 1, 1990;
Amended Eff. November 1, 2014; June 1, 2000;
Recodified from 04 NCAC 10A .0603 Eff. June 1, 2018;
Amended Eff. December 1, 2018.

11 NCAC 23A .0604 APPOINTMENT OF GUARDIAN AD LITEM

(a) Minors or incompetent individuals may bring an action only through their guardian ad litem. Upon the written application on a Form 42 Application for Appointment of Guardian Ad Litem, the Commission shall appoint the person as guardian ad litem, if the Commission determines it to be in the best interest of the minor or incompetent individual. The Commission shall appoint the guardian ad litem only after due inquiry as to the fitness of the person to be appointed.

(b) No compensation due or owed to an incompetent individual shall be paid directly to the guardian ad litem, unless the guardian ad litem has authority to receive the money pursuant to a federal or state court order. No compensation due or owed to a minor shall be paid directly to the guardian ad litem, except that a parent, legal guardian, or legal custodian may receive compensation on behalf of a minor in his or her capacity as parent, legal guardian, or legal custodian.

(c) The Commission may assess a fee to be paid by the employer or the insurance carrier to an attorney who serves as a guardian ad litem for services rendered upon receipt of an affidavit of time spent in representation of the minor or incompetent individual as part of the costs.

History Note: Authority G.S. 97-50; 97-79(e); 97-80(a); 97-91;
Eff. January 1, 1990;
Amended Eff. November 1, 2014; January 1, 2011; June 1, 2000; March 15, 1995;
Recodified from 04 NCAC 10A .0604 Eff. June 1, 2018;
Amended Eff. January 1, 2019.

11 NCAC 23A .0605 DISCOVERY

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

- (1) Any party may serve upon any other parties written interrogatories, up to 30 in number, including subparts thereof, to be answered by the party served or, if the party served is a public or private

- corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available from the party interrogated.
- (2) Interrogatories may, without leave of the Commission, be served upon any party after the filing of a Form 18 *Notice of Accident to Employer and Claim of Employee, Representative, or Dependent*, Form 18B *Claim by Employee, Representative, or Dependent for Benefits for Lung Disease*, or Form 33 *Request that Claim be Assigned for Hearing*, or after the acceptance of liability for a claim by the employer.
 - (3) Each interrogatory shall be answered separately and in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers shall be signed by the person making them and the objections shall be signed by the party making them. The party on whom the interrogatories have been served shall serve a copy of the answers and objections, if any, within 30 days after service of the interrogatories. The parties may stipulate to an extension of time to respond to the interrogatories. A motion to extend the time to respond shall state that an attempt to reach agreement with the opposing party to informally extend the time for response has been unsuccessful and the opposing party's position or that there has been an attempt to contact the opposing party to ascertain its position.
 - (4) If there is an objection to or other failure to answer an interrogatory, the party submitting the interrogatories may move the Commission for an order compelling answer.
 - (5) Interrogatories and requests for production of documents shall relate to matters that are not privileged, that are relevant to an issue in dispute, or that the requesting party reasonably believes may later be disputed. The signature of a party or attorney serving interrogatories or requests for production of documents constitutes a certificate by such person that he or she has personally read each of the interrogatories and requests for production of documents, that no such interrogatory or request for production of documents will oppress a party or cause any unnecessary expense or delay, that the information requested is not known or equally available to the requesting party, and that the interrogatory or requested document relates to an issue presently in dispute or that the requesting party reasonably believes may later be in dispute. A party may serve an interrogatory, however, to obtain verification of facts relevant to an issue presently in dispute. Answers to interrogatories may be used to the extent permitted by Chapter 8C of the North Carolina General Statutes.
 - (6) The parties may serve requests for production of documents without leave of the Commission until 35 days prior to the date of hearing.
 - (7) Additional methods of discovery as provided by the North Carolina Rules of Civil Procedure may be used only upon motion and approval by the Commission or by agreement of the parties. The Commission may approve the motion if it is shown to be in the interests of justice or to promote judicial economy.
 - (8) Discovery requests and responses, including interrogatories and requests for production of documents, shall not be filed with the Commission, except for the following:
 - (a) notices of depositions;
 - (b) discovery requests and responses deemed by filing party to be pertinent to a pending motion;
 - (c) responses to discovery following a motion or order to compel; and
 - (d) post-hearing discovery requests and responses.The above-listed documents shall be filed with the Commission, as well as served on the opposing party.
 - (9) Sanctions shall be imposed under this Rule for failure to comply with a Commission order compelling discovery unless the Commission excuses the failure based on an inability to comply with the order. A motion by a party or its attorney to compel discovery under this Rule and Rule .0607 of this Subchapter shall represent that informal means of resolving the discovery dispute have been attempted in good faith and state the opposing party's position or that there has been a reasonable attempt to contact the opposing party and ascertain its position.

History Note: Authority G.S. 97-80(a); 97-80(f); S.L. 2014-77;
Eff. January 1, 1990;
Amended Eff. November 1, 2014; January 1, 2011; June 1, 2000;
Recodified from 04 NCAC 10A .0605 Eff. June 1, 2018.

11 NCAC 23A .0606 DISCOVERY - POST HEARING

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

*History Note: Authority G.S. 97-80(a); 97-80(f);
Eff. January 1, 1990;
Amended Eff. November 1, 2014;
Recodified from 04 NCAC 10A .0606 Eff. June 1, 2018.*

11 NCAC 23A .0607 DISCOVERY OF RECORDS AND REPORTS

(a) Upon written request, any party shall provide to the requesting party without cost, a copy of all medical, vocational and rehabilitation reports, employment records, Commission forms, and written communications with health care providers in its possession, within 30 days of the request, unless objection is made within that time period. The duty to respond exists whether or not a request for hearing has been filed and is a continuing one, and any such reports and records that come into the possession of a party after receipt of a request pursuant to this Rule shall be provided to the requesting party within 15 days from the party's receipt of these reports and records.

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

*History Note: Authority G.S. 97-80(a); 97-80(b); 97-80(f);
Eff. January 1, 1990;
Amended Eff. November 1, 2014; June 1, 2000; March 15, 1995;
Recodified from 04 NCAC 10A .0607 Eff. June 1, 2018.*

11 NCAC 23A .0608 STATEMENT OF INCIDENT LEADING TO CLAIM

(a) Upon the request of the employer or the employer's agent to take a written or a recorded statement, the employer or the employer's agent shall advise the employee that the statement may be used to determine whether the claim will be paid or denied. Any employee who gives his or her employer, the employer's carrier, or any agent of the employer either a written or recorded statement of the facts and circumstances surrounding his or her injury shall be furnished a copy of the statement within 45 days after a request by the employee. Further, any employee who gives a written or recorded statement of the facts and circumstances surrounding his or her injury shall, without request, be furnished a copy of the statement within 45 days after the filing of a Form 33 Request that Claim be Assigned for Hearing. The copy shall be furnished at the expense of the person, firm, or corporation at whose direction the statement was taken.

(b) If any person, firm, or corporation fails to comply with this Rule, then a Commissioner or Deputy Commissioner may, if it is in the interest of justice, enter an order prohibiting that person, firm, or corporation, or its representative, from introducing the statement into evidence or using any part of the statement.

*History Note: Authority G.S. 97-80(a);
Eff. January 1, 1990;
Amended Eff. November 1, 2014; June 1, 2000;
Recodified from 04 NCAC 10A .0608 Eff. June 1, 2018;
Amended Eff. December 1, 2018.*

11 NCAC 23A .0609 MOTIONS PRACTICE

(a) Motions and responses before a Deputy Commissioner:

- (1) in cases that are currently calendared for hearing before a Deputy Commissioner shall be filed in accordance with Rule .0108 of this Subchapter.
- (2) to reconsider or amend an Opinion and Award, made prior to giving notice of appeal to the Full Commission, shall be addressed to the Deputy Commissioner who authored the Opinion and Award and filed in accordance with Rule .0108 of this Subchapter.

(b) Motions and responses shall be filed with the Office of the Executive Secretary in accordance with Rule .0108 of this Subchapter:

- (1) when a case is not calendared before a Deputy Commissioner;
 - (2) once a case has been continued or removed from a Deputy Commissioner's calendar; or
 - (3) after the filing of an Opinion and Award when the time for taking appeal has run.
- (c) Motions and responses before the Full Commission:
- (1) in cases calendared for hearing before the Full Commission shall be addressed to the Chair of the Full Commission panel and filed in accordance with Rule .0108 of this Subchapter.
 - (2) filed after notice of appeal to the Full Commission has been given but prior to the calendaring of the case shall be addressed to the Chair of the Commission and filed in accordance with Rule .0108 of this Subchapter.
 - (3) in cases continued from the Full Commission hearing docket, shall be addressed to the Chair of the panel of Commissioners who ordered the continuance and filed in accordance with Rule .0108 of this Subchapter.
 - (4) filed after the filing of an Opinion and Award by the Full Commission but prior to giving notice of appeal to the Court of Appeals or the expiration of the period allowed to give notice of appeal to the Court of Appeals shall be addressed to the Commissioner who authored the Opinion and Award and filed in accordance with Rule .0108 of this Subchapter.
- (d) Motions requesting an award of attorney's fees from ongoing compensation pursuant to G.S. 97-90 that are not required to be filed with a Deputy Commissioner or the Full Commission pursuant to Paragraphs (a) and (c) of this Rule shall be filed with the Commission's Claims Administration Section in accordance with Rule .0108 of this Subchapter.
- (e) All motions and responses thereto, including requests for extensions of time and requests to withdraw motions, shall include a caption containing the Industrial Commission file number(s), party names, and a title identifying the nature of the motion or response. Motions and responses set forth in the body of electronic mail correspondence or contained in a brief will not be accepted for filing by the Commission. This Paragraph does not apply to parties without legal representation.
- (f) A motion shall state with particularity the grounds on which it is based, the relief sought, and the opposing party's position, if known, and any effort made by the moving party to resolve the issue in dispute before filing of the motion. Service shall be made on all opposing attorneys of record, or on all opposing parties if not represented.
- (g) Motions to continue or remove a case from the hearing calendar on which the case is set shall be made as far in advance as possible of the scheduled hearing and may be made in written or oral form. In all cases, the moving party shall provide the basis for the motion and state that the other parties have been advised of the motion and relate the position of the other parties regarding the motion, or that there has been a reasonable attempt to contact the opposing party and ascertain its position regarding the motion.
- (h) Oral motions shall be followed with a written motion from the moving party, if requested by a hearing officer considering the interests of justice.
- (i) The responding party to a motion shall have 10 days after a motion is served during which to file and serve copies of a response in opposition to the motion. The Commission may shorten or extend the time for responding to any motion in the interests of justice or to promote judicial economy. Parties in agreement may submit a written stipulation to a single extension of time for responding to any motion, except for medical motions pursuant to Rule .0609A of this Section. The parties submitting a stipulation shall agree to an extension of a reasonable time, not to exceed 30 days.
- (j) Motions shall be ruled upon without oral argument unless the Commission determines that oral argument is necessary for a complete understanding of the issues.
- (k) All written motions and responses thereto shall include a proposed Order in Microsoft Word format to be considered by the Commission. The proposed Order shall include:
- (1) the Industrial Commission file number(s);
 - (2) the case caption;
 - (3) the subject of the proposed Order;
 - (4) the procedural posture; and
 - (5) the party appearances or contact information. If a party is represented by counsel, then the appearance shall include the attorney and firm name, email address, telephone number, and fax number. If a party is unrepresented, then the proposed Order shall include the party's email address, telephone number, and fax number, if available.

History Note: Authority G.S. 97-79(b); 97-80(a); 97-84; 97-91;
Eff. January 1, 1990;

*Amended Eff. February 1, 2016; November 1, 2014; June 1, 2000; March 15, 1995;
Recodified from 04 NCAC 10A .0609 Eff. June 1, 2018;
Amended Eff. January 1, 2019.*

11 NCAC 23A .0609A MEDICAL MOTIONS AND EMERGENCY MEDICAL MOTIONS

(a) Medical motions brought pursuant to G.S. 97-25 and responses thereto shall be brought before either the Office of the Chief Deputy Commissioner or the Executive Secretary and shall be submitted in accordance with Rule .0108 of this Subchapter. For parties to whom the electronic filing requirements of Rule .0108(b) of this Subchapter apply, motions, responses, and notices of appeal shall be submitted under the EDPF category "Medical Motions and Responses." The submitting party shall contemporaneously serve a copy of the filing to the opposing party or opposing party's counsel, if represented.

(b) In addition to any notice of representation contained in a medical motion or response, an attorney who is retained by a party to prosecute or defend a medical motion or appeal before the Commission shall file a notice of representation in accordance with Rule .0108 of this Subchapter and send a copy of the notice to all other counsel and all unrepresented parties involved in the proceeding.

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

- (1) a designation as a "Medical Motion" brought pursuant to G.S. 97-25 and a statement directly underneath the case caption clearly indicating the request is for either an administrative ruling by the Executive Secretary or an expedited full evidentiary hearing before a Deputy Commissioner;
- (2) a statement of the treatment or relief requested;
- (3) a statement of the medical diagnosis of the employee and the name of any health care provider having made a diagnosis or treatment recommendation that is the basis for the motion;
- (4) a statement as to whether the claim has been admitted on a Form 60, Employer's Admission of Employee's Right to Compensation, Form 63, Notice to Employee of Payment of Compensation without Prejudice (G.S. 97-18(d)) or Payment of Medical Benefits Only without Prejudice (G.S. 97-2(19) & 97-25), Form 21, Agreement for Compensation for Disability, or is subject to a prior Commission Opinion and Award or Order finding compensability, with supporting documentation attached;
- (5) a statement of the time-sensitive nature of the request, if any;
- (6) an explanation of opinions known and in the possession of the movant by any relevant experts, independent medical examiners, and second opinion examiners;
- (7) if the motion requests a second opinion examination pursuant to G.S. 97-25, the motion shall specify whether the employee has made a prior written request to the defendants for the examination, as well as the date of the request and the date of the denial, if any;
- (8) a representation that informal means of resolving the issue have been attempted in good faith, and a statement of the opposing party's position or that there has been a reasonable attempt to contact the opposing party and ascertain its position; and
- (9) a proposed Order in Microsoft Word format, in accordance with Rule .0609 of this Section.

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

- (1) a boldface or otherwise emphasized designation as "Emergency Medical Motion";
- (2) if the employee is unrepresented, the employee's telephone number and, if available, the employee's email address and fax number;
- (3) the adjuster's name, email address, telephone number, and fax number if counsel for the employer/carrier has not been retained;
- (4) an explanation of the medical diagnosis and treatment recommendation of the health care provider that requires emergency attention;
- (5) a statement of the need for a shortened time period for review, including relevant dates and the potential for adverse consequences if the recommended relief is not provided emergently;
- (6) an explanation of opinions known and in the possession of the movant by any relevant experts, independent medical examiner, and second opinion examiners;
- (7) a representation that informal means of resolving the issue have been attempted in good faith, and a statement of the opposing party's position or that there has been a reasonable attempt to contact the opposing party and ascertain its position;
- (8) documents known and in the possession of the movant relevant to the request, including relevant medical records; and

- (9) a proposed Order in Microsoft Word format, in accordance with Rule .0609 of this Section.
- (e) Upon receipt of an emergency medical motion, the non-moving party(ies) shall be advised by the Commission of any time allowed for response and whether informal telephonic oral argument is necessary. The Commission shall consider the interests of justice or judicial economy when determining the time allowed for response and whether informal telephonic oral argument is necessary.
- (f) 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 this Subchapter by filing notice of appeal in accordance with Rule .0108 of this Subchapter within 15 calendar days of receipt of the Order. Notices of appeal shall be submitted via EDPF under the category "Medical Motions and Responses." A letter or motion 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 or motion shall specifically identify the Order from which the appeal is taken and shall indicate that the appeal is from an administrative Order by the Executive Secretary entered pursuant to G.S. 97-25(f)(1). After receipt of a notice of appeal, the appeal shall be assigned to a Deputy Commissioner and an Order under the name of the Deputy Commissioner to which the appeal is assigned shall be issued within five days of receipt of the notice of appeal.
- (g) Depositions, if requested by the parties or ordered by the Deputy Commissioner, shall be taken in accordance with Rule .0612 of this Section and on the Deputy Commissioner's order pursuant to G.S. 97-25. In full evidentiary hearings conducted by a Deputy Commissioner pursuant to G.S. 97-25(f)(1) and (f)(2), depositions shall be completed and all transcripts, briefs, and proposed Opinion and Awards filed with the Deputy Commissioner in accordance with Rule .0108 of this Subchapter within 60 days of the filing of the motion or appeal. The Deputy Commissioner may reduce or enlarge the timeframe contained in this Paragraph for good cause shown or upon agreement of the parties.
- (h) A party may appeal the decision of a Deputy Commissioner filed pursuant to G.S. 97-25(f)(2) by filing notice of appeal to the Full Commission within 15 calendar days of receipt of the decision in accordance with Rule .0108 of this Subchapter. A letter expressing an intent to appeal a Deputy Commissioner's decision filed pursuant to G.S. 97-25 shall be considered notice of appeal to the Full Commission, provided that the letter specifically identifies the decision from which appeal is taken and indicates that the appeal is taken from a decision by a Deputy Commissioner pursuant to G.S. 97-25(f)(2). After receipt of notice of appeal, the appeal shall be acknowledged by the Commission within three days by sending an Order under the name of the Chair of the Panel to which the appeal is assigned. The Order shall set the schedule for filing briefs. A Full Commission hearing on an appeal of a medical motion filed pursuant to G.S. 97-25 shall be held telephonically and shall not be recorded unless unusual circumstances arise and the Commission so orders. All correspondence, briefs, and motions related to the appeal shall be addressed to the Chair of the Panel and shall be filed in accordance with Rule .0108 of this Subchapter.
- (i) A party may appeal the administrative decision of the Chief Deputy Commissioner or the Chief Deputy Commissioner's designee filed pursuant to G.S. 97-25(f)(3) by filing notice of appeal electronically in accordance with Rule .0108 of this Subchapter within 15 calendar days of receipt of the Order. A letter or motion expressing an intent to appeal the Chief Deputy Commissioner's or the Chief Deputy Commissioner'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 and indicates that the appeal is from an Order of a Deputy Commissioner entered pursuant to G.S. 97-25(f)(3). After receipt of notice of appeal, the appeal shall be acknowledged within five days by sending an Order under the name of the Deputy Commissioner to whom the appeal is assigned. The appeal of the administrative decision of the Chief Deputy Commissioner or the Chief Deputy Commissioner's designee shall be subject to G.S. 97-25(f)(2) and G.S. 97-84.

History Note: Authority G.S. 97-25; 97-78(f)(2); 97-78(g)(2); 97-80(a); S.L. 2014-77;
Eff. January 1, 2011;
Amended Eff. February 1, 2016; November 1, 2014;
Recodified from 04 NCAC 10A .0609A Eff. June 1, 2018;
Amended Eff. December 1, 2018.

11 NCAC 23A .0610 PRE-TRIAL AGREEMENT

- (a) A Pre-Trial Agreement shall be signed by the attorneys and filed with the Commission in accordance with Rule .0108 of this Subchapter 10 days before the hearing, unless a shorter time period is ordered upon agreement of the parties.
- (b) The Pre-Trial Agreement shall be prepared in a form that conforms to the Order on Final Pre-Trial Conference adopted in the North Carolina Rules of Practice for the Superior and District Courts. Should the parties fail to

comply with a Pre-Trial Order, the Commissioner or Deputy Commissioner shall remove the case from the hearing docket if required in the interests of justice or to promote judicial economy. Should the parties comply with the Pre-Trial Order after the removal of the case, the Pre-Trial Agreement shall be directed to the Commissioner or Deputy Commissioner who removed the case from the docket and filed in accordance with Rule .0108 of this Subchapter. The Commissioner or Deputy Commissioner shall order the case returned to the hearing docket as if a Request for Hearing had been filed on the date of the Order to return the case to the hearing docket. No new Form 33 Request that Claim be Assigned for Hearing is required.

(c) If the parties need a conference, a Commissioner or Deputy Commissioner shall order the parties to participate in a pre-trial conference. This conference shall be conducted at such place and by such method as the Commissioner or Deputy Commissioner deems appropriate in the interests of justice or judicial economy, including conference telephone calls.

(d) Any party may request a pre-trial conference to aid in settling the case or resolving contested issues prior to trial. Requests for such pre-trial conferences shall be directed to the Commissioner or Deputy Commissioner before whom the claim has been calendared.

History Note: Authority G.S. 97-80(a); 97-80(b); 97-83;
Eff. January 1, 1990;
Amended Eff. February 1, 2016; November 1, 2014; January 1, 2011; June 1, 2000; March 15, 1995;
Recodified from 04 NCAC 10A .0610 Eff. June 1, 2018;
Amended Eff. December 1, 2018.

11 NCAC 23A .0611 HEARINGS BEFORE THE COMMISSION

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

(b) In setting contested cases for hearing, cases in which the payment of workers' compensation benefits is at issue take precedence.

(c) The Commission shall give notice of hearings in every case. Postponement or continuance of a duly scheduled hearing shall be allowed only in the discretion of a Commissioner or Deputy Commissioner before whom the case is set if required in the interests of justice or to promote judicial economy. When a party has not notified the Commission of the attorney representing the party prior to the mailing of calendars for hearing, notice to that party constitutes notice to the party's attorney.

(d) In a contested case, the record includes all prior Opinion and Awards, filed Commission forms, form agreements, awards, and orders of the Commission. Any other documents that the parties wish to have included in the record shall be introduced and received into evidence.

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

History Note: Authority G.S. 97-79; 97-80(a); 97-84; 97-91;
Eff. January 1, 1990;
Amended Eff. November 1, 2014; June 1, 2000;
Recodified from 04 NCAC 10A .0611 Eff. June 1, 2018;
Amended Eff. December 1, 2018.

11 NCAC 23A .0612 DEPOSITIONS

(a) Prior to a hearing before a Deputy Commissioner, the parties shall confer to determine the methods by which medical evidence will be submitted. The parties shall stipulate in a Pre-Trial Agreement to the admission of all relevant medical records, reports, and forms, as well as opinion letters from the employee's health care providers with the goal of minimizing the use of post-hearing depositions. The parties shall state all experts to be deposed post-hearing. The parties shall certify that the parties have conferred to determine the methods by which medical evidence will be submitted. If there is a disagreement about the stipulation of medical evidence, the parties shall state the nature and basis of the disagreement.

(b) When medical or other expert testimony is requested by the parties for the disposition of a case, a Deputy Commissioner or Commissioner may order expert depositions to be taken on or before a day certain not to exceed

60 days from the date of the hearing; provided, however, the time allowed may be enlarged or shortened in the interests of justice or to promote judicial economy, or where required by the Act.

(c) The employer shall pay for the costs of up to two post-hearing depositions requested by the employee of health care providers who evaluated or treated the employee. The employer shall also bear the costs of a deposition of a second opinion doctor selected jointly by the parties or ordered by the Commission pursuant to G.S. 97-25.

(d) The parties may notice depositions of additional experts, and the costs thereof shall be borne by the party noticing the depositions; provided, however, if a ruling favorable to the employee is rendered and is not timely appealed by the employer, or the employer's appeal is dismissed or withdrawn, then the employer shall reimburse the employee the costs of such additional expert depositions.

(e) In claims pursuant to G.S. 97-29(d) or cases involving exceptional, unique, or complex injuries or diseases, the Commission may allow additional depositions of experts to be taken at the employer's expense, when requested by the employee and when necessary to address the issues in dispute, in which case the employee shall state, and the Commission shall consider when determining whether or not the employer shall bear the costs of such depositions such factors as:

- (1) the name and profession of the proposed deponent;
- (2) if the proposed deponent is a health care provider, whether the health care provider evaluated, diagnosed or treated the employee;
- (3) the issue to which the testimony is material, relevant and necessary;
- (4) the availability of alternate methods for submitting the evidence and the efforts made to utilize alternate methods;
- (5) the severity or complexity of the employee's condition;
- (6) the number and complexity of the issues in dispute;
- (7) whether the testimony is likely to be duplicative of other evidence; and
- (8) the opposing party's position on the request.

(f) The term "costs" as used in this Rule shall mean the expert's fee as approved by the Commission for the deposition, including the expert's time preparing for the deposition, if applicable. The term shall include fees associated with the production and delivery of a transcript of the deposition to the Commission, including the court reporter's appearance fee. The term shall not include costs for a party to obtain his or her own copy of the deposition transcript, or attorney's fees associated with the deposition, unless so ordered by the Commission pursuant to G.S. 97-88.1.

(g) Notwithstanding Paragraphs (c) and (d) of this Rule, the parties may come to a separate agreement regarding reimbursement of deposition costs, which shall be submitted to the Commission for approval.

(h) If the claimant is unrepresented at the time of a full evidentiary hearing before a Deputy Commissioner, the Commission shall confer with the parties and determine the best method for presenting medical evidence, if necessary, and the party responsible for bearing associated costs.

(i) If a party refuses to stipulate to relevant medical evidence, and as a result, the case is reset or depositions are ordered for testimony of medical or expert witnesses, a Deputy Commissioner or Commissioner may assess the costs of such hearing or depositions, including reasonable attorney fees, against the party who refused the stipulation, pursuant to G.S. 97-88.1.

(j) All evidence and witnesses other than those tendered as an expert witness shall be offered at the hearing before the Deputy Commissioner. Non-expert evidence may be offered after the hearing before the Deputy Commissioner by order of a Deputy Commissioner or Commissioner. The costs of obtaining non-expert testimony by deposition shall be borne by the party making the request unless otherwise ordered by the Commission in the interests of justice or to promote judicial economy.

*History Note: Authority G.S. 97-26.1; 97-80(a); 97-88; 97-88.1;
Eff. June 1, 1990;
Amended Eff. November 1, 2014; June 1, 2000;
Recodified from 04 NCAC 10A .0612 Eff. June 1, 2018.*

11 NCAC 23A .0613 EXPERT WITNESSES AND FEES

(a) The parties shall file with the Deputy Commissioner or Commissioner in accordance with Rule .0108 of this Subchapter within 15 days following the hearing, a list identifying all expert witnesses to be deposed and the deposition dates unless otherwise extended by the Commission in the interests of justice and judicial economy.

(b) After the deposition of each expert, the party that noticed the deposition shall, within 10 days after receiving the expert's fee invoice, file with the Deputy Commissioner or Commissioner in accordance with Rule .0108 of this

Subchapter a request to approve the costs related to the expert deposition. In these requests, the party shall provide, in a cover letter along with the invoice (if available), the following:

- (1) the name of the expert and the expert's practice;
- (2) the expert's fax number;
- (3) the expert's area of specialty and board certifications, if any;
- (4) the length of the deposition;
- (5) the length of time the expert spent preparing for the deposition, excluding any time meeting with parties' counsel;
- (6) whether the Commission determined that the claim was filed pursuant to G.S. 97-29(d) or involved an exceptional, unique, or complex injury or disease;
- (7) whether the deponent was selected by the employee in the Pre-Trial Agreement as an expert to be deposed at employer's expense; and
- (8) the party initially responsible for payment of the deposition fee pursuant to Rule .0612 of this Section.

At the time the request is made, the requesting party shall submit a proposed Order that shows the expert's name, practice name and fax number under the "Appearances" section. The proposed Order shall also reflect the party initially responsible for payment of the deposition fee pursuant to Rule .0612 of this Section.

(c) The Commission shall issue an order setting the deposition costs of the expert. The term "costs" as used in this Rule shall mean the expert's fee as approved by the Commission for the deposition, including the expert's time preparing for the deposition, if applicable.

(d) Failure to make payment to an expert witness within 30 days following the entry of a fee order shall result in an amount equal to 10 percent being added to the fee granted in the Order.

(e) A proposed fee for cancellation of a deposition within five days of a scheduled deposition may be filed with the Deputy Commissioner in accordance with Rule .0108 of this Subchapter for consideration and approval if in the interest of justice and judicial economy.

(f) This Rule applies to all expert fees for depositions; provided, however, either party may elect to reimburse a retained expert that did not treat or examine the employee the difference between the fee awarded by the Commission and the contractual fee of the expert.

*History Note: Authority G.S. 97-26.1; 97-80(a); 97-80(d);
Eff. January 1, 1990;
Amended Eff. February 1, 2016; November 1, 2014; January 1, 2011; June 1, 2000;
Recodified from 04 NCAC 10A .0613 Eff. June 1, 2018.*

11 NCAC 23A .0614 HEALTH CARE PROVIDER FEE DISPUTE PROCEDURE

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

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

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

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

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

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

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

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

History Note: Authority G.S. 97-26(i); 97-80(a);
 Eff. January 1, 1990;
 Amended Eff. November 1, 2014; January 1, 2011; June 1, 2000; March 15, 1995;
 Recodified from 04 NCAC 10A .0614 Eff. June 1, 2018.

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

History Note: Authority G.S. 97-80(a); 97-84; 97-91;
Eff. January 1, 1990;
Amended Eff. November 1, 2014; June 1, 2000;
Recodified from 04 NCAC 10A .0615 Eff. June 1, 2018.

11 NCAC 23A .0616 DISMISSALS

- (a) No claim filed under the Workers' Compensation Act shall be dismissed without prejudice, except upon order of the Commission in the interest of justice. No voluntary dismissal shall be granted after the record in a case is closed. Unless otherwise ordered by the Commission in the interests of justice, a plaintiff shall have one year from the date of the Order of Voluntary Dismissal Without Prejudice to refile his claim.
- (b) Upon notice and opportunity to be heard, any claim may be dismissed with or without prejudice by the Commission on its own motion or by motion of any party if the Commission finds that the party failed to prosecute or to comply with the rules in this Subchapter or any Order of the Commission.
- (c) In a denied claim, if a plaintiff has not requested a hearing within two years of the filing of the Order removing the case from a hearing calendar and has not pursued the claim, upon notice and opportunity to be heard, any claim shall be dismissed with prejudice by the Commission, on its own motion or by motion of any party.

History Note: Authority G.S. 97-80(a); 97-84; 97-91;
Eff. June 1, 2000;
Amended Eff. November 1, 2014; January 1, 2011;
Recodified from 04 NCAC 10A .0616 Eff. June 1, 2018.

11 NCAC 23A .0617 ATTORNEYS RETAINED FOR PROCEEDINGS

- (a) Any attorney who is retained by a party in a proceeding before the Commission shall comply with the applicable rules of the North Carolina State Bar. A copy of a notice of representation shall be served upon all other counsel and all unrepresented parties, and submitted to the Commission in accordance with Rule .0108 of this Subchapter. Thereafter, all notices required to be served on a party shall be served upon the attorney. No direct contact or communication concerning contested matters may be made with a represented party by the opposing party or any person on his or her behalf, without the attorney's permission except as permitted by G.S. 97-32 or other applicable law.
- (b) Any attorney who wishes to withdraw from representation in a proceeding before the Commission shall file with the Commission, in writing, a Motion to Withdraw that contains a statement of reasons for the request and that the request has been served on the client. The attorney shall make reasonable efforts to ascertain the last known contact information as defined in Rule .0109 of this Subchapter of the client and shall include this information in the motion. A Motion to Withdraw before an award is made shall state whether the withdrawing attorney requests an attorney's fee from the represented party once an award of compensation is made or approved.
- (c) An attorney may withdraw from representation only by written order of the Commission. The issuance of an award of the Commission does not release an attorney as the attorney of record.
- (d) An attorney withdrawing from representation whose client wishes to appeal an Order, Decision, or Award to the Full Commission shall timely file a notice of appeal, as set out by this Subchapter, on behalf of his or her client either before or with his or her Motion to Withdraw.
- (e) Motions to Withdraw shall be submitted in accordance with Rule .0108 of this Subchapter. The Motion to Withdraw shall include a proposed Order in Microsoft Word format that includes, in the appearances, the last known address of any pro se party or the contact information as defined in Rule .0109 of this Subchapter of new counsel if such counsel has been retained. The proposed Order shall include fax numbers for all parties, if known.

History Note: Authority G.S. 97-80(a); 97-90; 97-91;
Eff. January 1, 2011;

*Amended Eff. February 1, 2016; November 1, 2014;
Recodified from 04 NCAC 10A .0617 Eff. June 1, 2018;
Amended Eff. January 1, 2019.*

11 NCAC 23A .0618 DISQUALIFICATION OF A COMMISSIONER OR DEPUTY COMMISSIONER

*History Note: Authority G.S. 97-79(b); 97-80(a);
Eff. November 1, 2014;
Recodified from 04 NCAC 10A .0618 Eff. June 1, 2018;
Repealed Eff. December 1, 2018.*

11 NCAC 23A .0619 FOREIGN LANGUAGE AND SIGN LANGUAGE INTERPRETERS

- (a) When a person who does not speak or understand the English language or who is speech or hearing impaired is either called to testify in a hearing, other than in an informal hearing conducted pursuant to G.S. 97-18.1, or appears unrepresented before the Full Commission for an oral argument, the person, whether a party or a witness, shall be assisted by a qualified interpreter upon request. For purposes of this Rule, "language" means foreign language or sign language.
- (b) To qualify as a foreign language interpreter, a person shall possess sufficient experience and education, or a combination of experience and education, speaking and understanding English and the foreign language to be interpreted, to qualify as an expert witness pursuant to G.S. 8C-1, Rule 702. For Spanish language interpretation, the interpreter must be "Level A" certified by the North Carolina Administrative Office of the Courts. A person qualified as an interpreter under this Rule shall not be interested in the claim and shall make a declaration under oath or affirmation to interpret accurately and truthfully, meaning without any additions or deletions, all questions propounded to the witness and all responses thereto.
- (c) To qualify as a sign language interpreter, a person shall possess a license from the North Carolina Interpreter and Transliterator Licensing Board, under Chapter 90D of the North Carolina General Statutes.
- (d) Any party who is unable to speak or understand English, or who is speech or hearing impaired, or who intends to call as a witness a person who is unable to speak or understand English or who is speech or hearing impaired, shall so notify the Commission and the opposing party, in writing, not less than 21 days prior to the date of the hearing. The notice shall state the language(s) that shall be interpreted for the Commission.
- (e) Upon receiving or giving the notice required in Paragraph (d) of this Rule, the employer or insurer shall retain an interpreter who possesses the qualifications listed in Paragraph (b) or (c) of this Rule to appear at the hearing and interpret the testimony or oral argument of all persons for whom the notice in Paragraph (d) of this Rule has been given or received.
- (f) The interpreter's fee shall constitute a cost as set forth in G.S. 97-80. A qualified interpreter who interprets testimony or oral argument for the Commission is entitled to payment of the fee agreed upon by the interpreter and employer or insurer that retained the interpreter. Except in cases where a claim for compensation has been prosecuted without reasonable ground, the fee agreed upon by the interpreter and employer or insurer shall be paid by the employer or insurer. When the Commission ultimately determines that the request for an interpreter was unfounded, attendant costs shall be assessed against the movant.
- (g) Foreign language interpreters shall abide by the Code of Ethics and Professional Conduct for Court Interpreters, contained in Section 11 of Standards for Language Access Services, North Carolina Judicial Branch and promulgated by the North Carolina Administrative Office of the Courts, and shall interpret, as word for word as is practicable, without editing, commenting, or summarizing, testimony or other communications. The Code of Ethics and Professional Conduct for Court Interpreters is hereby incorporated by reference and includes subsequent amendments and editions. A copy may be obtained at no charge from the North Carolina Administrative Office of the Court's website, https://www.nccourts.gov/assets/inline-files/02_2_NC_Standards_for_Language_Access_0.pdf?NhuszCAEVfS8KkdLetH97b9I4NRBcd.f, or upon request, at the offices of the Commission, located in the Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, 27603, between the hours of 8:00 a.m. and 5:00 p.m.
- (h) Sign language interpreters shall interpret, as word for word as is practicable, without editing, commenting, or summarizing, testimony or other communications. Sign language interpreters shall abide by the ethical standards communicated in the training required by G.S. 90D-8.

*History Note: Authority G.S. 97-79(b); 97-80(a);
Eff. November 1, 2014;*

*Recodified from 04 NCAC 10A .0619 Eff. June 1, 2018;
Amended Eff. April 1, 2020; January 1, 2019.*

11 NCAC 23A .0620 WRITTEN COMMUNICATIONS WITH THE COMMISSION

- (a) This Rule shall apply to written communications related to a case before the Commission that are not governed by statute or another rule in this Subchapter.
- (b) Written communications sent to the Commission shall be contemporaneously sent by the same method of transmission, where possible, to the opposing party or, if represented, to opposing counsel.
- (c) Written communications, whether addressed directly to the Commission or copied to the Commission, shall not be used as an opportunity to introduce new evidence or to argue the merits of the case.

*History Note: Authority G.S. 97-80(a);
Eff. January 1, 2019.*

SECTION .0700 - APPEALS

11 NCAC 23A .0701 REVIEW BY THE FULL COMMISSION

- (a) Notice of Appeal. Application for review shall be made to the Commission within 15 days from the date when notice of the Deputy Commissioner's Opinion and Award was given. A letter requesting review shall be considered an application for review to the Full Commission within the meaning of G.S. 97-85, provided that the letter specifies the Order or Opinion and Award from which appeal is taken.
- (b) Motions to Reconsider to the Deputy Commissioner. A motion to reconsider or to amend the decision of a Deputy Commissioner shall be filed with the Deputy Commissioner within 15 days of receipt of notice of the award. The time for filing a request for review from the decision of a Deputy Commissioner under the rules in this Subchapter shall be tolled until a motion to reconsider or to amend the decision has been ruled upon by the Deputy Commissioner. However, if either party files a letter requesting review of the decision as set forth in Paragraph (a) of this Rule after a motion to reconsider or to amend has been filed with the Deputy Commissioner, jurisdiction shall be transferred to the Full Commission. Any party who had a pending motion to reconsider or amend the decision of the Deputy Commissioner may file a motion with the Chair of the Commission requesting remand to the Deputy Commissioner with whom the motion was pending. Upon remand, jurisdiction shall be transferred to the Deputy Commissioner. Following the Deputy Commissioner's ruling on the motion to reconsider or amend the decision, a party requesting review of the initial decision of the Deputy Commissioner or the ruling on the motion to reconsider or amend the decision shall file a letter requesting review as set forth in Paragraph (a) of this Rule to transfer jurisdiction of the matter back to the Full Commission.
- (c) Acknowledging Receipt; Form 44; Joint Certification. The Commission shall acknowledge the request for review by letter. The Commission shall prepare the official transcript and exhibits, if any, and provide them along with a Form 44 Application for Review to the parties involved in the appeal at no charge within 30 days of the acknowledgement letter.
 - (1) The official transcript and exhibits and a Form 44 Application for Review shall be provided electronically to parties represented by counsel. In such cases, the Commission shall send an email to the parties with directions on how to obtain an electronic copy of the official transcript and exhibits. 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. 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 10 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. The Commission shall save a copy of the parties' acknowledgements in the file for the claim to serve as record of the parties' electronic receipt of the Form 44 Application for Review and the official transcript and exhibits.
 - (2) In cases where it is not possible to provide a party with the official transcript and exhibits electronically, the Commission shall serve the official transcript and exhibits and a Form 44 Application for Review via any class of U.S. Mail that is fully prepaid.
- (d) Appellant's Form 44. The appellant shall submit a Form 44 Application for Review stating with particularity all assignments of error and grounds for review, including, where applicable, the pages in the transcript or the record on

which the alleged errors shall be recorded. Grounds for review and assignments of error not set forth in the Form 44 Application for Review are deemed abandoned, and argument thereon shall not be heard before the Full Commission.

(e) **Timing Requirements.** The appellant shall file the Form 44 Application for Review and brief in support of the grounds for review with the Commission with a certificate of service on the appellee within 25 days after receipt of the transcript or receipt of notice that there will be no transcript. The appellee shall have 25 days from service of the Form 44 Application for Review and appellant's brief to file a responsive brief with the Commission. The appellee's brief shall include a certificate of service on the appellant. When an appellant fails to file a brief, an appellee shall file its brief within 25 days after the appellant's time for filing the Form 44 Application for Review and appellant's brief has expired. A party who fails to file a brief shall not participate in oral argument before the Full Commission. If multiple parties request review, each party shall file an appellant's brief and appellee's brief on the schedule set forth in this Paragraph. If the matter has not been calendared for hearing, a party may obtain a single extension of time not to exceed 15 days by filing a written stipulation pursuant to Rule .0108 of this Subchapter.

(f) **Brief Requirements.** Briefs to the Full Commission shall not exceed 35 pages, excluding attachments. In no event shall attachments be used to circumvent the 35-page limit or as a means to submit documents into evidence. No page limit applies to the length of attachments. Briefs shall be prepared using a 12 point proportional font and serif typeface, shall be double spaced, and shall be prepared with non-justified right margins. Each page of the brief shall be numbered at the bottom of the page. When a party quotes or paraphrases testimony or other evidence from the appellate record in the party's brief, the party shall include, at the end of the sentence in the brief that quotes or paraphrases the testimony or other evidence, a parenthetical entry that designates the source of the quoted or paraphrased material and the page number within the applicable source. The party shall use "T" to refer to the transcript of hearing testimony and "Ex" for exhibit. For example, if a party quotes or paraphrases material located in the hearing transcript on page 11, the party shall use the following format "(T 11)," and if a party quotes or paraphrases material located in an exhibit on page 12, the party shall use the following format "(Ex 12)." When a party quotes or paraphrases testimony in the transcript of a deposition in the party's brief, the party shall include the last name of the deponent and the page on which such testimony is located. For example, if a party quotes or paraphrases the testimony of John Smith, located on page 11 of such deposition, the party shall use the following format "(Smith 11)." Parties shall not discuss matters outside the record, assert personal opinions or relate personal experiences, or attribute wrongful acts or motives to opposing counsel or members of the Commission.

(g) **Reply Briefs.** Within 10 days of service of the appellee's brief, a party may request by motion to file a reply brief. The motion shall not contain a reply brief. A reply brief may only be filed if ordered by the Full Commission. Reply briefs shall not exceed 15 pages, excluding attachments. Reply briefs shall be prepared in accordance with the requirements of Paragraph (f) of this Rule. Any reply brief filed shall be limited to a concise rebuttal of arguments set out in the appellee's brief, and shall not reiterate arguments set forth in the appellant's principal brief.

(h) **Citations.** Case citations shall be to the North Carolina Reports, the North Carolina Court of Appeals Reports, or the North Carolina Reporter, and when possible, to the South Eastern Reporter. An unpublished appellate decision does not constitute controlling legal authority. If a party believes that an unpublished opinion has precedential or persuasive value to a material issue in the case and that there is no published opinion that would serve as well, the party may cite the unpublished opinion. When citing an unpublished opinion, a party shall indicate the opinion's unpublished status. If no reporter citation is available at the time a brief is filed, the party citing to the case shall attach a copy of the case to its brief.

(i) **Motions.** After a request for review has been submitted to the Full Commission, any motions related to the issues for review shall be filed with the Full Commission, with service on the other parties. Motions related to the issues for review including motions for new trial, to supplement the record, including documents from offers of proof, or to take additional evidence, filed during the pendency of a request for review to the Full Commission, shall be considered by the Full Commission at the time of review of the appeal, except motions related to the official transcript and exhibits. The Full Commission, for good cause shown, may rule on such motions prior to oral argument.

(j) **Oral Argument.**

- (1) Each appellant shall have 20 minutes to present oral argument and may reserve any amount of the twenty-minute total allotment for rebuttal, unless otherwise specified by Order of the Commission. Each appellee shall also have 20 minutes to present oral argument, unless otherwise specified by Order of the Commission. The appellee(s) may not reserve rebuttal time. In the case of cross-appeals, each appealing party may reserve rebuttal time.
- (2) Any party may request additional time to present oral argument in excess of the 20-minute allowance. Such requests shall be made in writing and submitted to the Full Commission no less

than 10 days prior to the scheduled hearing date. The written request for additional time shall state with particularity the reason(s) for the request of additional time and the amount of additional time requested.

- (3) An employee appealing the amount of a disfigurement award shall personally appear before the Full Commission to permit the Full Commission to view the disfigurement.
- (4) A party may waive oral argument or appearance before the Commission at any time with approval of the Commission. Upon the request of a party or on its own initiative, the Commission may review the case and file an Order or Award without oral argument or appearance before the Commission.
- (5) If any party fails to appear before the Full Commission upon the call of the case, the Commission may, in the interests of justice or judicial economy, disallow the party's right to present oral argument. If neither party appears upon the call of the case, the Full Commission may decide the case upon the record and briefs on appeal, unless otherwise ordered.
- (6) Parties shall not discuss matters outside the record, assert personal opinions, relate personal experiences, or attribute wrongful acts or motives to opposing counsel or members of the Commission.

*History Note: Authority G.S. 97-80(a); 97-85;
Eff. January 1, 1990;
Amended Eff. November 1, 2014; January 1, 2011; August 1, 2006; June 1, 2000;
Recodified from 04 NCAC 10A .0701 Eff. June 1, 2018;
Amended Eff. January 1, 2019.*

11 NCAC 23A .0702 REVIEW OF ADMINISTRATIVE DECISIONS

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

- (1) applications to approve agreements to pay compensation and medical bills;
- (2) applications to approve the termination or suspension or the reinstatement of compensation;
- (3) applications to change the interval of payments; and
- (4) applications for lump sum payments of compensation.

(b) Administrative decisions made in cases not set for hearing before a Commissioner or Deputy Commissioner or before the Full Commission for review shall be reviewed upon the filing of a Motion for Reconsideration, upon a request for hearing on the administrative decision, or upon request for hearing on the ruling on a Motion for Reconsideration. A Motion for Reconsideration shall be filed within 15 days of receipt of the administrative decision and addressed to the Administrative Officer who made the decision. A request for hearing shall be filed within 15 days of the administrative decision or a ruling on a Motion for Reconsideration. Notwithstanding the provisions above, issues addressed by an administrative decision may be raised and determined at a subsequent hearing.

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

(d) Any request for a hearing to review an administrative decision pursuant to Paragraph (b) shall be filed with the Office of the Clerk. The Commission shall designate a Commissioner or Deputy Commissioner to hear the review. The Commissioner or Deputy Commissioner hearing the matter shall consider all issues de novo, and no issue shall be considered moot solely because the order has been fully executed during the pendency of the hearing.

(e) Any request for review by the Full Commission of an administrative decision by a Commissioner or Deputy Commissioner made during the pendency of a case assigned to them pursuant to G.S. 97-84 shall be filed with the Office of the Clerk. If the administrative decision made by the authoring Commissioner or Deputy Commissioner is a final judgment as to one or more issues or parties and the administrative decision contains a certification that there is no just reason for delay, the request for review shall be referred directly to a panel of the Full Commission. If the administrative decision contains no certification, requests for review will be referred to the Chair of the Commission for a determination regarding the right to immediate review, and the parties shall address the grounds upon which immediate review shall be allowed.

(f) Orders filed by a single Commissioner in matters before the Full Commission for review pursuant to G.S. 97-85, including orders dismissing reviews to the Full Commission or denying a request for immediate review to the Full Commission, are administrative orders and are not final determinations of the Commission. As such, an order filed by a single Commissioner is not appealable to the North Carolina Court of Appeals. A one-signature order filed by a single Commissioner may be reviewed by:

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

(g) 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.

History Note: Authority G.S. 97-79(g); 97-80(a); 97-85; S.L. 2014-77;
Eff. January 1, 1990;
Amended Eff. November 1, 2014; January 1, 2011; June 1, 2000;
Recodified from 04 NCAC 10A .0702 Eff. June 1, 2018;
Amended Eff. January 1, 2019.

11 NCAC 23A .0702A REMAND FROM THE APPELLATE COURTS

History Note: Authority G.S. 97-80(a);
Eff. August 1, 2006;
Repealed Eff. November 1, 2014;
Recodified from 04 NCAC 10A .0702A Eff. June 1, 2018.

11 NCAC 23A .0703 APPEAL TO THE COURT OF APPEALS

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

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

History Note: Authority G.S. 97-80(a); 97-86;
Eff. March 15, 1995;
Amended Eff. November 1, 2014; January 1, 2011; June 1, 2000;
Recodified from 04 NCAC 10A .0703 Eff. June 1, 2018.

11 NCAC 23A .0704 REMAND FROM THE APPELLATE COURTS

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

History Note: Authority G.S. 97-80(a); 97-86;
Eff. November 1, 2014;
Recodified from 04 NCAC 10A .0704 Eff. June 1, 2018.

SECTION .0800 – RULES OF THE COMMISSION

11 NCAC 23A .0801 WAIVER OF RULES

In the interests of justice or to promote judicial economy, the Commission may, except as otherwise provided by the rules in this Subchapter, waive or vary the requirements or provisions of any of the rules in this Subchapter in a case pending before the Commission upon request of a party or upon its own initiative only if the employee is not represented by counsel. Notwithstanding oral requests made during a hearing before the Commission, all requests shall be submitted in writing and served upon all opposing parties contemporaneously. By order of the Commission, oral requests shall be submitted in writing within five days of the request. Responses to requests considered pursuant to this Rule may be submitted in accordance with Rule .0609 of this Subchapter within five days of service of the original request. Citation to this Rule or use of the term "waiver" is not required for requests considered pursuant to this Rule. Factors the Commission shall use in determining whether to grant the waiver are:

- (1) the necessity of a waiver;
- (2) the party's responsibility for the conditions creating the need for a waiver;
- (3) the party's prior requests for a waiver;
- (4) the precedential value of such a waiver;
- (5) notice to and opposition by the opposing parties; and
- (6) the harm to the party if the waiver is not granted.

History Note: Authority G.S. 97-80(a);
Eff. January 1, 1990;
Amended Eff. November 1, 2014;
Recodified from 04 NCAC 10A .0801 Eff. June 1, 2018;
Amended Eff. January 1, 2019.

11 NCAC 23A .0802 SANCTIONS

History Note: Authority G.S. 1A-1, Rule 37; 97-18; 97-80(a); 97-88.1;
Eff. January 1, 1990;
Amended Eff. June 1, 2000;
Repealed Eff. November 1, 2014;
Recodified from 04 NCAC 10A .0802 Eff. June 1, 2018.

11 NCAC 23A .0803 RULEMAKING

History Note: Authority G.S. 97-80(a);
Eff. January 1, 1990;
Repealed Eff. November 1, 2014;
Recodified from 04 NCAC 10A .0803 Eff. June 1, 2018.

SECTION .0900 – REPORT OF EARNINGS

11 NCAC 23A .0901 CHECK ENDORSEMENT

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

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

History Note: Authority G.S. 97-80(a); 97-88.2;
Eff. June 1, 2000;
Amended Eff. November 1, 2014;
Recodified from 04 NCAC 10A .0901 Eff. June 1, 2018.

11 NCAC 23A .0902 NOTICE

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

NOTICE TO EMPLOYEE RECEIVING WORKERS' COMPENSATION BENEFITS

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

Please TAKE NOTICE of the following:

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

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

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

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

*History Note: Authority G.S. 97-80(a); 97-88.2;
Eff. June 1, 2000;
Amended Eff. November 1, 2014;
Recodified from 04 NCAC 10A .0902 Eff. June 1, 2018.*

11 NCAC 23A .0903 EMPLOYEE'S OBLIGATION TO REPORT EARNINGS

(a) A self-insured employer, carrier, or third-party administrator may require the employee who has filed a claim and is receiving wage loss benefits under G.S. 97-29 or G.S. 97-30 to complete a Form 90 Report of Earnings when reasonably necessary but not more than once every six months.

(b) The Form 90 Report of Earnings shall be sent to the employee by certified mail, return receipt requested, and shall include a self-addressed stamped envelope for the return of the form. When the employee is represented by an attorney, the Form 90 Report of Earnings shall be sent only to the attorney for the employee and shall be sent by any method of transmission that provides proof of receipt, including electronic mail, facsimile, or certified mail, return receipt requested.

(c) The employee shall complete and return the Form 90 Report of Earnings within 15 days after receipt of a Form 90 Report of Earnings. If the employee fails to complete and return the Form 90 Report of Earnings within 30 days of receipt of the form, the self-insured employer, carrier, or third-party administrator may seek to suspend compensation being paid pursuant to G.S. 97-29 by filing a Form 24 Application to Terminate or Suspend Payment of Compensation, as allowed by G.S. 97-18.1 and Rule .0404 of this Subchapter.

(d) If compensation is suspended pursuant to Paragraph (c) of this Rule and the employee subsequently completes and returns the Form 90 Report of Earnings, the self-insured employer, carrier, or third-party administrator shall reinstate payment of compensation to the employee with back payment. However, if the Form 90 Report of Earnings does not indicate continuing eligibility for disability compensation, the self-insured employer, carrier, or third-party administrator is not required to reinstate payment of compensation. If the Form 90 Report of Earnings indicates continuing eligibility for temporary partial disability compensation, the self-insured employer, carrier, or third-party administrator shall make payment of compensation pursuant to G.S. 97-30 with back payment within 14 days of receipt of documentation establishing the amount of compensation due. If payment of compensation is not reinstated

following submission of the completed Form 90 Report of Earnings and the employee claims entitlement to ongoing disability compensation, the employee may seek reinstatement by filing a Form 23 Application to Reinstate Payment of Disability Compensation or Form 33 Request that Claim be Assigned for Hearing.

*History Note: Authority G.S. 97-80(a);
Eff. June 1, 2000;
Amended Eff. November 1, 2014; August 1, 2006;
Recodified from 04 NCAC 10A .0903 Eff. June 1, 2018;
Amended Eff. December 1, 2020.*

SECTION .1000 – PREAUTHORIZATION FOR MEDICAL TREATMENT

11 NCAC 23A .1001 PREAUTHORIZATION FOR SURGERY AND INPATIENT TREATMENT

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

(b) As used in this Section:

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

(c) Insurers shall, on an annual basis, electronically submit an electronic copy or link for any medical practice guidelines the insurer utilizes in the preauthorization review process to the Commission at the following email address, execsec@ic.nc.gov, by July 1 of each year.

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

(e) The preauthorization review policy shall include:

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

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

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

(h) Upon receipt of a request for preauthorization, the insurer shall provide to the health care provider or person making the request the name, telephone number, fax number and email address of the Preauthorization Agent. The

Preauthorization Agent must be available on a continuous basis, every business day (which excludes weekends and holidays) from 8:00 a.m. to 8:00 p.m. Eastern Standard Time to facilitate responses to insurer communications or determinations.

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

(j) Insurers shall, on an annual basis, electronically submit their Peer Review Physician Profiles to the Commission at the following email address, execsec@ic.nc.gov, by July 1 of each year.

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

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

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

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

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

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

History Note: Authority G.S. 97-25.3; 97-80(a);
Eff. November 1, 2014;
Recodified from 04 NCAC 10A .1001 Eff. June 1, 2018;
Amended Eff. January 1, 2026.