

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013**

**SESSION LAW 2013-294
SENATE BILL 174**

AN ACT TO DISAPPROVE CERTAIN RULES ADOPTED BY THE NORTH CAROLINA INDUSTRIAL COMMISSION, TO PROVIDE SPECIFIC DIRECTIONS TO THE INDUSTRIAL COMMISSION TO REPLACE THE RULES, AND TO AMEND CERTAIN PROVISIONS OF THE WORKERS' COMPENSATION LAW.

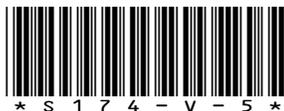
The General Assembly of North Carolina enacts:

SECTION 1. Pursuant to G.S. 150B-21.3(b1), 04 NCAC 10A .0102 (Official Forms), 04 NCAC 10A .0105 (Electronic Payment of Costs), 04 NCAC 10A .0405 (Reinstatement of Compensation), 04 NCAC 10A .0601 (Employer's Obligations Upon Notice; Denial of Liability...), 04 NCAC 10A .0603 (Responding to a Party's Request for Hearing), 04 NCAC 10A .0605 (Discovery), 04 NCAC 10A .0608 (Statement of Incident Leading to Claim), 04 NCAC 10A .0609A (Medical Motions and Emergency Medical Motions), 04 NCAC 10A .0612 (Depositions and Additional Hearings), 04 NCAC 10A .0613 (Expert Witnesses and Fees), 04 NCAC 10A .0701 (Review by Full Commission), 04 NCAC 10A .0704 (Remand from the Appellate Courts), 04 NCAC 10C .0103 (Definitions), 04 NCAC 10C .0109 (Vocational Rehabilitation Services Return to Work), 04 NCAC 10E .0201 (Document and Record Fees), 04 NCAC 10E .0202 (Hearing Costs or Fees), 04 NCAC 10E .0203 (Fees Set by the Commission), 04 NCAC 10G .0104A (Foreign Language Interpreters), as adopted by the Industrial Commission on September 20, 2012, and approved by the Rules Review Commission on October 18, 2012, are disapproved.

SECTION 2. Pursuant to G.S. 150B-21.3(b1), 04 NCAC 10A .0801 (Suspension of Rules), 04 NCAC 10B .0501 (Suspension of Rules), 04 NCAC 10C .0108 (Interaction with Physicians), 04 NCAC 10C .0201 (Suspension of Rules), 04 NCAC 10D .0110 (Suspension of Rules), 04 NCAC 10E .0301 (Suspension of Rules), 04 NCAC 10G .0107 (Compensation of the Mediator), 04 NCAC 10G .0110 (Waiver of Rules), 04 NCAC 10H .0206 (Waiver of Rules), 04 NCAC 10I .0204 (Suspension of Rules), as adopted by the Industrial Commission on September 20, 2012, and approved by the Rules Review Commission on November 15, 2012, are disapproved.

SECTION 3. G.S. 97-18(k) reads as rewritten:

"(k) In addition to any other methods for reinstatement of compensation available under the Act, whenever the employer or insurer has admitted the employee's right to compensation, or liability has been established, the employee may move for reinstatement of compensation on a form prescribed by the Commission. If the employer or insurer contests the employee's request for reinstatement, the matter shall be scheduled on a preemptive basis. The form prescribed by the Commission shall contain the reasons for the proposed reinstatement of compensation, be supported by available documentation, and inform the employer of the employer's right to contest the reinstatement of compensation by filing an objection in writing with the Commission within 14 days of the date the employee's notice is filed with the Commission or within such additional reasonable time as the Commission may allow. If the employer or insurer contests the employee's request for reinstatement, the Commission shall conduct an informal hearing by telephone with the parties or their counsel. If either party objects to conducting the hearing by telephone, the Commission may conduct the hearing in person in Raleigh or at another location selected by the Commission. The parties shall be afforded an opportunity to state their position and to submit documentary evidence at the informal hearing. The employee may waive the right to an informal hearing and proceed to the formal hearing. The Commission's decision in the informal hearing is not binding in the subsequent hearings. If the application for Reinstatement of Payment of Disability



Compensation is approved or not contested, then compensation shall be reinstated immediately and continue until further order of the Commission. The employer or employee may request a formal hearing pursuant to G.S. 97-83 on the Commission's decision approving or denying the employee's application for reinstatement. A formal hearing under G.S. 97-83 ordered or requested pursuant to this subsection shall be a hearing de novo on the employee's application for reinstatement of compensation and may be scheduled by the Commission on a preemptive basis. This subsection shall not apply to a request for a review of an award on the grounds of a change in condition pursuant to G.S. 97-47."

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

"§ 97-25. Medical treatment and supplies.

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

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

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

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

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

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

(g) If the Commission determines that a medical motion should be expedited, each party shall be afforded an opportunity to state its position and to submit documentary evidence at an informal telephonic hearing. The medical motion shall contain documentation and support of the request, including the most relevant medical records and a representation that informal means of resolving the issue have been attempted in good faith, and the opposing parties'

position, if known. The Commission shall determine whether deposition testimony of medical and other experts is necessary and if so shall order that the testimony be taken within 35 days of the date the motion is filed. For good cause shown, the Commission may reduce or enlarge the time to complete depositions of medical and other experts. Transcripts of depositions shall be expedited and paid for by the administrator, carrier, or employer. Transcripts shall be submitted electronically to the Commission within 40 days of the date the motion is filed unless the Commission has reduced or enlarged the time to complete the depositions. The Commission shall render a decision on the motion within five days of the date transcripts are due to the Commission.

(h) If the Commission determines that a medical motion is an emergency, the Commission shall make a determination on the motion within five days of receipt by the Commission of the medical motion. Motions requesting emergency medical relief shall contain the following:

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

SECTION 5. G.S. 97-79 is amended by adding a new subsection to read:

"(g) The Commission shall adopt rules, in accordance with Article 2A of Chapter 150B of the General Statutes, for administrative motions, including practices and procedures for carrying out the provisions of this Article."

SECTION 6. G.S. 97-80 reads as rewritten:

"§ 97-80. Rules and regulations; subpoena of witnesses; examination of books and records; depositions; costs.

(a) The Commission shall adopt rules, in accordance with Article 2A of Chapter 150B of the General Statutes and not inconsistent with this Article, for carrying out the provisions of this Article.

The Commission shall adopt rules establishing processes and procedure to be used under this Article.

Processes, procedure, and discovery under this Article shall be as summary and simple as reasonably may be.

(b) The Commission or any member thereof, or any person deputized by it, shall have the power, for the purpose of this Article, to tax costs against the parties, to administer or cause to have administered oaths, to preserve order at hearings, to compel the attendance and testimony of witnesses, and to compel the production of books, papers, records, and other tangible things.

(c) The Commission may order parties to participate in mediation, under rules substantially similar to those approved by the Supreme Court for use in the Superior Court division, except the Commission shall determine the manner in which payment of the costs of the mediated settlement conference is assessed.

(d) The Commission may order testimony to be taken by deposition and any party to a proceeding under this Article may, upon application to the Commission, which application shall set forth the materiality of the evidence to be given, cause the depositions of witnesses residing within or without the State to be taken, the costs to be taxed as other costs by Commission. Depositions ordered by the Commission upon application of a party shall be taken after giving the notice and in the manner prescribed by law for depositions in action at law, except that they shall be directed to the Commission, the commissioner, or the deputy commissioner before whom the proceedings may be pending.

(e) A subpoena may be issued by the Commission and served in accordance with G.S. 1A-1, Rule 45. A party shall not issue a subpoena duces tecum less than 30 days prior to the hearing date except upon prior approval of the Commission. Upon a motion, the

Commission may quash a subpoena if it finds that the evidence the production of which is required does not relate to a matter in issue, the subpoena does not describe with sufficient particularity the evidence the production of which is required, or for any other reason sufficient in law the subpoena may be quashed. Each witness who appears in obedience to such subpoena of the Commission shall receive for attendance the fees and mileage for witnesses in civil cases in courts of the county where the hearing is held.

(f) The Commission may by rule provide for and limit the use of interrogatories and other forms of discovery, including production of books, papers, records, and other tangible things, and it may provide reasonable sanctions for failure to comply with a Commission order compelling discovery.

(g) The Commission or any member or deputy thereof shall have the same power as a judicial officer pursuant to Chapter 5A of the General Statutes to hold a person in civil contempt, as provided thereunder, for failure to comply with an order of the Commission, Commission member, or deputy. A person held in civil contempt may appeal in the manner provided for appeals pursuant to G.S. 97-85 and G.S. 97-86. The provisions of G.S. 5A-24 shall not apply to appeals pursuant to this subsection.

(h) The Commission or any member or deputy thereof shall also have the same power as a judicial officer pursuant to Chapter 5A of the General Statutes to punish for criminal contempt, subject to the limitations thereunder, (i) for ~~wilful~~willful behavior committed during the sitting of the commissioner or deputy commissioner and directly tending to interrupt the proceedings; (ii) for ~~wilful~~willful disobedience of a lawful order of the Commission or a member or deputy thereof; or (iii) for ~~wilful~~willful refusal to be sworn or affirmed as a witness, or, when so sworn or affirmed, ~~wilful~~willful refusal to answer any legal and proper question when refusal is not legally justified. The Commission or any member or deputy thereof may issue an order of arrest as provided by G.S. 15A-305 when authorized by G.S. 5A-16 in connection with contempt proceedings. When the commissioner or deputy commissioner chooses not to proceed summarily pursuant to G.S. 5A-14, the proceedings shall be before a district court judge, and venue lies throughout the district where the order was issued directing the person charged to appear. A person found in criminal contempt may appeal in the manner provided for appeals in criminal actions to the superior court of the district in which the order of contempt was issued, and the appeal is by hearing de novo before a superior court judge."

SECTION 7. G.S. 97-81(a) reads as rewritten:

"(a) The Commission shall prepare and cause to be printed, and upon request furnish, free of charge to any employee or employer, such blank forms and literature as it shall deem requisite to facilitate or prompt the efficient administration of this Article. Notwithstanding G.S. 150B-2(8a)d., any new forms or substantive amendments to old forms adopted after July 1, 2013, shall be adopted in accordance with Article 2A of Chapter 150B of the General Statutes. The Commission may authorize the use of electronic submission of forms and other means of transmittal of forms and notices when it deems appropriate."

SECTION 8. The Industrial Commission shall adopt rules to replace the rules disapproved by Sections 1 and 2 of this act, in accordance with the following directions:

- (1) With regard to 04 NCAC 10A .0601 (Employer's Obligations Upon Notice; Additional Medical Comp.), the Commission shall amend subsection (b) of the rule to provide that the letter of denial shall be sent to all known health care providers who have submitted bills and provided medical records to the employer or carrier.
- (2) With regard to 04 NCAC 10A .0603 (Responding to a Party's Request for Hearing), the Commission shall amend subsection (a) of the rule to delete the sentence "If a defendant files a request for hearing, the employee is not required to respond." The Commission shall amend subsection (b) of the rule to delete all references to "plaintiff" and substitute "moving party," and all references to "defendant" and substitute "nonmoving party."
- (3) With regard to 04 NCAC 10A .0605 (Discovery), the Commission shall amend the rule by deleting the following phrase from subdivision (4): "including the sanctions specified in G.S. 1A-1, Rule 37."; and by deleting the following from subdivision (9): "The parties shall not submit motions to compel production of information otherwise obtainable under G.S. 97-25.6."

- (4) With regard to 04 NCAC 10A .0608 (Statement of Incident Leading to Claim), the Commission shall amend subsection (b) of the rule by adding the word "unreasonably" between the words "corporation" and "fails."
- (5) With regard to 04 NCAC 10A .0701 (Review by Full Commission), the Commission shall establish a procedure to track an appellant's electronic receipt of a Form 44 and notice of appeal from the Commission.
- (6) With regard to 04 NCAC 10A .0704 (Remand from the Appellate Courts), the Commission shall rewrite the rule to specifically allow for a stay of the deadline to submit a statement to the Commission on remand when a party files a petition for discretionary review or rehearing.
- (7) With regard to 04 NCAC 10C .0103 (Definitions), the Commission shall amend subdivision (3) to read as follows: ""Vocational rehabilitation" means the delivery and coordination of services under an individualized written plan, with the goal of assisting the injured worker to return to suitable employment or participate in education or retraining, as defined by subsection (5) of this rule or applicable statute."
- (8) With regard to 04 NCAC 10C .0108 (Interaction with Physicians), the Commission shall amend subsection (e)(1) by inserting the phrase "that is authorized or ordered" after the word "examination."
- (9) With regard to 04 NCAC 10C .0109 (Vocational Rehabilitation Services Return to Work), the Commission shall delete subsection (i) of the rule.
- (10) With regard to 04 NCAC 10A .0405 (Reinstatement of Compensation), the Commission shall delete subsections (a) through (g) and substitute the following:
 - "(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 sent to the Commission at the same time and by the same method by which a copy of the Form 23 and attached documents are sent to the employer, carrier, or administrator and the employer's, carrier's, or administrator's attorney of record. The 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 send it to the Commission and to the employee, or the employee's attorney of record, at the same time and by the same method by which the form is sent to the Commission.
 - (c) If the employer, carrier, or administrator does not object within the time allowed, the Commission shall review the Form 23 Application to Reinstate Payment of Disability Compensation and attached

documentation and, without an informal hearing, render an Administrative Decision or Order as to whether there is sufficient basis under the Workers' Compensation Act to reinstate compensation. This Administrative Decision and Order shall be rendered within five days of the expiration of the time within which the employer, carrier, or administrator could have filed a response to the Form 23 Application to Reinstate Payment of Disability Compensation. Either party may seek review of the Administrative Decision and Order as provided by Rule .0703 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 .0703 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, that shall be in lieu of a Form 33 Request that Claim be Assigned for Hearing, and the case shall be placed on the formal hearing docket. If additional issues are to be addressed, the employee, employer, carrier, or administrator shall 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."
- (11) With regard to 04 NCAC 10A .0609A (Medical Motions and Emergency Medical Motions), the Commission shall rewrite the rule in accordance with G.S. 97-25, as amended by Section 4 of this act.
 - (12) With regard to 04 NCAC 10A .0102 (Official Forms), the Commission shall adopt a form for use as a subpoena that is in compliance with current North Carolina law. The Commission shall also review all prior minutes and administrative rulings of the Commission and where necessary adopt rules related to the processes and procedures outlined in the prior minutes and

administrative rulings. The rules shall be adopted in accordance with Article 2A of Chapter 150B of the General Statutes.

SECTION 9. The Industrial Commission shall adopt rules to replace the following disapproved rules which relate to when the Commission may waive rules. In each case, the Commission shall amend references to granting a waiver "upon its own initiative" to read "upon its own initiative only if the employee is not represented by counsel."

04 NCAC 10A .0801 (Waiver of Rules)
04 NCAC 10B .0501 (Waiver of Rules)
04 NCAC 10C .0201 (Waiver of Rules)
04 NCAC 10D .0110 (Waiver of Rules)
04 NCAC 10E .0301 (Waiver of Rules)
04 NCAC 10G .0110 (Waiver of Rules)
04 NCAC 10H .0206 (Waiver of Rules)
04 NCAC 10I .0204 (Waiver of Rules)

SECTION 10. The Industrial Commission shall study the financial and economic impact and operational burdens on all parties of mandating that costs and fees be submitted electronically as provided by 04 NCAC 10A .0105. The Commission shall submit a report of its findings and recommendations to the 2014 Regular Session of the 2013 General Assembly.

SECTION 11. Notwithstanding G.S. 150B-21.2, the Industrial Commission shall adopt permanent rules in accordance with the provisions of this act using the procedure and time lines for temporary rules set forth in G.S. 150B-21.1(a3). Rules adopted by the Industrial Commission in accordance with this section shall be subject to review by the Rules Review Commission as provided by G.S. 150B-21.1(b); provided however, that if the rules are approved by the Rules Review Commission, they shall become effective as provided by G.S. 150B-21.3(b). Rules adopted pursuant to this section shall not be subject to G.S. 150B-19.1(h) or G.S. 150B-21.4. The Industrial Commission shall consult with the Office of Administrative Hearings to ensure that rules adopted in accordance with this section are submitted to the Rules Review Commission in time to be eligible for legislative disapproval in the 2014 Regular Session of the 2013 General Assembly. The rules of the Industrial Commission that were in effect on the effective date of S.L. 2011-287 shall remain in effect with regard to rules disapproved by Sections 1 and 2 of this act until rules adopted to replace the disapproved rules become effective pursuant to this section.

SECTION 12. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 9th day of July, 2013.

s/ Daniel J. Forest
President of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

s/ Pat McCrory
Governor

Approved 6:17 p.m. this 18th day of July, 2013