

**Regulatory Impact Analysis  
Codification of and/or changes to filing requirements**

Agency: North Carolina Industrial Commission  
Contact: Ashley Snyder – (919) 807-2524  
Proposed New Rule Title:  
Rules proposed for amendment: Rule 11 NCAC 23A .0502  
(See proposed rule text in Appendix 1)

State Impact: Yes  
Local Impact: Yes  
Private Impact: Yes  
Substantial Economic Impact: No

Statutory Authority: G.S. § 97-17  
G.S. § 97-80

Introduction/Background:

Rule 11 NCAC 23A .0502, along with G.S. 97-17, directs the parties as to what information and language must be included in compromise settlement agreements (CSAs) to be submitted to the Commission for approval. G.S. 97-17 (b)(1) provides that a settlement agreement must be deemed by the Commission to be fair and just and that the interests of the parties and any person, including a health benefit plan, that paid medical expenses of the employee have been considered prior to approval of the agreement. In order to complete an inquiry as to whether the agreement is fair, just, and in the interests of the parties, or to consider the interests of a health benefit plan, often additional information must be requested of the parties. Most of the proposed changes to the rule are designed to make the Rule easier to read and less confusing and are essentially a reorganization of information. The substantive changes to the rule are designed to make the inclusion of often-requested information mandatory and thus decrease the time it takes to review and approve settlement agreements.

Proposed Rule Changes and Their Estimated Impact:

The proposed rule amendments that make substantive changes to the rule include the following: a reference to the payment of costs by the parties related to Rule 11 NCAC 23E .0203 and 11 NCAC 23G .0107; the addition of language reducing the requirement to provide certain information if the employee is represented by counsel; additional details about required medical expense information; a reference to a party's duty to simultaneously serve the other party on additional information or changes to CSAs filed with the Commission following the initial submission, and the requirement that any current attorney seeking a fee in connection with a

CSA must advise the Commission if a pending claim for attorney's fees from a prior attorney exists, if known.

1. *11 NCAC 23A .0502(a)(2)*

This rulemaking updates the rule and requires the CSA submitted by the parties to provide an accounting of any costs the defendants intend to recoup from the settlement amount. These costs can be of three kinds: 50% of the CSA filing fee paid to the Commission, 50% of the mediator report filing fee paid to the Commission, and/or the employee's portion of any required compensation paid to a mediator. These costs are paid by the defendants upon filing or after mediation based on 11 NCAC 23E .0203(a) and (b) and 11 NCAC 23G .0107, respectively. Defendants are entitled to take a credit from the settlement amount for any of these costs paid on behalf of plaintiff. Quite often, the parties bargain over the payment of these costs as part of the settlement agreement.

Currently, the rule only requires that the CSA state that defendants will pay the CSA filing fee upon filing. That rule is no longer required because the CSA filing fee must now be paid upon submission. The current rule does not require any information about the application of credits or any agreement to waive the credits. Often, this information is included in the CSA, but there are a good number of cases in which it is not. The information is helpful because it affects the actual amount the employee will receive, which needs to be considered by the Commission. Most importantly, however, many settlements involve employees without legal counsel who may not be aware of these various costs or their obligations to pay portions of them. Therefore, they may settle their case for a certain amount and then receive \$200+ less than what they expected to receive without advance knowledge. This information should be in the settlement agreement that the employee reviews and signs so that the employee is aware of any credits to be applied to the settlement funds. Currently, this issue causes a delay in the approval process when the Commission has to request this information from the parties. The economic impact of this rule change is described below:

a. Costs to the State through the Commission:

The Commission does not anticipate any significant costs related to the proposed rule change. Most parties already memorialize in the CSA any agreement or credits related to the payment of costs in cases in which both sides are represented by counsel. There may be a brief period during which some parties fail to comply with the new rule and the Commission must correspond with them to inform them of the new rule and request the required information. However, this is likely to occur in a relatively small number of cases for only a few weeks and the corrective action by the Commission is equivalent to the action it already takes currently to obtain this information. Therefore, the Commission expects no to minimal cost impact from the rule change and only for a short duration.

b. Costs to the State as an employer:

It is unlikely that the State as an employer will have to expend additional funds to be able to comply with the proposed rule change, as the information being requested is available to the defendant. The defendant is responsible for drafting the agreement and this information is already frequently included. State employees such as attorneys and paralegals representing the State will have to add this information to any compromise settlement agreement submitted for filing. It is anticipated that this would take approximately 1-3 minutes per case. The Commission receives and reviews approximately 10,000 CSAs per year. There is no data regarding how many CSAs are currently submitted without this information.

c. Costs to private sector filers, including private employers, insurance carriers, and employees:

It is unlikely that those in the private sector would have to expend additional funds to be able to comply with the proposed rule change, as this information is available to the defendants and their attorneys who are responsible for drafting the agreement. Attorneys and paralegals will have to add this information to any compromise settlement agreement submitted for filing where an agreement exists. It is anticipated that this would take approximately 1-3 minutes per case. The Commission has no data regarding how many CSAs are submitted without this information where an agreement exists.

d. Benefits to the State through the Commission:

The proposed rule change will improve the efficiency of reviewing CSAs submitted to the Commission. This information is routinely requested when it is not initially provided, especially in cases where the plaintiff is not represented by an attorney and the settlement amount is low. This could save 10 to 15 minutes of the hearing officer's time in reviewing cases that do not currently include this information. The Commission has no data regarding how many cases this might be.

e. The benefits to the public and private sector:

If parties who did not previously provide the information comply with the new rule, they will save approximately 10-15 minutes of attorney or paralegal time handling an inquiry from the Commission seeking the information. All parties may see a small improvement in CSA turnaround times due to increased efficiency. Employees may benefit from having this information in the CSA so that they are aware in advance of the credits to be applied to the settlement amount.

2. *11 NCAC 23A .0502(a)(6)*

This rulemaking saves the CSA drafter from having to include certain employment information in cases where the employee has returned to work making less than his or her previous average weekly wage and is represented by counsel. Currently, the parties must state that the employee is not making a claim for partial wage loss or include information about the employee's job, including a description of the job, the name of the employer, and the average weekly wage earned. While this information is helpful for analyzing the employee's potential entitlement to temporary partial disability compensation, the Commission does not need the information in cases in which the employee is represented by counsel because it is assumed that counsel has advised the employee regarding entitlement to benefits during the settlement negotiations. Prior to November 1, 2014, the Commission did not require parties represented by counsel to state whether the employee was making a claim for partial wage loss or include information about the employee's current employment. The changes to this part of the rule in 2014 made Rule .0502(a)(6) inconsistent with (a)(7)(B) and thus confusing to parties. Currently, the Commission is in the position of having to enforce an unnecessary and inconsistent rule. The change to Rule 11 NCAC 23A .0502 (a)(6) would no longer require the drafters of the CSA to include partial wage loss claim information when the employee is represented by counsel, other than to include the employee's current work status.

The economic impact of the rule change is estimated as follows:

- a. Costs to the State through the Commission and to all parties before the Commission:

Because the rule removes a requirement, the Commission does not anticipate any costs related to the proposed rule change.

- b. Benefits to the State through the Commission:

The proposed rule change will improve the efficiency of reviewing CSAs submitted to the Commission. The Industrial Commission will no longer have to verify that this information is included in represented cases and spend 10-15 minutes contacting the parties to obtain the information. The Industrial Commission has no data on how many CSAs in represented cases do not include this information but it is believed to be a relatively low number.

- c. Benefits to the public and private sector:

For the small number of clinchers that do not include this information under the current rule, public and private sector parties will no longer be contacted to obtain it following submission of the CSA, saving approximately 10-15 minutes per applicable CSA. It is anticipated that this rule will improve turnaround times in CSA approvals incrementally by removing a requirement.

3. *11 NCAC 23A .0502(b)(2)*

This rulemaking has no economic impact. The changes to this part of the rule simply clarifies what is meant by “parties.”

4. *11 NCAC 23A .0502(b)(4)*

This rule provision addresses the list of medical expenses required by G.S. 97-17(b) and (c). The goal of the rule change is to clarify what information the Commission requires.

a. Description of baseline situation:

In settlement agreements where the defendants do not agree to pay all medical expenses related to the injury up to the date of injury, the parties must include with the agreement a list of all known medical expenses related to the injury, including disputed medical expenses. The parties must also include a list of all unpaid medical expenses that will be paid by the defendant, if the defendant has agreed to pay any, and a list of all unpaid medical expenses that will be paid by the employee, if the employee agrees to pay any. The current language of Rule .0502(b)(4) and (5) is somewhat confusing in its wording and the provisions overlap. Further, G.S. 97-17 requires the Commission to consider the interests of a health benefit plan that has paid medical expenses on behalf of the employee. However, the current rule does not require information regarding payment of medical expenses by a health benefit plan. Currently, medical expense information is one of the most common items delaying approval of a CSA. Often, even after the Commission requests the list of medical expenses, additional information must be requested because the list is not complete.

b. Description of proposed changes:

The changes to Rule 11 NCAC 23A .0502(b)(4), including the deletion of (b)(5), require that parties include on one list a breakdown of the medical expenses related to the claim including those that have been paid by defendants, are disputed by defendants, paid by the employee, paid by a health benefit plan, agreed to be paid by defendants as part of the settlement, and expenses that are to be paid by the employee. The rule change related to medical expenses is a re-configuration of the current rule to make it easier for the parties to understand what should be provided on a list of medical expenses and codifies the parties’ best practice, which is to provide the medical expense information in a list format. The only new addition to the rule is the requirement to list medical expenses paid by a health benefit plan, which G.S. 97-17 already requires indirectly. Many parties already include this information.

c. Economic Impact:

(1) Costs to the State through the Commission:

The Commission does not anticipate any significant costs related to the proposed rule change. The Commission already requests a list of medical expenses routinely when this information is not provided as required by the rule and statute.

(2) Costs to the State and some local government as an employer:

It is unlikely that the State as an employer will have to expend significant additional funds to comply with the proposed rule change, as most of the information being requested is available to the defendant who are responsible for drafting the agreement. Other than the list including expenses paid by a health benefit plan, this information already has to be provided per the existing rule. Even the list of medical expenses paid by a health benefit plan is contemplated by the statute and so is routinely included by most parties. In denied represented claims where the defendant has not paid any medical expenses, this list is often compiled by the plaintiff's counsel. In applicable cases, it could take the State or local government 15-30 minutes to obtain information from plaintiff regarding payment of medical expenses by a health benefit plan and include it in the CSA. This work may be done by legal assistants earning \$35.71 in total hourly compensation<sup>1</sup> or attorneys earning \$84.50 in total hourly compensation.<sup>2</sup> The Commission does not have data regarding how often it has to request additional information regarding payment of expenses by a health benefit plan from the State or local government.

(3) Costs to private sector, including private employers, insurance carriers, self-insured local government using private counsel, and employees:

It is unlikely that the private sector would have to expend significant additional funds to comply with the proposed rule change, as this information is generally available to the parties who are responsible for drafting the agreement. Other than the inclusion of expenses paid by a health benefit plan, this information already has to be provided to the Commission per the rule. If the information has not been provided by the employee, it may take 15-30 minutes to obtain information from the employee regarding payment of medical expenses by a health benefit plan and include it in the CSA. It is noted that many defense

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<sup>1</sup> 2017 wage estimates for paralegals and legal assistants in North Carolina reported by NC Department of Commerce, Occupational Employment and Wages in North Carolina (OES). Benefits as a percent of total compensation reported by NC OSHR. 2016 Compensation and Benefits Report. [https://files.nc.gov/ncoshr/documents/files/2016%20Comp%20and%20Benefits%20Report\\_FINAL.pdf](https://files.nc.gov/ncoshr/documents/files/2016%20Comp%20and%20Benefits%20Report_FINAL.pdf)  
Total compensation adjusted for recent 2% legislative increase.

<sup>2</sup> 2017 median wage estimates for attorneys in North Carolina reported by NC Department of Commerce, Occupational Employment and Wages in North Carolina (OES). <https://d4.nccommerce.com/OESSelection.aspx>  
Benefits as a percent of total compensation reported by NC OSHR. 2016 Compensation and Benefits Report. [https://files.nc.gov/ncoshr/documents/files/2016%20Comp%20and%20Benefits%20Report\\_FINAL.pdf](https://files.nc.gov/ncoshr/documents/files/2016%20Comp%20and%20Benefits%20Report_FINAL.pdf)  
Total compensation adjusted for recent 2% legislative increase.

firms charge an all-inclusive fee to carriers to draft and submit a CSA to the Commission. For those cases in which an hourly rate is charged to draft a CSA, it is estimated that a law firm charges \$90.00 per hour for a paralegal's time and \$150.00 for an attorney. It could take employees or their counsel 15-30 minutes to find and communicate the information, but it is not feasible to estimate the fiscal impact of this time because an unrepresented employee uses his or her own time and attorneys for employees generally work on a contingency fee. Therefore, the rule change may cause a temporary small increase in cost of \$30-60 in a small number of cases. The Commission does not have data regarding how often it has to request additional information regarding payment of expenses by a health benefit plan from the private sector.

(4) Benefits to the State through the Commission:

The proposed rule change reorganizes the information regarding medical expenses that should be submitted and is intended to make the information easier to digest. It is hoped that the Commission will see better compliance with this rule leading to improved efficiency in the Commission's review of CSAs. The Commission will save approximately 10-15 minutes of staff attorney time on applicable cases, which is estimated at \$7.77 - \$11.66<sup>3</sup>. It is not feasible to estimate the number of cases in which compliance with the amended rule will result in savings.

(5) Benefits to the public and private sector:

The parties may see an overall incremental improvement in CSA turnaround times due to better rule compliance and increased efficiency.

5. *11 NCAC 23A .0502(b)(5)*

Amendments to this rule provision expand the cases in which the CSA must indicate who will notify certain unpaid health care providers of the completion of the settlement agreement. Currently, the rule only requires this if (1) an employee's counsel has notified the health care provider in writing not to pursue a private claim against the employee or (2) a health care provider has notified an employee's counsel in writing of its claim for payment and requested notification of settlement. The amended rule would require this in cases where these conditions apply to an unrepresented employee as well. This could increase the number of cases where this provision is invoked. The rule change is intended to close the gap on cases in which health care providers have corresponded with the employee or counsel regarding payment. The amended rule will increase notice of settlement to health care providers. There is no data available on the number of cases

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<sup>3</sup> In FY 2016-2017, the Executive Secretary's Office issued 9,821 orders on CSAs, 83% of the 11,848 issued by the Commission as a whole. 2016-2017 Industrial Commission Annual Report, <http://www.ic.nc.gov/2017AnnualReport.pdf>. The average annual wage, including benefits, of a Special Deputy Commissioner in the Executive Secretary's section is \$95,139.92, or \$46.64 per hour.

in which employees are not represented by counsel and either of the two conditions in the amended rule exists with respect to a health care provider.

In those cases where the information must be included in a settlement agreement, it is not likely to take more than 1-3 additional minutes to insert the information in the settlement agreement. The Commission expect minimal cost or benefit to result from this rule change for the Commission, State, local government, or other parties. There may be some minor benefit to health care providers who receive notice of the completion of a settlement agreement and can consider that information with respect to any collection efforts. It is not feasible to estimate this benefit.

6. *11 NCAC 23A .0502(c)*

a. Description of baseline situation:

The current rule provides all CSAs will be directed to the Office of the Executive Secretary for review or distribution. The rule does not give any direction about addenda or changes to a CSA. Currently, there are times when it is not clear to the Commission that all parties have received a copy of a change to a CSA. The Commission cannot consider a change to a CSA unless all parties are aware of it and have agreed to the change.

b. Description of proposed changes:

The proposed amendments to the second sentence of the rule update the rule by deleting the reference to the Executive Secretary's Office. This allows the Commission flexibility for its internal procedures. The Commission does not expect this rule change to have any fiscal impact.

The proposed amendment adding a third sentence to the Paragraph (c) requires that any changes or addenda to the CSA be served upon the opposing party contemporaneously with submission to the Commission.

c. Economic impact:

(1) Costs to the State through the Commission:

There are no expected costs to the State through the Commission. Parties must already submit any changes or addenda to a CSA to the Commission in order to get them approved.

(2) Costs to the State and local governments as an employer:

Any changes to a CSA are already submitted to the Commission because they must be approved by the Commission. The only additional requirement on state and local governments is that they copy the opposing party contemporaneously

when any changes or addenda are submitted to the Commission. Because submissions to the Commission are electronic, the opposing party must be copied via email. This is expected to take one additional minute or less.

It is assumed paralegals or legal assistants will submit any changes and addenda. Based on an hourly compensation rate of \$35.71,<sup>4</sup> it costs approximately \$0.60 to copy the opposing party on one change or addenda. Copying by mail to employees without reliable e-mail may take slightly longer, five minutes or less, or \$3.00, plus postage. Currently, most parties already follow this practice. There is no data on how many cases involve addenda. There is also no data on how often parties currently fail to copy the other parties on an addendum, but it is infrequent in the Commission's experience. Therefore, the additional cost on State and local governments is expected to be *de minimis*.

(3) Costs to the private sector:

Any changes to a CSA are already submitted to the Commission. The only additional requirement on state and local governments is that they copy the opposing party when any changes or addenda are submitted to the Commission. Because submissions to the Commission are electronic, the opposing party must be copied via email. This is expected to take one additional minute or less. It is assumed paralegals or legal assistants will submit any changes and addenda. Based on an hourly compensation rate of \$34.50,<sup>5</sup> it costs approximately \$0.58 to copy the opposing party on one change or addenda. Copying by mail to employees without reliable e-mail may take slightly longer, five minutes or less, or \$2.90, plus postage. Currently, most parties already follow this practice. There is no data on how many cases involve addenda. There is also no data on how often parties currently fail to copy the other parties on an addendum, but it is infrequent in the Commission's experience. Therefore, the additional cost on State and local governments is expected to be *de minimis*.

(4) Benefits to the State through the Commission:

Ensuring the opposing party is copied on all changes and addenda to the CSA will decrease the time Commission staff spends communicating with the parties.

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<sup>4</sup> 2017 wage estimates for paralegals and legal assistants in North Carolina reported by NC Department of Commerce, Occupational Employment and Wages in North Carolina (OES).

<sup>5</sup> 2017 wage estimates for paralegals and legal assistants in North Carolina reported by NC Department of Commerce, Occupational Employment and Wages in North Carolina (OES). <https://d4.nccommerce.com/OESSelection.aspx>

Benefits as a percent of total compensation reported by Bureau of Labor Statistics. Employer Costs per Hour Worked for Employee Compensation and Costs as a Percentage of Total Compensation: Private industry workers. March 2018 (Release Date June 8, 2018).

<https://www.bls.gov/news.release/ecec.t05.htm>

Adjusted for private sector wage growth estimate of 2.74% for North Carolina professional and business service sectors. Reported by IHS Connect. Regional Economics Database. North Carolina Annual Forecast Data. Accessed June 13, 2018.

Although it is hard to estimate the time spent communicating with the parties regarding changes and addenda, Special Deputy Commissioners in the Executive Secretary's section handle most of the CSAs.<sup>6</sup> The average hourly wage of a Special Deputy Commissioner in the Executive Secretary's section, including benefits, is \$46.64,<sup>7</sup> meaning a benefit of \$7.77 for every 10 minutes saved.

(5) Benefits to the State, local governments, and the private sector, including employees:

The parties may see an overall incremental improvement in CSA turnaround times due to better rule compliance and increased efficiency.

7. *11 NCAC 23A .0502(d)*

a. Description of baseline situation:

The current rule requires the employer, carrier, or administrator to submit a CSA to the employee's attorney of record or the employee, if unrepresented, once the Commission approves the CSA. It should be noted that it is common practice for an employee to sign the CSA first and then send it back to defendants for signature, so the employee cannot receive a fully executed copy until after all signatures are complete. The current rule unnecessarily requires the employer or carrier to send a copy of the CSA to the employee after the CSA is approved by the Commission. Generally, the employee is copied on the submission of the CSA to the Commission. The rule as currently written could lead an employer or carrier to think they do not need to copy the employee on the submission to the Commission or it could create the impression that a second copy must be sent after the CSA is approved.

b. Description of proposed changes:

The proposed amendment simply requires the employer, carrier, or administrator to furnish an executed copy of the CSA to the employee's attorney of record or the employee, if unrepresented. There is no reason for the employer or carrier to wait until after approval of the CSA to provide the employee with a copy of the executed CSA. In fact, if the agreement is not approved, the rule would not require the carrier to provide a copy to the employee who may need a copy in order to appeal the disapproval.

c. Economic impact:

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<sup>6</sup> In FY 2016-2017, the Executive Secretary's Office issued 9,821 orders on CSAs, 83% of the 11,848 issued by the Commission as a whole. 2016-2017 Industrial Commission Annual Report, <http://www.ic.nc.gov/2017AnnualReport.pdf>.

<sup>7</sup> The average annual wage, including benefits, of a Special Deputy Commissioner in the Executive Secretary's section is \$95, 139.92.

(1) Costs to the State through the Commission:

There are no expected costs to the State through the Commission because the proposed amendment to the rule deals with a requirement upon the parties.

(2) Costs to the State and local governments as an employer and private sector employers or carriers:

Any additional cost on State and local governments and private employers or carriers from this rule change is expected to be *de minimis*.

(4) Benefits to the State through the Commission:

Ensuring all parties have a copy of the final, executed agreement as submitted to the Commission in subsection (c) will decrease the time Commission staff spends communicating with the parties. Special Deputy Commissioners in the Executive Secretary's section handle the majority of the CSAs.<sup>8</sup> The average hourly wage of a Special Deputy Commissioner in the Executive Secretary's section, including benefits, is \$46.64,<sup>9</sup> meaning a benefit of \$7.77 for every 10 minutes saved.

(5) Benefits to the State, local governments, and the private sector:

The parties may see an overall incremental improvement in CSA turnaround times due to better rule compliance and increased efficiency. Most employers or carriers already copy the employee or counsel with a copy of the executed CSA when it is submitted to the Commission. The rule as currently written would seem to require them to send another copy to the employee after approval of the CSA. There could be a small savings if the amended rule prevents duplication.

8. *11 NCAC 23A .0502(e)*

This rulemaking deals with the situation in which the employee is currently represented by counsel but was previously represented by another attorney who has requested that a fee be considered at the time of any award by the Commission.

a. Description of baseline situation:

The current rule provides that an attorney seeking fees in connection with a CSA shall submit a copy of the fee agreement with the client. If there is a pending fee request from a prior attorney in the file, the hearing officer reviewing the CSA will contact the current counsel of record and opposing counsel of record and ask

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<sup>8</sup> In FY 2016-2017, the Executive Secretary's Office issued 9,821 orders on CSAs, 83% of the 11,848 issued by the Commission as a whole. 2016-2017 Industrial Commission Annual Report, <http://www.ic.nc.gov/2017AnnualReport.pdf>.

<sup>9</sup> The average annual wage, including benefits, of a Special Deputy Commissioner in the Executive Secretary's section is \$95,139.92.

them whether there is an agreement as to the fee split and, if not, to communicate with each other to determine whether an agreement as to the fee split can be reached between the attorneys. If no agreement can be reached, the hearing officer will approve the CSA and the current counsel of record will be advised to hold the fee in trust pending a determination of the fee split.

b. Description of proposed changes:

The change to Rule 11 NCAC 23A .0502 (e) requires that plaintiff's counsel inform the Commission of a prior attorney's fee request if one is known to exist at the time of submission of the clincher and shall advise if an agreement regarding a division of fees has been reached. This rule codifies the best practice of plaintiffs' attorneys when it comes to requesting consideration of a fee where a prior attorney's fee claim exists.

c. Economic Impact:

(5) Costs to the State through the Commission:

The Commission does not anticipate any significant costs related to the proposed rule change. There may be an initial increase in calls or emails from attorneys to confirm the rule change.

(6) Costs to the State as an employer:

The state should have no additional costs as an employer. This rule does not affect employers or their attorneys.

(7) Costs to private sector filers, including private employers, insurance carriers, and employees:

This rule will only effect current plaintiff's attorneys. It is anticipated that providing the information sought would take approximately 1-3 minutes per case to add this information to an existing fee request.

(8) Benefits to the State through the Commission:

The proposed rule changes may improve the efficiency of reviewing CSAs submitted to the Commission. Although the rule only requires attorneys to provide information if known and only requires them to advise the Commission on an agreement regarding the division of fees if one has been reached, it may prompt current attorneys to contact prior attorneys and negotiate an agreement prior to submitting a fee request. Since the rule only applies to situations in which the pending fee request is known, the hearing officer reviewing the CSA will still have to review the file to ascertain whether an attorney fee request is pending, or if more than one is pending.

The hearing officer will still need to send a memo to the attorney and former attorney(s) in cases where the former attorney's request wasn't noted by the current attorney or, if it was noted, no agreement on a fee split was reached. It might save the Commission 15-30 minutes of time where the parties have noted all fee petitions and have come to an agreement on those fees.

(5) The benefits to the public and private sector:

The proposed rule change won't significantly benefit the public or private sector, except that the parties may see an improvement in CSA turnaround times.

Summary of impact:

Benefits and costs related to the changes to 11 NCAC 23A .0502 are not quantified in this analysis due to lack of data.

It is anticipated that the rule will go into effect on January 1, 2019, and that the same level of cost and benefit will recur each year.

## APPENDIX 1

### Proposed Rule Text

Rule 11 NCAC 23A .0502 is proposed for amendment as follows:

#### **11 NCAC 23A .0502 COMPROMISE SETTLEMENT AGREEMENTS**

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

- (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 employer, carrier, or administrator will pay all costs incurred. 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) No rights other than those arising under the provisions of the Workers' Compensation Act are compromised or released by this agreement.
- (4) ~~The Whether the employee has, or has not, returned to work. a job or position at the same or a greater average weekly wage as was being earned prior to the injury or occupational disease.~~
- (5) If the employee has returned to work, whether the employee is earning the same or greater average weekly wage.
- ~~(5)(6) Where~~ If the employee has not returned to work a job or position at the same or a greater wage at a lower average weekly wage, as was being earned prior to the injury or occupational disease, the employee has, or has not, returned to some other job or position and, if so, the a description of the particular job or position, the name of the employer, and the average weekly wage earned. This Subparagraph does not apply where the employee or counsel certifies that partial wage loss due to an injury or occupational disease is not being claimed. 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.
- ~~(6)(7) Where~~ If the employee has not returned to work, a job or position at the same or a greater average weekly wage as was being earned prior to the injury or occupational disease, 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 upon a showing of: if:
  - (A) it places an unreasonable burden upon the parties;
  - (B) the employee is represented by counsel; or

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

(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 parties and all attorneys of record, 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 ~~The~~ settlement agreement contains a list of all known medical expenses of the employee related to the injury to the date of the settlement agreement, ~~including medical expenses that the employer, carrier, or administrator disputes, when the employer or insurer has not agreed to pay all medical expenses of the employee related to the injury up to the date of the settlement agreement. This list shall include:~~
  - (A) All known medical expenses that have been paid by the employer, carrier, or administrator;
  - (B) All known medical expenses that the employer, carrier, or administrator disputes;
  - (C) All known medical expenses that have been paid by the employee;
  - (D) All known medical expenses that have been paid by a health benefit plan;
  - (E) All known unpaid medical expenses that will be paid by the employer, carrier, or administrator;
  - (F) All known unpaid medical expenses that will be paid by the employee.
- ~~(5) The settlement agreement contains a list of the unpaid medical expenses, if known, that will be paid by the employer, carrier, or administrator, if there are unpaid medical expenses that the employer or carrier has agreed to pay. The settlement agreement also contains a list of unpaid medical expenses, if known, that will be paid by the employee, if there are unpaid medical expenses that the employee has agreed to pay.~~
- ~~(6)~~(5) The settlement agreement provides that a party who has agreed to pay a disputed unpaid medical expense will notify ~~in writing~~ 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 ~~in writing~~ 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.
- (7)(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.
- (8)(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 ~~directed to the Office of the Executive Secretary for review or distribution~~ 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) ~~Once a compromise settlement agreement has been approved by the Commission, the~~ 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 ~~seeking~~ that seeks fees in connection with a ~~Compromise Settlement Agreement~~ compromise settlement agreement shall submit ~~to the Commission~~ a copy of the attorney's fee agreement between the employee and the employee's previous attorney, then with the client. at the time of submission of a compromise settlement agreement, the employee's current attorney shall advise the Commission of the employee's fee agreement with the previous attorney and note whether an agreement has been reached between counsel as to the division of attorney's fees.

*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;*

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