Regulatory Impact Analysis
Employer's Requirement to File a Form 19

Agency:	North Carolina Industrial Commission
Contact:	Gina Cammarano – (919) 807-2524
Proposed New Rule Title:	Employer's Requirement to File First Report of Injury
Rule Proposed for Amendment:	Rule 11 NCAC 23A .0104 (see proposed rule text in Appendix A)
State Impact:	Yes
Local Impact:	Yes
Private Impact:	Yes
Substantial Economic Impact:	Possible
Statutory Authority:	*G.S. § 97-80(a); § 97-92.*

Background and Purpose of Proposed Rule Changes:

The purpose of Rule 11 NCAC 23A .0104 is to provide notice and guidance to the regulated entities about the requirement, when certain thresholds are met, for the employer, carrier, or administrator to file with the Industrial Commission a report of the employee's injury or occupational disease on the form established for this purpose by the Industrial Commission, which is the Form 19 *Employer's Report of Employee's Injury or Occupational Disease to the Industrial Commission.*

There are two thresholds that trigger the requirement to file a Form 19, and the Form 19 must be filed upon the first of these thresholds being met. One threshold is when the employee misses more than one day of work due to the injury or occupational disease. The other threshold is when the medical compensation charges paid by the employer, carrier, or administrator exceed the amount set by the Industrial Commission.

The purpose of the Form 19 is for an employer to report workplace injuries to the Industrial Commission once the first of the two thresholds is met in terms of time out of work or medical charges paid.

It should be noted that the filing of a Form 19 does not constitute the filing of an employee's claim for compensation. The Form 19 is merely a report of injury. But, upon the receipt of a Form 19, the Industrial Commission assigns an "IC File Number" to the case, which will be the file number used going forward, if and when the employee files a claim for compensation. Additionally, when an employer files a Form 19, the rule requires the employer to send a blank Form 18 *Notice of Accident to Employer and Claim of Employee, Representative, or Dependent* to the employee. The Form 18 is the most common method by which an employee files a claim for workers' compensation benefits.

The rule, in its current form, does not tell the regulated entities the medical compensation dollar amount set by the Industrial Commission, even though G.S. 97-92(a) states that the need to file a report of injury is triggered if medical compensation exceeds "the amount set by the Commission."

Currently, in order to determine this dollar amount, the regulated entities have to refer to the April 20, 1992 *Minutes, Medical Procedure Changes*[1] of the Industrial Commission. In S.L. 2013-294, however, the legislature directed the Industrial Commission to 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, in accordance with Article 2A of Chapter 150B of the General Statutes. Therefore, it appears necessary for the Commission to amend Rule 104 and state the current dollar amount set by the Commission.

Proposed Rule Changes and Their Estimated Impact:

The proposed amendments to this rule achieve three main objectives:

(1) The proposed amendment to subsection (a) gives needed clarity to the regulated entities by clearly describing the situations that trigger the compulsory filing of a Form 19 under the statute and by specifically stating the dollar amount of medical charges that has been set by the Industrial Commission as the amount over which the need to file a Form 19 is triggered in cases where the employee has not missed more than one day of work.[2] The proposed increase of the medical charges dollar amount over which the need to file a Form 19 is triggered in cases where the employee has not missed more than one day of work from $2,000.00 (the amount that was set by the Commission in 1992) to $4,000.00 sets a dollar amount that reasonably reflects the increase in North Carolina workers' compensation medical expenses (prescriptions and other medical treatment costs common to North Carolina workers' compensation cases) that has occurred between 1992 and 2019 and strikes a good balance from a cost-benefit analysis

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[1] The Commission's April 20, 1992 *Minutes, Medical Procedure Changes* increased the amount of medical charges set by the Commission from $1,000.00 to $2,000.00 effective July 1, 1992. Prior to the 1992 increase, the dollar amount was increased from $800.00 to $1,000.00 effective July 1, 1989 in the Commission's May 1, 1989 *Office Memorandum* for *"Medical Only" Claims*. The Commission's records do not contain any documents between May 1, 1989 and August 12, 1959 memorializing the dollar amount. The Commission's August 12, 1959 *Amendment to Instructions and Rules Applicable to Certain "Medical Only" Cases* increased the dollar amount from $10.00 to $15.00 effective September 1, 1959. Prior to that, the Commission's July 18, 1951 *Amendment to Instructions and Rules Applicable to Certain "Medical Only" Cases* set the dollar amount at $10.00 effective August 1, 1951.

[2] In cases where the employee has missed more than one day of work, a Form 19 must be filed, regardless of the amount of medical charges.

standpoint. It should be noted that the Commission informally sought stakeholder input and feedback regarding this rule change, and both employee representatives and employer representatives support setting the dollar amount at $4,000.00.

(2) The proposed amendment to subsection (a) also carries out the legislative mandate of S.L. 2013-294, which required the Industrial Commission to review all prior minutes and, where necessary, adopt rules related to the processes and procedures outlined in the prior minutes in accordance with Article 2A of Chapter 150B of the General Statutes.

The remaining proposed changes are technical edits intended to clarify existing procedure with no expected impact to regulated entities.

Economic impact:

(1) Number of cases affected annually

The amendment to subsection (a) of the rule is expected to result in some decrease in the number of Forms 19 filed. However, the number by which the Forms 19 will decrease cannot be precisely determined due to limitations in the available data, namely the fact that neither the Industrial Commission nor any of the regulated entities keeps data on the number of cases where the employee has not missed more than one day of work and where the employee's medical charges are greater than $2,000.00 but not greater than $4,000.00.

Based on the data obtained from the North Carolina Rate Bureau (NCRB) (which is based on data from the National Council on Compensation Insurance (NCCI)), during policy years 2011 through 2017, in about 5.8% of North Carolina workers' compensation cases, the medical expenses ranged from $2,001.00- $4,000.00 and the employee missed seven or fewer days of work. Unfortunately, neither NCCI or NCRB nor any other known entity keeps data in a way that separates out workers' compensation cases where the medical expenses range from $2,001.00- $4,000.00 and the employee has missed no more than one day of work.

Because of the limits on the data, the number of cases that will be affected by increasing the dollar amount of the medical charges that trigger the Form 19 filing requirement by $2,000.00 cannot be precisely determined. However, based on the available data from policy years 2011-2017, the maximum number of cases that could be affected is approximately 3,300 per year, assuming all of the

individuals in the "seven-or-fewer-days-missed" category missed no more than one day of work.[3]

These numbers are the maximum number of cases affected, but the true number of cases affected will likely be less (and could be significantly less) because if and when any of the employees in any of these cases were to miss more than one day of work, the employer, carrier or administrator will be required to file a Form 19 regardless of the amount of medical charges. It is probably fair to assume that as the dollar amount of medical charges increases, the chance that an employee will miss more than one day of work due to the injury also increases.

(2) <u>The State through the Industrial Commission</u>:

The Industrial Commission can expect processing time savings of approximately $6,600.00 per year resulting from a decrease in the number of Forms 19 filed.

Based on the information obtained from the Director of Claims Administration at the Industrial Commission, it takes the average Claims Examiner about five minutes to process a Form 19 in a typical case where the coverage is clear and there are not any other issues. The Claims Examiner salary at the Industrial Commission is $31,200.00, equating to $50,140.00 including salary and benefits. Based on a 40-hour work week and a 52-week year, each Claims Examiner costs $24.00 per hour or .40 per minute. Therefore, the cost of processing a Form 19, assuming it takes five minutes to process, is $2.00.

In a given year, if the Industrial Commission processes a maximum of 3,300 fewer Forms 19 and if it costs $2.00 of Claims Examiner time to process each Form 19, this is a cost savings of up to $6,600.00 per year to the State through the Industrial Commission.

(2) <u>The Private Sector as Employees/Plaintiffs:</u>

When an employer files a Form 19, the rule requires the filer of the Form 19 to send a blank Form 18 *Notice of Accident to Employer and Claim of Employee, Representative, or Dependent* to the employee. The Form 18 is the most common method by which an employee files a claim for workers' compensation benefits.

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[3] See attached chart for policy years 2011-2015 and policy years 2016-17

Since the amendment to subsection (a) of the rule is expected to reduce the number of Forms 19 filed by up to a maximum of 3,300 cases annually, this means that fewer employees will receive direct notification in the form of a blank Form 18 about the need to file a claim for workers' compensation benefits if they wish to do so. Under the proposed rule change, employers will not send a blank Form 18 to employees in these cases unless and until the employees miss more than one day of work due to their workplace injuries.

This could result in fewer employees filing claims for workers' compensation benefits and it also could result in some of those employees failing to timely file claims for workers' compensation benefits, meaning that their right to claim benefits will be time-barred.[4] If a claim becomes time-barred, the employee is no longer eligible to claim benefits for lost compensation or medical expenses associated with the disabling workplace event for the remainder of their lifetime. These foregone benefits could be substantial. However, because it is not possible to determine how many fewer claims will be filed, and of those cases, how many will develop complications and incur costs after the statute of limitations has passed, the frequency and cost of this potential outcome is unquantified.

On the other hand, stakeholders from both the employer and employee side have indicated that their experience over the years with claims and with adjuster behavior indicates that adjusters often voluntarily pay medical claims up to the $2000 dollar threshold - *before* an employee takes any action to file a claim through a Form 18 or other means - because adjusters do not have to accept liability for the claim (or even deny the claim) until the employee takes action by filing the claim. Raising the dollar amount from $2,000 to $4,000 could benefit employees because adjusters may make voluntary payments for a longer period of time, thereby extending the employee's statute of limitations for filing a claim. However, it is not possible to reliably predict future adjuster behavior in terms of whether or not (or, if so, for how long), they are likely to voluntarily to pay additional medical compensation beyond $2,000.00 if the dollar threshold is raised to $4,000.00.

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[4] In an injury by accident claim, an employee has two years from the date of accident or from the date of the employer/carrier/administrator's last payment of medical compensation, whichever is later, to file a claim for workers' compensation benefits. In an occupational disease claim, the two years runs from the later of: (1) the last payment of medical compensation or (2) the date by which the employee is both disabled from the occupational disease and has been informed by competent medical authority of the nature and work-related cause of the disease.

Even though fewer employees will receive direct notification by (or on behalf of) their employer of their right to file a Form 18 if the dollar threshold is raised, these employees still will be notified that they should file a Form 18 if they are claiming workers' compensation benefits through the Form 17 *N.C. Workers' Compensation Notice to Injured Workers and Employers* (which must be prominently posted at the employee's place of employment if the employer has workers' compensation insurance or qualifies as a self-insured employer).

And employees will remain able to obtain a copy of a blank Form 18 by printing it out from the Industrial Commission website or by calling the Industrial Commission's Workers' Compensation Information Specialists who can mail a copy of a blank Form 18 to the employee. An employee also may obtain a copy of a blank Form 18 from the Information Specialists by scheduling an appointment to come to the Industrial Commission to pick up the blank Form 18. The phone number for the Industrial Commission's HELP LINE (which is answered by the Industrial Commission's Workers' Compensation Information Specialists is posted on the Form 17.

It also should be noted that once an employee misses more than one day of work due to his or her injury or occupational disease, the employer will have to file a Form 19 and send a Form 18 to the employee, regardless of the dollar amount of the medical charges. Further, if an employee has not missed more than one day of work due to an injury then the employee may not need to file a workers' compensation claim at that time.

(2) **The State as an Employer, Local Government as an Employer, and the Private Sector as Self-Insured Employers, Carriers and Administrators/Defendants**

The amendment to subsection (a) of the rule is expected to result in some decrease in the number of Forms 19 filed. This means that there will be fewer Forms 19 for adjusters with the State, Local Government and private sector to process electronically and to mail to employees (along with a blank Form 18), which will result in a savings of adjuster time and compensation costs attributable to the Form 19 process, as well as other Form 19-related costs, such as postage. These savings amount to a maximum of $43,000 annually. Detailed calculations are available in Appendix B.

The amendment also may result in a decrease in the number of Forms 18 filed by employees to claim workers compensation benefits. This outcome could reduce compensation costs and administrative processing time. If no Form 18 is filed and the claim becomes time-barred, the employer is not obligated to pay workers compensation benefits. Due to the uncertainty about the frequency of this occurrence, these potential savings are not quantified. If no Form 18 is filed the employer is not required to respond to the claim by accepting or denying the claim.

Summary of Economic Impact:

The proposed rule amendment increases the workers' compensation medical expense threshold that obligates an employer to file a Form 19 when the employee has not missed more than one day of work from $2,000.00 to $4,000.00.

The amendment will result in fewer Forms 19 being filed or, at the very least, Forms 19 being filed at a later point (the point at which the medical compensation exceeds $4,000.00) in cases where the employee has not missed more than one day of work. Likewise, fewer employees will receive direct notification from employers in the form of a blank Form 18 about how to file a claim for workers' compensation benefits.

This could result in fewer employees filing timely claims for workers' compensation benefits, meaning that their right to claim benefits could be time-barred – a cost to employees and savings to self-insured employers, carriers, and administrators. These foregone benefits could be substantial, but the frequency and cost of this potential outcome is unquantifiable. However, increasing the filing threshold could also benefit employees because adjusters may make voluntary payments for a longer period of time, thereby extending the employee's statute of limitations for filing a claim. However, it is not possible to reliably predict future adjuster behavior. The net effect of these rules on employees and self-insured employers, carriers, and administrators is unknown.

Based on the available data, in a given year, the maximum number of affected cases is approximately 3,300. It should be noted, however, that the actual number is likely to be far less than this maximum number since as soon as any of these employees misses more than one day of work they will be sent a blank Form 18 (along with a copy of the Form 19) by the employer. Additionally, there is no data available indicating how many employees file a Form 18 only because a blank Form 18 was mailed to them by their employer versus how many employees file a Form 18 independent of having been mailed a blank Form 18 by their employer. Therefore, it is difficult, if not impossible, to monetize the effect on claims filing behavior of fewer employees receiving a blank Form 18 from the employer.

Administrative cost savings associated with reduced Form 19 processing could reach up to $18,000 per year for State government (both through the Industrial Commission and as an Employer, $1,760 for Local Government, and $23,250 for the Private Sector.

It is anticipated the rule will go into effect on April 1, 2020 or May 1, 2020, and it is anticipated that the same or similar aggregate economic impact and behavioral effects will recur each year, although over time and with medical inflation the impact and effects may lessen.

Alternatives

The Industrial Commission considered several alternatives to the $4,000 dollar amount, namely leaving the dollar amount at $2,000, raising the dollar amount to $3,500.00, and raising the dollar amount to $5,000.00. Leaving the dollar amount at $2,000.00 was rejected because the amount was set at $2,000.00 in 1992, which was 27 years ago, and it is undisputed that medical costs have gone up since then.

Raising the dollar amount to $5,000.00 also was rejected, even though this amount was given serious consideration, because a comparison of the January 1, 1993 North Carolina Industrial Commission Fee Schedule reimbursement rates versus the current North Carolina Industrial Commission Fee Schedule reimbursement rates for 11 common types of medical treatment in workers' compensation cases showed an average of a 93% increase in facility reimbursement rates. Therefore, it was decided that raising the dollar amount by 150%, even when factoring in the cost savings and the benefits to employees of potentially having more medical compensation paid over a longer period of time, was too high of an increase.

Raising the dollar amount to $3,500.00 also was given serious consideration but, ultimately, rejected in favor of $4,000.00 because $3,500.00 only represents a 75% increase in dollar amount as compared with the 93% average increase in Fee Schedule facility reimbursement rates between January 1, 1993 and 2019 and because the cost savings benefits and benefits to employees of potentially having more medical compensation paid over a longer period of time are higher at the $4,000.00 level than at the $3,500.00 level.

Appendix A – Proposed Rule Text

11 NCAC 23A .0104 is proposed for amendment as follows:

11 NCAC 23A .0104 EMPLOYER'S REQUIREMENT TO FILE ~~A FORM 19~~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. _____.

Appendix B – Adjuster Time and Postage Savings

Adjuster Time Savings

The average amount of time that it takes for an adjuster to handle the filing and mailing of a Form 19 (and mailing of the copy of the blank Form 18) appears to vary, depending on whether the adjuster works for the State, Local Government or private sector.

Based on the information obtained from the North Carolina Office of State Human Resources, the total estimated time it takes personnel to file the Form 19 and prepare the acknowledgement packet sent to the employee containing the blank Form 18, a copy of the Form 19, and a cover letter is about 16 minutes. The North Carolina League of Municipalities estimated a processing time of 30 minutes, while a third party adjusting firm in the private sector estimated 20 minutes.

Based on the information obtained from the Workers' Compensation Manager at the North Carolina Office of State Human Resources, the average salary of a person who handles the filing and mailing of the Form 19 (and mailing of the copy of the blank Form 18) for the State as an Employer is $32,000.00 per year, equating to $51,268.00 in total compensation including salary and benefits. The per-minute cost for this position is $0.41.

Based on the information obtained from the Manager of Workers' Compensation Claims at the North Carolina League of Municipalities, the average salary of a "Med Only" adjuster who handles the filing and mailing of the Form 19 (and mailing of the copy of the blank Form 18) for Local Government as an Employer is $62,850.00 per year, equating to $109,134.00 in total compensation including salary and benefits . The per-minute cost for this position is $0.87.

Based on the information obtained from an Officer and Claims Manager of a third party adjusting firm in the private sector that handles many North Carolina workers' compensation cases, for large insurance companies in the private sector the salary of an adjuster who handles the filing and mailing of the Form 19 (and mailing of the copy of the blank Form 18) can range from a low of $35,000.00 to a high of $75,000.00, but the average adjuster salary in a large insurance company is believed to be about $60,000.00 (without a bonus), equating to $86,831.00 in total compensation including salary and benefits. The per-minute cost for this position is $0.70.

The League of Municipalities reported that their claims accounted for approximately 2% of the total claims affected by this rule. In the absence of data, this analysis assumes the remainder of cases are evenly split between state government and private sector employers.

Using these percentages (49% State, 2% Local Government, and 49% Private Sector), the annual cost savings to the State as an Employer would be $10,628

($6.57 savings per affected case x 1617 cases), the annual cost savings to Local Government as an Employer would be $1,731 ($26.23 savings per affected case x 66 cases), and the annual cost savings to the Private Sector would be $22,501.00 ($13.92 savings per affected case x 1617 cases).

Postage Annual Savings

Assuming the cost of $0.46 per letter (the current metered rate) for mailing a cover letter, one Form 19, and one blank Form 18 to an employee, and using the percentages immediately above, the annual cost savings in postage for the State as an Employer would be $743.82, the annual cost savings in postage for Local Government as an Employer would be $30.36, and the annual cost savings in postage for the Private Sector would be $743.82.

North Carolina

Medical Only, Lost-Time, and Total Claims Distribution By Incurred Medical Loss Amount

Policy Years 2011-2015

Incurred Medical Loss Amount Range	Percent of Medical Only Claims in Range	Percent of Lost-Time* Claims in Range	Percent of Total Claims in Range
$0 - $1,000	77.895%	18.005%	63.438%
$1,001 - $2,000	12.525%	9.193%	11.721%
$2,001 - $3,000	4.149%	6.897%	4.812%
$3,001 - $4,000	1.877%	5.064%	2.646%
$4,001 - $5,000	1.047%	4.099%	1.784%
$5,001 - $6,000	0.629%	3.441%	1.308%
$6,001 - $7,000	0.425%	3.008%	1.049%
$7,001 - $8,000	0.311%	2.757%	0.902%
$8,001 - $9,000	0.219%	2.488%	0.767%
$9,001 - $10,000	0.159%	2.315%	0.680%
$10,001 - $20,000	0.577%	15.634%	4.212%
$20,001 - $30,000	0.113%	8.832%	2.218%
$30,001 - $40,000	0.040%	5.323%	1.315%
$40,001 - $50,000	0.014%	3.299%	0.807%
$50,001 - $60,000	0.008%	2.155%	0.526%
$60,001 - $70,000	0.004%	1.495%	0.364%
$70,001 - $80,000	0.003%	1.129%	0.275%
$80,001 - $90,000	0.001%	0.839%	0.203%
$90,001 - $100,000	0.001%	0.632%	0.153%
$100,001 and greater	0.002%	3.395%	0.821%
Total Number of Claims	**284,918**	**90,664**	**375,582**

*Claims where an injured employee has received wage replacement benefitsdue to a compensable workplace injury.

North Carolina

Medical Only, Lost-Time, and Total Claims Distribution By Incurred Medical Loss Amount

Policy Years 2016-2017

Incurred Medical Loss Amount Range	Percent of Medical Only Claims in Range	Percent of Lost-Time* Claims in Range	Percent of Total Claims in Range
$0 - $1,000	78.919%	17.705%	64.151%
$1,001 - $2,000	11.888%	9.781%	11.380%
$2,001 - $3,000	3.921%	6.894%	4.638%
$3,001 - $4,000	1.737%	5.196%	2.572%
$4,001 - $5,000	0.991%	4.371%	1.807%
$5,001 - $6,000	0.613%	3.731%	1.366%
$6,001 - $7,000	0.394%	3.275%	1.089%
$7,001 - $8,000	0.292%	2.963%	0.936%
$8,001 - $9,000	0.230%	2.720%	0.831%
$9,001 - $10,000	0.202%	2.827%	0.836%
$10,001 - $20,000	0.617%	16.224%	4.382%
$20,001 - $30,000	0.126%	8.975%	2.261%
$30,001 - $40,000	0.035%	5.086%	1.254%
$40,001 - $50,000	0.020%	3.030%	0.746%
$50,001 - $60,000	0.003%	1.878%	0.455%
$60,001 - $70,000	0.004%	1.211%	0.295%
$70,001 - $80,000	0.004%	0.884%	0.216%
$80,001 - $90,000	0.001%	0.586%	0.142%
$90,001 - $100,000	0.002%	0.465%	0.113%
$100,001 and greater	0.001%	2.197%	0.531%
Total Number of Claims	**111,676**	**35,509**	**147,185**

*Claims where an injured employee has received wage replacement benefits due to a compensable workplace injury.