

**Regulatory Impact Analysis**  
**Changes to Electronic Filing Requirements for Certain Documents and Filers (11 NCAC 23A .0108; 11 NCAC 23B .0104), Changes to How Contact Information is Transmitted to the Commission (11 NCAC 23A .0109, .0302; 11 NCAC 23B .0105), and Changes to Forms 21, 26, 26A and T-42 Regarding Filing and Other Instructions and Notices (11 NCAC 23L .0101, .0102, .0103, and .0105)**

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| Agency:                       | North Carolina Industrial Commission   |
| Contact:                      | Gina Cammarano – (919) 807-2524  |
| Rules proposed for amendment: | 11 NCAC 23A .0108<br>11 NCAC 23A .0109<br>11 NCAC 23A .0302<br>11 NCAC 23B .0104<br>11 NCAC 23B .0105<br>11 NCAC 23L .0101<br>11 NCAC 23L .0102<br>11 NCAC 23L .0103<br>11 NCAC 23L .0105<br>(See proposed rule text for all nine rules in Appendix 1) |
| State Impact:                 | Yes  |
| Local Impact:                 | Yes  |
| Private Impact:               | Yes  |
| Substantial Economic Impact:  | No   |
| Statutory Authority:          | G.S. §§ 97-30; 97-31; 97-73; 97-80; 97-81; 97-82; 97-86; 97-94; 143-291; 143-291.2; 143-293; 143-295; 143-300; S.L. 2014-77.   |

**A. Background and Purpose of Proposed Rule Changes:**

These nine proposed rule amendments share a common theme of streamlining the filing of all documents<sup>1</sup> and the filing of all current contact information<sup>2</sup> in all claims arising under the Workers' Compensation Act and State Tort Claims Act. This streamlining is accomplished by making utilization of the Commission's secure Electronic Document Filing Portal ("EDFP") the universal method for filing documents and contact information with the Commission, unless an exception applies.

The advantages of having parties file all documents and current contact information at the Industrial Commission via EDFP are numerous. For the Commission, receiving documents via EDFP as compared with other filing methods greatly improves the

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<sup>1</sup> With the exception of documents filed by plaintiffs or non-insured employers who are unrepresented by legal counsel

<sup>2</sup> Again, with the exception of unrepresented plaintiffs and unrepresented non-insured employers

agency's efficiency by reducing document processing time and lessening the risk that documents will be misfiled. And receiving a party's current contact information via EDFP as compared with email (which is the current method by which all parties except unrepresented plaintiffs and unrepresented non-insured employers must notify the Commission of their current contact information) allows the Commission to consolidate the updating and storage of contact information, does not require various email inboxes to be monitored by Commission staff members, saves the Commission time, and eliminates the chance that contact information will be mis-typed into the computer system by the Commission.

The parties, themselves, also benefit from being able to file all documents and contact information via EDFP. When filing documents via EDFP, a party begins by typing in the IC file number, which brings up the case caption and allows the party to ensure that the documents are being uploaded to the correct Industrial Commission file. Filing via EDFP also requires the party to choose the document type from a drop-down menu, thereby ensuring that there is no confusion on the part of the Commission as to what type of document (*i.e.*, form, motion, response to motion, proposed order, etc.) is being filed. And before completing the upload, a party must review the filing to confirm and submit the filing, thereby further reducing opportunities for error. Finally, following submission of the EDFP filing, the party receives an email receipt confirming the EDFP filing, which is helpful for keeping track of filings and ensuring that the filing was properly submitted.

For contact information updates, submitting this information via EDFP as opposed to sending it to an email address will allow the parties to directly input their contact information into the Commission's electronic filing system, as opposed to sending an email containing the updated contact information (which relies on Commission staff having to take the information from the email and correctly type it into the computer system) or composing and typing a letter containing the updated contact information and attaching the letter to an email (which is much more time-consuming than submitting the information via EDFP and which relies on Commission staff having to correctly type the information from the letter into the computer system).

Despite the numerous advantages to both the Commission and the regulated parties of filing all documents and contact information via EDFP, unrepresented plaintiffs and unrepresented non-insured employers are never required to submit filings via EDFP because some may lack the technological ability to do so. While these unrepresented parties are permitted to submit filings via EDFP, they also are permitted, in the alternative, to submit any filings via email, fax, U.S. mail, private courier service, or hand delivery. The proposed rule changes that are the subject of this fiscal note do not make any changes to the filing methods that may be used by unrepresented plaintiffs and unrepresented non-insured employers for documents or for contact information. Therefore, these proposed changes will have no fiscal impact on these unrepresented parties.

### ***11 NCAC 23A .0108***

Since February of 2016, the Industrial Commission has required the electronic filing of most documents in workers' compensation claims, except those filed by unrepresented employees, unrepresented non-insured employers, and medical providers, pursuant to Rule 11 NCAC 23A .0108. The types of documents required to be filed electronically via EDPF has increased over time as a result of approved Rule 11 NCAC 23A .0108 amendments effective February 1, 2017 and December 1, 2018.

Now that EDPF has been required in workers' compensation claims for the filing of most documents by most parties for about four years, the parties have become very familiar with using EDPF. Therefore, amending Rule 11 NCAC 23A .0108 to require all parties except unrepresented plaintiffs and unrepresented non-insured employers to file via EDPF the remaining documents that are not currently required to be filed under EDPF should present little, if any, learning curve for the regulated parties.

Under the proposed amendment, all medical providers will be required to file documents via EDPF. Common sense dictates, and it is the Commission's experience, that all medical providers have the capability to file all the documents they need to file with the Commission (namely, medical bills for which the provider is requesting an analysis of what they are owed under the Commission's Medical Fee Schedule and medical provider fee dispute documentation) via EDPF. The reason medical providers currently are exempt from EDPF filing has nothing to do with any lack of electronic filing capabilities on the part of medical providers; it has only to do with the way the current Industrial Commission computer system is set up to receive and store filings submitted to the Commission's Medical Fees Section. But as part of the implementation of the Commission's new case management system, which is anticipated to "go live" for the regulated parties in the summer of 2020, filings with the Medical Fees Section will be compatible with and be able to be received via EDPF.

It should be noted that even under the proposed amendment to Rule 11 NCAC 23A .0108, any party still may request an emergency temporary waiver of the electronic filing requirement because of temporary technical problems.

The proposed amendment to Paragraph (g) of 11 NCAC 23A .0108 makes the rule more consistent with G.S. §97-86, the North Carolina Rules of Appellate Procedure, and the terms and conditions that govern appeals from the superior court to the Court of Appeals in ordinary civil cases by broadening the methods or means by which a Notice of Appeal to the North Carolina Court of Appeals may be filed with the Commission. This proposed amendment should have no fiscal impact on the Commission or on any of the regulated parties because the amendment does not change the EDPF filing option that exists in the rule, as currently written, and because specifically adding hand delivery as an alternative filing method is not expected to change the current behavior of the regulated parties and is not expected to result in any appreciable costs or cost savings to the Commission or to any of the regulated parties.

The remainder of the proposed changes to 11 NCAC 23A .0108 (clarifying in Paragraph (a) that documents filed by employees and non-insured employers without legal representation should be directed to the Clerk of the Industrial Commission and providing these parties with the specific email address where these documents should be sent, adding multiple employer or carrier claims and six-character IC file number claims to Paragraph (d), and specifying the email addresses for fraud and employee misclassification complaints filed with the Commission's Criminal Investigations & Employee Classification Division<sup>3</sup> under Paragraph (e)) were made to bring the rule in conformity with existing practices or provide clarity to the regulated parties, and they have no fiscal impact.

#### ***11 NCAC 23B .0104***

In February of 2017, the Commission began accepting (though not requiring) most State tort claim filings via EDPF. Since March of 2019, the Commission has required the electronic filing of most documents in State tort claims, except those filed by plaintiffs who are unrepresented by legal counsel and those filed by attorneys who are granted a one-year waiver of the electronic filing requirement due to a lack of the necessary internet technology resources, pursuant to Rule 11 NCAC 23B .0104. Rule 11 NCAC 23B .0104, in its current form, provides that the one-year waiver provision expires one year from the effective date of the rule. Since the rule became effective March 1, 2019, this one-year waiver provision expires on March 1, 2020. Therefore, this provision has been deleted from the rule in the current proposed rule amendment since the proposed effective date of the rule amendment is subsequent to March 1, 2020 and the deletion of the one-year waiver provision (which will have expired by the time the amended rule goes into effect) has no fiscal impact.

Now that EDPF has been operational for most State tort claims filings for about three years and mandatory for most State tort claim filings for about one year, the parties in State tort claims also have become familiar with using EDPF. Therefore, amending Rule 11 NCAC 23B .0104 to require represented parties to file via EDPF the remaining documents that are not currently required to be filed under EDPF by this rule should present little, if any, learning curve for the regulated parties. Additionally, as with workers' compensation claims, unrepresented plaintiffs still fall under an exception to the EDPF filing requirement under the proposed amendment to Rule 11 NCAC 23B .0104. And as with workers' compensation claims, any party still may request an emergency temporary waiver of the electronic filing requirement because of temporary technical problems.

The proposed amendment to Paragraph (a) of 11 NCAC 23B .0104 clarifies that documents filed by plaintiffs without legal representation should be directed to the Clerk of the Industrial Commission and provides these unrepresented plaintiffs with the specific email address where these documents should be sent. This proposed amendment functions to provide clarity to the regulated parties and has no fiscal impact.

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<sup>3</sup> This is a recently-formed division of the Commission following a reorganization that occurred to provide expanded resources to investigate allegations of employee misclassification.

The proposed amendment to the last paragraph of 11 NCAC 23B .0104 makes the rule more consistent with G.S. §143-293, the North Carolina Rules of Appellate Procedure, and the terms and conditions that govern appeals in ordinary civil actions by broadening the methods or means by which a Notice of Appeal to the North Carolina Court of Appeals may be filed with the Commission. This proposed amendment should have no fiscal impact on the Commission or on any of the regulated parties because the amendment does not change the EDFP filing option that exists in the rule, as currently written, and because specifically adding hand delivery as an alternative filing method is not expected to change the current behavior of the regulated parties and is not expected to result in any appreciable costs or cost savings to the Commission or to any of the regulated parties.

***11 NCAC 23A .0109, .0302; 11 NCAC 23B .0105***

The proposed amendments to Rules 11 NCAC 23A .0109 and .0302 and Rule 11 NCAC 23B .0105 change the method for providing the Commission with a party's contact information from emailing a designated email address to submitting the contact information via EDFP, unless the party is an unrepresented plaintiff or unrepresented non-insured employer, in which case the proposed amendments do not apply. Submitting all contact information via EDFP will streamline and consolidate the Commission's collection, updating, and storage of a party's contact information and will eliminate the chance that Commission staff will mis-type a party's contact information into the computer system. Paragraph (b) of 11 NCAC 23B .0105 also is being amended to specify the email address to which persons or entities without legal representation should send their contact information changes, should they choose to do so via email. This proposed amendment provides clarity to the regulated entities and has no fiscal impact.

***11 NCAC 23L .0101, .0102, .0103, .0105***

The proposed amendments to Rules 11 NCAC 23L .0101, .0102, .0103, and .0105 change the form filing instructions found in these rules for filing the Industrial Commission forms that are the subject of these rules (the Forms 21, 26, 26A, and T-42, respectively) from mail or email filing of the forms to filing the forms via EDFP. It should be noted, however, that the current practice is for all of the Forms 21, 26, and 26A (which always are filed by an adjuster or an attorney) to be filed via EDFP. And the current practice is for all of the Forms T-42 with an I.C. file number that are filed by an attorney to be filed via EDFP. Furthermore, the proposed rule amendment affecting the filing of the Form T-42 does not apply to any unrepresented person. Therefore, amending these rules to reflect the current practice will have little, if any, fiscal impact.

The proposed amendments to Rules 11 NCAC 23L .0101, .0102, .0103 also make some changes to the form notices in order to make those notices consistent with the proposed amendments to Rules 11 NCAC 23A .0408 and .0501 that were published in the January 15, 2020 *North Carolina Register*, but these changes have no fiscal impact. The remaining proposed amendments to these rules either correct website addresses, add missing information that was inadvertently left out of these rules in the past, make changes to bring these forms in conformity with current procedures, or delete earlier provisions in these rules that expired on July 1, 2015, again having no fiscal impact.

## **B. Proposed Rule Changes and Their Estimated Impact:**

### ***1. 11 NCAC 23A .0108 and 11 NCAC 23B .0104***

The proposed amendments to 11 NCAC 23A .0108 and 11 NCAC 23B .0104 no longer exempt the following documents from the documents that are required to be filed via EDFP: (1) Form 18 when no IC file number has been assigned; (2) Form 18B; (3) Form 51; (4) Plaintiff's Attorney Representation Letter when no IC file number has been assigned; (5) Documents filed with the Commission's Medical Fees Section; (6) Form 25N when no IC file number has been assigned; (7) Rehabilitation referrals to the Commission's Medical Rehabilitation Nurses Section when no IC file number has been assigned; (8) Form T-1 when no IC file number has been assigned; (9) Form T-3 when no IC file number has been assigned; and (10) Pre-affidavit motion under Rule 9(j)(3) of the Rules of Civil Procedure to extend the statute of limitations when no IC file number has been assigned.

It should be noted that in Industrial Commission cases, different filers file different documents and some documents can only be filed by certain filers while others can be filed by most or all filers. The chart on the following page shows the number of filings that likely will be affected per year by these proposed rule amendments<sup>4</sup> and the type of filer affected.

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<sup>4</sup> For the Forms 18B, Forms 51, Documents filed with the Medical Fees Section, Forms 25N with no IC file number, Forms T-1 with no IC file number, and Forms T-3 with no IC file number, the number of filings estimated is based on the filings made in 2018 and 2019 because the Commission keeps these statistics and there were no atypical circumstances relevant to the filings. For rehabilitation referrals, the number of filings estimated is based on the average number of cases opened by the Commission over a three-year period of time because there were several months in 2018 when the Commission had no Rehabilitation Professional to take referrals. For Forms 18 with no IC file number and Plaintiff Attorney Representation Letters with no IC file number, the number of filings is estimated based on a tracking of these filings over specific periods in January 2020 because the Commission does not normally track filings in a way that would capture these statistics. For Pre-affidavit motions under Rule 9(j)(3) with no IC file number, the number of filings is estimated based on a survey of Commission personnel who have handled these motions because they are so rare and are not tracked.

| <b>DOCUMENT TYPE</b>  | <b>EST.# FILED PER YEAR</b> | <b>FILER TYPE</b>   |
|---|-----------------------------|---|
| Form 18 with no IC file number (excluding those filed by an unrepresented plaintiff) <sup>5</sup> | Up to 10,400                | This form is filed only by plaintiffs   |
| Form 18B  | 360                         | This form is almost exclusively filed by attorneys for plaintiffs <sup>6</sup>  |
| Form 51   | 347                         | This form is filed only by adjusters for defendants   |
| Plaintiff Attorney Representation Letter with no IC file number                                   | Up to 6,500                 | This document is filed only by attorneys for plaintiffs   |
| Documents filed with the Commission's Medical Fees Section  | 560                         | These documents are filed only by medical providers <sup>7</sup> , adjusters for defendants, and attorneys for plaintiffs |
| Form 25N with no IC file number   | 4,464                       | This form is filed only by adjusters for defendants   |
| Rehabilitation referrals with no IC file number   | 120                         | This document can be filed by the plaintiff or defense side, but virtually all are filed by attorneys for plaintiffs      |
| Form T-1 with no IC file number (excluding those filed by an unrepresented plaintiff)             | 156                         | This form is filed only by plaintiffs   |
| Form T-3 with no IC file number   | 36                          | This form is filed almost exclusively by the Attorney General's Office for the State as a defendant                       |
| Pre-affidavit motion under Rule 9(j)(3) with no IC file number                                    | 5                           | This motion is filed only by attorneys for plaintiffs   |

Based on the data outlined in the chart above, the number of total filings expected to be affected per year by the proposed rule amendments affecting these ten document types is up to 22,948.

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<sup>5</sup> Unrepresented plaintiff filings have been excluded from the Form 18 and Form T-1 estimates because they are not affected by the rule amendments since these unrepresented parties always are exempt from EDFP requirements.

<sup>6</sup> Even though a Form 18B could be filed by an unrepresented plaintiff, the current Commission staff has only seen that happen one time in many years.

<sup>7</sup> The Commission's experience is that office staff members for medical providers virtually always submit these filings and the Commission has not seen any notable number of these filings made by attorneys for medical providers.

This means that a maximum of 22,948 more documents per year are expected to be required to be filed via EDFP. In other words, up to 22,948 more documents per year will be filed at the Commission via EDFP versus the current filing method. This will increase the Commission's EDFP document filings by up to 22,948 documents per year but correspondingly decrease the Commission's alternate document filings (email or paper filings) by the same amount per year.

With respect to the various different filers, however, instead of analyzing the fiscal impact on each type of filer based on the total number of documents affected by the proposed rule amendments, the fiscal impact on each filer is best analyzed by considering only the types of documents that particular filer files.

**a. Impact on the Industrial Commission**

***Costs to the Industrial Commission***

The costs to the Industrial Commission for adding ten more document types to the documents that can be filed via EDFP are *de minimus*. Adding new document types to EDFP on the drop-down screen is a one-time task that the Commission anticipates will take a staff member just a few minutes to perform. And the remainder of the work necessary to allow document types without an IC file number to be filed via EDFP and to transition these additional document types to EDFP is covered under the Commission's contract for its new legal case management system.

***Benefits to the Industrial Commission***

There are many benefits that accrue to the Industrial Commission by having all documents filed via EDFP by all filers, other than unrepresented parties. As compared with filings made via email, filings made via EDFP save the Commission an average of 1.5 minutes of staff time per document, based on prior studies conducted by the Commission for prior approved fiscal notes. Assuming that up to 22,787<sup>8</sup> more documents will be filed in a year via EDFP instead of via email, this will save the Commission up to 569.68 hours of staff time per year. Assuming the Commission staff member doing the work is paid an average of \$26.08<sup>9</sup> in total hourly compensation, this is a savings to the Commission of \$14,857.12 per year.

The Forms T-1 with no IC file number and the Pre-affidavit motions under Rule 9(j)(3), a total of 161 of which are estimated to be filed per year by attorneys for plaintiffs, currently must be filed in paper document form via mail or hand

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<sup>8</sup> Because the Forms T-1 and Pre-affidavit Motions under Rule 9(j)(3) without an IC file number currently cannot be filed via email and must be filed via a paper copy, those estimated filings (a total of 161) have not been counted for the EDFP-versus-email analysis in this paragraph.

<sup>9</sup> Based on the assumption that the Commission staff who does this work earns an average of \$33,500 per year, or \$54,255 in total compensation per year.



delivery. As compared with paper documents filed via mail or hand delivery, filings made via EDFP save the Commission 5-10 minutes of staff time per document, based on discussions with Commission staff doing this work. Assuming that up to 161 more of these documents are filed in a year via EDFP instead of via paper copy, this will save the Commission up to 26.83 hours of staff time per year, for a savings to the Commission of \$699.81 per year.

**b. Impact on Filers**

For the filer of a document, filing a document via EDFP instead of via email is likely to add an average of 53 seconds of time to the filing process, based upon the Commission's testing of EDFP-versus-email filing times as set forth in prior approved fiscal notes. However, filing the document via EDFP instead of via mail is likely to save filers an average of 3.5 minutes of time, based on estimates calculated by the Commission for prior approved fiscal notes, and it also eliminates postage costs, which can exceed \$1.00 per mailing.

For all filers other than medical providers, filing documents via EDFP is a very familiar process and there will be no additional time spent learning how to use EDFP to file the additional documents that are the subject of these proposed rule amendments. For medical providers, since they will be new to filing documents via EDFP, they will need to register and receive an NCID. They will then need to review brief EDFP training materials. Registering for an NCID and reviewing the EDFP training materials likely takes 10-15 minutes, but this is a one-time occurrence per filer, and registering for and filing documents via EDFP is free.

**STATE FILERS ONLY**

***Costs to State Filers***

***Form T-3***

State filers are the only filers that should be affected by the EDFP requirement for Forms T-3 without an IC file number because virtually all Forms T-3 (which is a form setting forth the settlement of a State tort claim that is submitted to the Commission on behalf of the State by its attorney) are filed by the Attorney General's Office for the State as a defendant. The Commission receives, on average, a total of 36 Forms T-3 with no IC file number per year. Assuming that the program assistants and paralegals from the Attorney General's Office filing the Form T-3 earn an average of \$ 69,209.00 in total yearly compensation, for a per-minute cost of \$0.55 for this position, and assuming it takes an extra 53 seconds to file each Form T-3 via EDFP as opposed to email, this equates to \$18.00 per year in extra costs to the State for filing these forms via EDFP instead of email.

## **Benefits to State Filers**

### ***Form T-3***

Filing Forms T-3 via EDFP as opposed to email in all cases (even when there is no IC file number) has non-quantifiable, but significant and noteworthy, benefits to the State as a filer. An EDFP filer is able to ensure that the form is being uploaded to the correct Industrial Commission file and that the upload is properly characterized as the correct form. An EDFP filer also receives an email receipt from the Commission confirming the EDFP filing. None of these advantages exist when forms are being submitted via email.

## **STATE AND LOCAL GOVERNMENT FILERS**

### **Costs to State and Local Government Filers**

#### ***Form 51***

Both State and local government filers will be affected by the EDFP requirement for Forms 51. A total of 357 Forms 51 were filed in Fiscal Year 2018-19.

Assuming that the type of filer (public versus private) follows the same breakdown as the type of employment in North Carolina, 11% of these forms should be attributed to the public sector.<sup>10</sup> It can be assumed that half of the 11% is attributable to the State as a filer and half to local government as a filer.

Based on information obtained in late 2019 from the Workers' Compensation Manager at the North Carolina Office of State Human Resources regarding the average salary of a staff person who files Industrial Commission forms, it is assumed that the staff person filing the Form 51 for the State earns \$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. Therefore, if the EDFP filing requirement adds 53 seconds to this staff person's work per Form 51 and if this staff person is filing twenty Forms 51 per year, that equates to \$7.00 per year in extra costs to the State for filing the Forms 51 via EDFP versus email.

Based on information obtained in late 2019 from the Manager of Workers' Compensation Claims at the North Carolina League of Municipalities regarding the average salary of a staff person who files Industrial Commission forms, it is assumed that the staff person filing the Form 51 for local government earns \$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. Therefore, if the EDFP filing requirement adds 53 seconds to this staff person's work per Form 51 and if this staff person is filing twenty Forms 51 per year, that equates to \$15.00 per year in extra costs to local government for filing the Forms 51 via EDFP versus email.

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<sup>10</sup> Based on the data cited in the Commission's prior approved fiscal note dated July 18, 2018.

***Form 25N with no IC file number***

Both State and local government filers also will be affected by the EDFP requirement for Forms 25N with no IC file number. A total of 4,464 Forms 25N with no IC file number were filed in Fiscal Year 2018-19. 11% of these would be attributable to the public sector, with half of the 11% being attributed to the State as a filer and half to local government as a filer.

For the State, with a per-minute cost for a form filer of \$0.41, this equates to \$89.00 per year in extra costs to the State for filing these forms via EDFP versus email. And for local government, with a per-minute cost for a form filer of \$0.87, this equates to \$190.00 per year in extra costs to local government for filing these forms via EDFP versus email.

***Documents filed with Commission's Medical Fees Section***

Both State and local government filers also will be affected by the EDFP requirement for documents filed with the Commission's Medical Fees Section. A total of 560 documents were filed with the Medical Fees Section in Fiscal Year 2018-19. Based upon a survey of Commission staff who handles these documents, about 90% of these document filings (504 filings) can be attributed to filers who are not medical providers. 11% of these 504 filings would be attributable to the public sector, with half of the 11% being attributed to the State and half to local government.

For the State, with a per-minute cost for a document filer of \$0.41, this equates to \$10.00 per year in extra costs to the State for filing these documents via EDFP versus email. And for local government, with a per-minute cost for a document filer of \$0.87, this equates to \$21.00 per year in extra costs to local government for filing these documents via EDFP versus email.

***Benefits to State and Local Government Filers***

Filing the Forms 51 and 25N and the documents sent to the Commission's Medical Fees Section via EDFP as opposed to email in all cases (even when there is no IC file number) has non-quantifiable, but significant and noteworthy, benefits to the State and local government as filers. An EDFP filer is able to ensure that the form or other document is being uploaded to the correct Industrial Commission file and that the upload is properly characterized as the correct form or other document. An EDFP filer also receives an email receipt from the Commission confirming the EDFP filing. None of these advantages exist when forms and other documents are being submitted via email.

## **PRIVATE SECTOR FILERS**

### **PLAINTIFFS (THROUGH THEIR ATTORNEYS' OFFICES)**

Plaintiffs, through their attorneys' offices, are the only filers affected by adding the Forms 18 with no IC file number, Forms 18B, Plaintiff Attorney Representation Letters with no IC file number, Rehabilitation referrals with no IC file number, Forms T-1 with no IC file number, and Pre-affidavit motions with no IC file number to the list of documents that need to be filed via EDFP instead of via email. Plaintiffs, through their attorneys' offices (along with defendants (namely, carriers and third-party administrators through adjusters)) also are affected by adding documents filed by the Commission's Medical Fees Section to the list of documents that need to be filed via EDFP instead of via email.

The plaintiffs, themselves, do not incur any costs for time that their attorneys' offices spend filing documents because plaintiffs' attorneys in workers' compensation cases do not bill their clients by the hour. These attorneys work on a contingency fee basis. However, the attorney offices have to pay their staff members who file the documents. Assuming that the average North Carolina plaintiff's attorney office pays a staff member who files forms \$50,000.00 per year, equating to \$69,735.00 in total compensation including salary and benefits, the per-minute cost for this position is \$0.56.

Filing a document via EDFP takes an average of 53 seconds longer than filing it via email, based on the Commission's studies and tests set forth in prior approved fiscal notes.

### **Costs to Plaintiffs (Through Their Attorneys' Offices)**

#### ***Form 18 with no IC file number***

Based on the Commission's estimates, the annual number of document filings affected by requiring Forms 18 with no IC file number to be filed via EDFP instead of email is up to 10,400. This equates to up to \$5,133.00 per year in extra costs to the private sector.

#### ***Form 18B***

Based on the Commission's estimates, the annual number of document filings affected by requiring Forms 18B to be filed via EDFP instead of email is 360. This equates to \$178.00 per year in extra costs to the private sector.

#### ***Plaintiff Attorney Representation Letter with no IC file number***

Based on the Commission's estimates, the annual number of document filings affected by requiring Plaintiff Attorney Representation Letters with no IC file number to be filed via EDFP instead of email is up to 6,500. This equates to up to \$3,208.00 per year in extra costs to the private sector.

***Rehabilitation referrals with no IC file number***

Based on the Commission's estimates, the annual number of document filings affected by requiring Rehabilitation referrals with no IC file number to be filed via EDFP instead of email is 120. This equates to \$59.00 per year in extra costs to the private sector.

***Documents filed with the Commission's Medical Fees Section***

Half of the 89% of the 504<sup>11</sup> documents filed with the Commission's Medical Fees Section that are attributable to filers in the private sector other than medical providers can be attributed to plaintiffs through their attorneys' offices. This equates to \$111.00 per year in extra costs to private sector plaintiff attorney offices for filing these documents via EDFP versus email.

***Benefits to Plaintiffs (Through Their Attorneys' Offices)***

Some documents filed at the Commission currently are not accepted via email (the Form T-1 with no IC file number and the Pre-affidavit motion under Rule 9(j)(3) with no IC file number), and the Commission currently requires that a paper copy of these documents be filed. Transitioning these document filings to EDFP will decrease the filer's costs because, as discussed above, there is a savings of an average of 3.5 minutes per document when filing a document via EDFP versus mailing the document, plus there is a postage savings that can exceed \$1.00 per document.<sup>12</sup> Additionally, there are non-quantifiable benefits that are important and noteworthy associated with EDFP filing, including assurances that the forms and other documents are being uploaded to the correct file and that the uploads are characterized as being the correct form or other document, plus the benefit of receiving an email confirmation documenting the EDFP filing.

***Form T-1 with no IC file number***

In Fiscal Year 2018-19, a total of 156 Forms T-1 with no IC file number were filed by attorneys for plaintiffs. Assuming that the average per-minute cost for an attorney office staff member mailing a Form T-1 is \$0.56, the 3.5-minute savings for filing the Forms T-1 via EDFP instead of mailing them equates to 546 minutes saved annually by plaintiff attorney offices, for a savings of \$305.00 per year in the private sector. And assuming the total postage savings is at least \$1.00 per Form T-1, that equates to at least an additional \$156.00 in benefits to the private sector. Therefore, there is a total annual savings to the private sector of at least \$461.00.

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<sup>11</sup> This number is based on the Commission's estimate that 90% of these 560 documents filed were filed by non-medical providers.

<sup>12</sup> Technically, these paper documents could be filed by plaintiffs' attorneys' offices via hand delivery instead of mail, but it is rare these days for a plaintiff's attorney office to hand deliver filings to the Commission.

***Pre-affidavit motions under Rule 9(j)(3) with no IC file number***

The Commission estimates that five of these motions are filed per year by attorneys for plaintiffs. This equates to 17.50 minutes saved annually by the attorney offices filing these motion (3.5 minutes per filing), for a savings of \$10.00 per year in private sector costs, plus at least an additional \$5.00 in postage savings to the private sector, for a total savings of \$15.00 per year.

**DEFENDANTS (CARRIERS AND THIRD-PARTY ADMINISTRATORS)**

Private sector defendants (insurance carriers and third-party administrators) will be affected by the EDFP requirement for Forms 51, documents filed with the Commission's Medical Fees Section, and Forms 25N with no IC file number. These documents are filed by adjusters for the insurance carriers or third-party administrators (not by attorneys for the insurance carriers or third-party administrators).

**Costs to Defendants (Carriers and Third-Party Administrators)**

Based on the information obtained from an Officer and Claims Manager of an adjusting firm in the private sector that handles many North Carolina workers' compensation claims, for large insurance companies in the private sector the salary of an adjuster who files Industrial Commission forms and other documents 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 about \$60,000.00, equating to \$86,831.00 in total compensation including salary and benefits. The per-minute cost for this position is \$0.70.

***Form 51***

A total of 357 Forms 51 were filed in Fiscal Year 2018-19. Assuming that the type of filer (public versus private) follows the same breakdown as the type of employment in North Carolina, about 89% of these forms, or approximately 318 Forms 51, should be attributed to the private sector.<sup>13</sup> Since filing the Form 51 via EDFP versus email is expected to take an adjuster an additional 53 seconds, this equates to \$195.00 per year in extra costs to the private sector for filing these forms via EDFP versus email.

***Documents filed with the Commission's Medical Fees Section***

Half of the 89% of the 504<sup>14</sup> documents filed with the Commission's Medical Fees Section that are attributable to filers in the private sector other than medical providers can be attributed to defendants (carriers and third-party administrators) through their adjusters. This equates to \$138.00 per year in extra costs to private sector defendants for filing these documents via EDFP versus email.

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<sup>13</sup> Based on the data cited in the Commission's prior approved fiscal note dated July 18, 2018.

<sup>14</sup> This number is based on the Commission's estimate that 90% of these 560 documents filed were filed by non-medical providers.

***Form 25N with no IC file number***

A total of 4,464 Forms 25N with no IC file number were filed in Fiscal Year 2018-19. Attributing 89% of these to the private sector equates to \$2,442.00 per year in extra costs to the private sector for filing these forms via EDFP versus email.

***Benefits to Defendants (Carriers and Third-Party Administrators)***

Filing the Forms 51 and 25N and the documents sent to the Commission's Medical Fees Section via EDFP as opposed to email in all cases (even when there is no IC file number) has non-quantifiable, but important and noteworthy, benefits to the defendants in the private sector. An EDFP filer is able to ensure that the form or other document is being uploaded to the correct Industrial Commission file and that the upload is properly characterized as the correct form or other document. An EDFP filer also receives an email receipt from the Commission confirming the EDFP filing. None of these advantages exist when forms and other documents are being submitted via email.

**MEDICAL PROVIDERS**

***Costs to Medical Providers***

Since medical providers have not been filing documents via EDFP, there will be some time spent by them registering for and learning how to use EDFP. Each medical provider filer likely will spend 10-15 minutes registering for and learning how to use EDFP. However, this will be a one-time occurrence for medical provider filers.

Assuming there are about 56<sup>15</sup> medical providers who will need to do this, this is a time cost of time of up to 840 minutes. Based upon North Carolina's Occupation Employment and Wages survey, the average salary for a North Carolina medical provider staff person doing administrative tasks is \$117,650.00 equating to \$168,312.00 in total compensation including salary and benefits. The per-minute cost for this position is \$1.35. Therefore, the one-time, initial cost for medical providers to register and learn how to use EDFP equates to \$1,133.00 in extra costs to medical providers in the private sector.

In addition to this initial time cost, the annual time cost for medical providers of filing 56 additional documents per year via EDFP instead of email, given that filing via EDFP takes an additional 53 seconds of time, equates to \$67.00 in extra costs to medical providers in the private sector.

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<sup>15</sup> This number is based on the fact that no more than 10% of the documents filed with the Commission's Medical Fees Section are attributable to medical providers and in Fiscal Year 2018-19, 560 documents were filed with the Medical Fees Section.

### **Benefits to Medical Providers**

Filing documents sent to the Commission's Medical Fees Section via EDFP as opposed to email has non-quantifiable, but important and noteworthy, benefits to medical providers. An EDFP filer is able to ensure that the document is being uploaded to the correct Industrial Commission file and that the upload is properly characterized as the correct document. An EDFP filer also receives an email receipt from the Commission confirming the EDFP filing. None of these advantages exist when documents are being submitted via email.

#### **2. *11 NCAC 23A .0109, .0302; 11 NCAC 23B .0105***

The proposed amendments to these rules no longer allow attorneys, insurance carriers, third-party administrators, or self-insured employers to provide their updated or current contact information to the Commission by sending an email to a designated email address. Instead, these parties will have to submit notifications to the Commission regarding their contact information via EDFP. The proposed amendments to these rules will not affect unrepresented plaintiffs or unrepresented non-insured employers and, therefore, will have no fiscal impact on them.

The Commission estimates that up to 300 contact information updates may be filed annually pursuant to 11 NCAC 23A .0109 and up to 170 may be filed annually pursuant to 11 NCAC 23B .0105. The Commission's statistics show that 65 contact information notifications have been filed pursuant to 11 NCAC 23A .0302 in the past year.

There will be additional costs of time for all parties to provide this information via EDFP instead of by email. These costs are expected to be minimal due to the small time difference (53 seconds) and the small number of contacts per year and are not quantified in this analysis.

### **Benefits to State, Local, and Private Sector Filers and the Commission**

Having the parties put their own contact information into EDFP will give them more control over the contact information updating process and will eliminate the chance that the Commission will mis-type their updated contact information from an email. Submitting contact information via EDFP also will provide the parties with a receipt from the Commission for the filing of the contact information. While non-quantifiable, these benefits are important and noteworthy.

#### **3. *11 NCAC 23L .0101, .0102, .0103, and .0105***

These four rules are Industrial Commission forms (the Form 21, 26, 26A, and T-42, respectively). Since the form filing instructions in these rules do not conform with the current filing practice of the regulated parties, these four rules are being



amended to reflect the current filing practice and, in the case of 11 NCAC 23L .0105, the rule is being further amended to require all Forms T-42 (even those without an IC file number) to be filed via EDFP, unless the filer is an unrepresented plaintiff.

With respect to 11 NCAC 23L .0101, .0102, and .0103, the form filing instructions direct the filer to submit the form to the Commission via mail even though the filers have been submitting the form to the Commission via EDFP since at least June of 2018. These three rules became effective in July of 2015 and have not been amended since then, so the filing instructions need to be amended to reflect the current practice of filing these forms via EDFP and to bring the form filing instructions in conformity with the Commission's electronic filing rule.

With respect to 11 NCAC 23L .0105, the form filing instructions direct all filers to submit the form to the Commission via an email to the Commission's Dockets Section, even though attorney filers have been submitting the form to the Commission via EDFP (unless the claim has no IC file number) since the form became effective in March of 2019. It appears to have been an oversight for the form filing instructions in the rule to direct all filers to file this form in all cases via email.

**a. Impact on the Industrial Commission**

**Costs to the Industrial Commission**

The Commission already has document types in EDFP for all four of these forms, so there are no costs associated with the proposed amendments in terms of adding these document types to EDFP. And for Forms T-42 with no IC file number, the work necessary to allow them to be filed via EDFP is covered under the Commission's contract for its new legal case management system.

**Benefits to the Industrial Commission**

Since the Form 21, Form 26, and Form 26A already are being filed via EDFP by filers, no additional benefits will accrue to the Commission by amending Rules 11 NCAC 23L .0101, .0102, and .0103 to require EDFP filing. For the Forms T-42 with no IC file number, however, requiring these to be submitted via EDFP instead of via email will save the Commission an average of 1.5 minutes of staff time per document, based on prior studies conducted by the Commission for prior approved fiscal notes.

Since the creation of the Form T-42, which only became effective in March of 2019, two Forms T-42 have been filed at the Commission. Assuming that in a given year, the Commission receives up to five Forms T-42 and assuming that none of the five Forms T-42 are filed by an unrepresented plaintiff (who would be

exempt from the EDFP filing requirement) but all five of the Forms T-42 have no IC file number, a savings of up to \$3.23 would accrue to the Commission annually for the savings of 7.5 minutes of staff time, if we assume that the Commission staff member processing the Form T-42 earns an average of \$26.08 in total hourly compensation for a per-minute cost of \$0.43 for this position.

**b. Impact on Filers**

The filers of the Forms 21, 26, and 26A are insurance carriers or third-party administrators, or their attorneys. These insurance carriers or third-party administrators (or their attorneys) may be filing these forms on behalf of the State, local government, or the private sector. Plaintiffs never file a Form 21, 26, or 26A. Because the current filing practice already is for the filers of the Forms 21, 26, and 26A to file these forms via EDFP, the proposed rule amendments to 11 NCAC 23L .0101, .0102, and .0103 should have no fiscal impact on the filers.

The filers of the Form T-42 are either attorneys for a plaintiff, attorneys being appointed as guardians ad litem, or unrepresented plaintiffs. However, unrepresented plaintiffs are exempt from EDFP filing requirements and, therefore, the proposed rule amendment to 11 NCAC 23L .0105 have no fiscal impact on them. The attorney filers of the Form T-42 are part of the private sector.

**Costs to State, Local, and Private Sector Filers**

There are no State or local government costs associated with any of the proposed amendments to these form rules regarding EDFP filing because the only forms filed by the State or local government (the Forms 21, 26, and 26A) already are being filed by them via EDFP.

The only private sector costs associated with any of the proposed amendments to these form rules regarding EDFP filing is the additional time cost to attorneys for plaintiffs or attorneys being appointed as guardians ad litem who will be required to file Forms T-42 that have no IC file number via EDFP as opposed to via email. Assuming that in a given year, private sector attorneys' offices will have to file up to five Forms T-42 without IC file numbers via EDFP as opposed to via email, assuming that it takes an additional 53 seconds to file a document via EDFP as opposed to email, and assuming that the per-minute cost of the position held by the attorney office staff member filing the Form T-42 is \$0.56, this equates to \$2.00 per year in extra costs to the private sector.

**Benefits to State, Local and Private Sector Filers**

There are no State or local government benefits associated with any of the proposed amendments to these form rules regarding EDFP filing because the only forms filed by the State or local government (the Forms 21, 26, and 26A) already are being filed by them via EDFP.

Filing Forms T-42 with no IC file number via EDFP as opposed to email in all cases (even when there is no IC file number) has non-quantifiable, but important and noteworthy, benefits to private sector filers. An EDFP filer is able to ensure that the form is being uploaded to the correct Industrial Commission file and that the upload is properly characterized as the correct form. An EDFP filer also receives an email receipt from the Commission confirming the EDFP filing. None of these advantages exist when forms are being submitted via email.

**C. Summary of Aggregate Impact:**

The chart on the next page depicts the expected costs and benefits each year to the State through the Industrial Commission, the State as an employer, local government as an employer, and the private sector expected to result from the proposed rule amendments that are the subject of this fiscal note.

The monetized costs and benefits of the proposed rule amendments amount to an annual benefit of over \$15,500.00 to the Commission from efficiency savings and costs to filers due to increased filing time ranging from approximately \$120.00 to approximately \$8,200.00 per year. The net impact to all parties is a benefit of approximately \$3,000.00. However, this estimate excludes the unquantified but important and noteworthy benefit of reduced risk of error in the EDFP system. Most of these costs and benefits, with the exception of medical provider registration, are expected to continue indefinitely.

| <b>Costs and Benefits by Affected Party</b>                           | <b>Annual Impact</b> | <b>By Form</b> |
|---|----------------------|----------------|
| Benefits from reduced errors - all parties                            | <b>Unquantified</b>  | Unquantified   |
| Commission  | <b>\$ 15,560</b>     |                |
| State gov filers  | <b>\$ (124)</b>      |                |
| Form 51   |                      | \$ (7)         |
| Form 25N  |                      | \$ (89)        |
| Medical Fees Section docs   |                      | \$ (10)        |
| Form T-3  |                      | \$ (18)        |
| Local gov filers  | <b>\$ (226)</b>      |                |
| Form 51   |                      | \$ (15)        |
| Form 25N  |                      | \$ (190)       |
| Medical Fees Section docs   |                      | \$ (21)        |
| Private filers, plaintiffs  | <b>\$ (8,216)</b>    |                |
| Form 18   |                      | \$ (5,133)     |
| Form 18B  |                      | \$ (178)       |
| Representation letter   |                      | \$ (3,208)     |
| Rehab referrals   |                      | \$ (59)        |
| Form T1   |                      | \$ 461         |
| Medical Fees Section docs   |                      | \$ (111)       |
| Form T-42   |                      | \$ (2)         |
| Pre-affidavit motions   |                      | \$ 15          |
| Private filers, defendants  | <b>\$ (2,775)</b>    |                |
| Form 51   |                      | \$ (195)       |
| Form 25N  |                      | \$ (2,442)     |
| Medical Fees Section docs   |                      | \$ (138)       |
| Medical providers   | <b>\$ (1,200)</b>    |                |
| Register and train for EDFP (one time)                                |                      | \$ (1,133)     |
| Medical Fees Section docs   |                      | \$ (67)        |
| <b>Net impact to all parties,<br/>excluding unquantified benefits</b> |                      |                |
|   | <b>\$ 3,020</b>      |                |