

SUBCHAPTER 23D – WORKERS' COMPENSATION RULES FOR MANAGED CARE ORGANIZATIONS

SECTION .0100 – RULES

11 NCAC 23D .0101 PURPOSE

The rules in this Subchapter are intended to facilitate the timely and cost-effective delivery of appropriate medical compensation services to fulfill the employer's duty to provide such services as are reasonably necessary to effect a cure, give relief, or shorten the period of disability resulting from compensable injuries through the use of Managed Care Organizations (MCOs). The rules in this Subchapter do not affect informal lists or "employer networks" of providers assembled by employers or insurers for their own referrals.

*History Note: Authority G.S. 97-2(19); 97-2(20); 97-2(21); 97-25; 97-25.2; 97-25.3(e); 97-25.4(a); 97-26(b); 97-26(c);
Eff. January 1, 1996;
Amended Eff. July 1, 2014;
Recodified from 04 NCAC 10D .0101 Eff. June 1, 2018.*

11 NCAC 23D .0102 DEFINITIONS

As used in this Subchapter:

- (1) "Employer" means an employer as defined by G.S. 97-2(3) who is obligated by the Workers' Compensation Act to pay or provide indemnity or medical compensation, including any insurance carrier, self-insurance fund, third party administrator or other person, firm or corporation undertaking to pay or adjust claims on behalf of the employer's employees.
- (2) "Act" means the North Carolina Workers' Compensation Act, Chapter 97, Article 1 (G.S. 97-1 through G.S. 97-101.1).
- (3) "Employer network" means any group of providers assembled by or for an entity liable for medical compensation that agrees to accept the referrals of that entity's workers' compensation patients, and from among whom an adjuster, officer, employee, or insured patient of the entity chooses the initial provider; provided, the entity has no right to sell the services of the providers to a third party.

*History Note: Authority G.S. 58-50-50; 97-2(3); 97-2(20); 97-2(21); 97-25; 97-25.2; 97-26(b); 97-26(c); 97-77; 97-79;
Eff. January 1, 1996;
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11 NCAC 23D .0103 QUALIFICATION BY DEPARTMENT OF INSURANCE

*History Note: Authority G.S. 97-2(21); 97-25;
Eff. January 1, 1996;
Repealed Eff. July 1, 2014;
Recodified from 04 NCAC 10D .0103 Eff. June 1, 2018.*

11 NCAC 23D .0104 QUALIFICATION AND REVOCATION

For ineffective delivery of medical services, failure to comply with applicable laws, rules or regulations, and failure to respond to lawful orders of the Commission or other regulatory authorities, the Commission shall change the provider of medical compensation in accordance with the Workers' Compensation Act.

*History Note: Authority G.S. 97-25; 97-25.2;
Eff. January 1, 1996;
Amended Eff. July 1, 2014;
Recodified from 04 NCAC 10D .0104 Eff. June 1, 2018.*

11 NCAC 23D .0105 NOTICE TO COMMISSION

- (a) Upon contracting with an employer to provide medical compensation services, an MCO shall provide to the Commission the following:
- (1) a copy of that portion of the contract containing the provisions specified in Rule .0106 of this Subchapter and the method for determining payment to the MCO, excluding those of its terms kept confidential by the North Carolina Department of Insurance, initialed by the employer;
 - (2) a copy of its current certificate(s) issued annually by the North Carolina Department of Insurance pursuant to G.S. Chapter 58; and
 - (3) the name and address of all owners or shareholders, or related groups of owners or shareholders, holding more than 10 percent interest in the MCO, and whether they are or have any relationship with a provider.
- (b) Persons or firms are related, for the purpose of this Rule, if either has the following:
- (1) a financial interest in the other;
 - (2) shares officers, agents, or employees; or,
 - (3) if natural persons, are first cousins or closer in kinship.
- (c) An MCO subject to the Rules in this Subchapter shall report its medical compensation expenditures annually on I.C. Form 51.

*History Note: Authority G.S. 97-25.2;
Eff. January 1, 1996;
Amended Eff. July 1, 2014;
Recodified from 04 NCAC 10D .0105 Eff. June 1, 2018.*

11 NCAC 23D .0106 CONTRACT PROVISIONS

An MCO's contract with an employer subject to the Rules in this Subchapter shall include:

- (1) the principal place(s) of employment of the covered employees, including address(es) and phone number(s) of the workplace(s);
- (2) the name, title, mailing address, phone number, fax number, and email address, if any, of an officer or responsible employee of the MCO empowered to assent to the treatment or referral of covered employees, capable of obtaining and providing complete business, administrative and medical records generated pursuant to the contract, and empowered to resolve routine disputes with employees, employers and providers under the Commission's jurisdiction;
- (3) the name, title, mailing address, phone number, fax number, and email address, if any, of an adjuster, officer, agent or employee of the employer empowered to negotiate the resolution of routine medical compensation disputes, and receive orders of the Commission on behalf of the employer;
- (4) an acknowledgment that the MCO is bound by applicable requirements of Chapters 58 and 97 of the North Carolina General Statutes and the rules in this Subchapter, and is subject to orders of the Commission to the same extent as the employer;
- (5) the agreement of the employer that it will cooperate and assist in furnishing its employees and supervisors with a phone number and instructions for obtaining emergency treatment and contacting the MCO upon injury to any employee during the workday or on the employer's premises requiring physician attention;
- (6) a dispute resolution plan in accordance with G.S. 97-25.2, including provisions for notice of decision in appeals within 30 days, or within 72 hours of appeal when the regular appeals process would cause a delay in the rendering of health care that would be detrimental to the health of the employee;
- (7) a description of physician panels, including specialties represented, and the employee's right to select his or her attending physician from the appropriate panel, and to subsequently change attending physicians once within the members of the panel; and
- (8) whether the MCO or employer will be responsible for securing the services of "out of network" providers when needed.

*History Note: Authority G.S. 97-25.2;
Eff. January 1, 1996;
Amended Eff. July 1, 2014;
Recodified from 04 NCAC 10D .0106 Eff. June 1, 2018.*

11 NCAC 23D .0107 INFORMATION FOR EMPLOYEE

(a) Following the onset of an injury, the employer or MCO shall provide to the employee a printed explanation of the system being utilized for his care, suitable for sharing with emergency, "out-of-network", and referral physicians, that shall be filed with any Form 19 submitted to the Commission; provided, that electronic filers may otherwise notify the Commission of the identity of the MCO. This statement shall include the following information:

- (1) the offices to contact concerning medical treatment for the injury, including a telephone number;
- (2) if known at that time, the employee's chosen treating physician, including a phone number for seeking medical assistance outside normal business hours if the injury might cause such a need;
- (3) the applicable methods for choosing and changing treating physicians and resolving disputes concerning physicians or treatment pursuant to G.S. 97-25.2;
- (4) that the MCO can provide access to licensed physicians of all specialties;
- (5) the employer's obligation to pay for treatment for which the employee is referred to the MCO, whether or not the employer admits liability for the injury per G.S. 97-90(e);
- (6) the employee's duty to cooperate in treatment, and right to secure treatment at his or her own expense that does not interfere with the treating physician's treatment; and
- (7) the Commission's File Number, if known when filed.

(b) Providers may include identifying billing information on the statement.

History Note: Authority G.S. 97-25.2;
Eff. January 1, 1996;
Amended Eff. July 1, 2014;
Recodified from 04 NCAC 10D .0107 Eff. June 1, 2018.

11 NCAC 23D .0108 INCLUSIVE PROVIDER PANELS

Following the onset of an injury, and upon an employee's first request to change attending physician, the MCO shall provide the employee with a list of reasonably accessible and available panel physicians qualified to treat or manage the primary condition for which the employer has accepted liability or authorized treatment from which the employee may select the attending physician. The employer and MCO shall provide for access to all medical compensation services, and include in its panels, or otherwise make available for the employee's choice, one or more licensed physicians representing all specialties available in the community to provide necessary treatment for the employee's primary compensable condition.

History Note: Authority G.S. 97-2(19); 97-2(20); 97-25; 97-25.2;
Eff. January 1, 1996;
Amended Eff. July 1, 2014;
Recodified from 04 NCAC 10D .0108 Eff. June 1, 2018.

11 NCAC 23D .0109 QUALITY ASSURANCE AND UTILIZATION REVIEW

An MCO subject to the Rules in this Subchapter shall comply with the requirements of the North Carolina Department of Insurance for quality assurance and utilization review plans, and upon request, provide the Commission with copies of records generated by, or utilized in, the operation of those programs, and copies of plans or amendments to plans not yet filed with the Department of Insurance.

History Note: Authority G.S. 97-25.2;
Eff. January 1, 1996;
Amended Eff. July 1, 2014;
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11 NCAC 23D .0110 WAIVER OF RULES

In the interests of justice or to promote judicial economy, the Commission may, except as otherwise provided by the rules in this Subchapter, waive or vary the requirements or provisions of any of the rules in this Subchapter in a case pending before the Commission upon written application of a party or upon its own initiative only if the employee is not represented by counsel. Factors the Commission shall use in determining whether to grant the waiver are:

- (1) the necessity of a waiver;

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

History Note: Authority G.S. 97-25.2; 97-80(a);
Eff. January 1, 1996;
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