REGULATORY REVIEW COMAR 14.09. Update 06/27/2013

Proposed Restructuring

Existing chapters 10 – expanding to 16

Transfer without change:
Transfer from 14.09.02 to 14.09.14 (Governmental Group Self-Insurance)
Transfer from 14.09.08 to 14.09.15 (Open Meetings)
Transfer from 14.09.09 to 14.09.16 (Public Information Act Requests)
Transfer from 14.09.10 to 14.09.13 (Individual Employer Self-Insurer)
Transfer from 14.09.05 to 14.09.07 (Vocational Rehabilitation Practitioners)
Transfer from 14.09.03 to 14.09.08 (Guide of Medical and Surgical Fees)

Transfer from 14.09.04 to 14.09.09 (Guide for Evaluation of Permanent Impairment) (and amendments)

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.01 Definitions (formerly 14.09.01.01) (with amendments)
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.05 Business hours (formerly 14.09.01.31)
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DRAFT COMAR 14.09.01 – General and Administrative

(draft 06/24/2013)

.01 Definitions.

A. In this subtitle, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Affidavit" means a written statement the contents of which are affirmed under the penalties of perjury to be true.

(2) "Certified mail" means mail deposited with the United States Postal Service, postage prepaid and return receipt requested.

(3) "Claimant" means a person filing a workers' compensation claim and includes:

(a) A covered employee;

(b) A dependent of a deceased covered employee; or

(c) A individual authorized to act on behalf of a dependent of a deceased covered employee.

(4) "Commission" means either the Workers' Compensation Commission or its designee.

(5) "Disputed workers' compensation claim" means a:

(a) Newly filed claim from the date it is filed until the employer or insurer commences paying the claim or until the consideration date has expired;

(b) New claim in which issues have been filed;

(c) Pending claim in which one or more issues have been filed; or

(d) Claim that is pending on appeal.

(6) "Final award" means the award of compensation determined by the Commission after exhaustion of all applicable appeals, regardless of whether the award is increased or decreased as a result of any appeal.

(7) "Formal set-aside allocation" means a document reflecting a comprehensive analysis and projection of future injury-related medical needs and associated costs.

(8) "Individual" means a human being.

(9) "Insurer" means:

(a) A stock corporation or mutual association that is authorized under the Insurance Article, Annotated Code of Maryland, to provide workers' compensation insurance in the State;

(b) The Chesapeake Employers' Insurance Company authorized under Insurance Article, Title 24, Subtitle 3, Annotated Code of Maryland;

(c) A governmental self-insurance group that meets the requirements of Labor and Employment Article, §9-404, Annotated Code of Maryland;

(d) A self-insurance group of private employers that meets the requirements of Insurance Article, §§25-301—25-308, Annotated Code of Maryland; or

(e) An individual employer that self-insures in accordance with Labor and Employment Article, §9-405, Annotated Code of Maryland.

(9) "Non-compromise case" means a case in which the employer/insurer has not contested liability or in which the Commission has found liability and in which the settlement compensates the claimant for anticipated future medical expenses.

(10) "Person" means an individual, general or limited partnership, joint stock company, unincorporated association or society, municipal or other corporation, incorporated

associations, limited liability partnership, limited liability company, the State, its agencies or political subdivisions, or governmental entity.

(11) "Proxy" means administrative or support staff, designated by an attorney, to have access to all claim documents in all claims in which the attorney has entered the attorney's appearance for the purpose of filing documents and managing claims.

(12) "Role" means the functionality and type of account for which a user is authorized in the WFMS system and includes attorney, attorney proxy, employer, insurer and healthcare provider.

(13) "State average weekly wage" means the State average weekly wage in effect on the date of the accident or date of disablement.

(14) "Subpoena" means a written order directed to a person and requiring attendance at a particular time and place to take the action specified.

(15) "Subsequent Injury Fund" or "SIF" means the statutorily created entity, funded by assessments on workers' compensation awards and settlements, that may be a party to a claim and which pays benefits attributable to a compensable injury to previously injured body parts.

(16) "Undisputed workers' compensation claim" means a claim in which all issues have been:

(a) Withdrawn;

(b) Resolved by a decision of the commission that is not appealed; or

(c) Resolved on appeal.

(17) "Uninsured Employers' Fund" or "UEF" means the statutorily created entity, funded by assessments on workers' compensation awards and settlements, that may be a party to

a claim and which pays workers compensation awards made against an uninsured employer.

(18) "Web Enabled File Management" or "WFMS" means the Commission's subscriber-based web-enabled electronic file management system designed to facilitate the filing and adjudication of workers' compensation claims.

.02 Commission Forms.

A. Forms prepared by the Commission, and made available on the Commission's website or through WFMS, are mandatory and shall be used for filing claims, notices, requests, motions, and other papers as required by law, or by these regulations.

B. Where the Commission has not created a form but has directed that the party or attorney prepare its own petition or motion, the party or attorney shall draft and file the required papers.

.03 Service of Papers.

A. Service by the Commission.

(1) The Commission shall serve notice of its orders and decisions, by:

(a) By electronic means, if the party's attorney of record consents or, if the party is unrepresented, the party consents; or

(b) First class mail to the last known address of each party's attorney of record or, if the party is unrepresented, to the unrepresented party.

(2) Parties and attorneys of record shall notify the Commission promptly of a change of address.

(3) For all other notices, where service by electronic means has not been authorized by statute or regulation, the Commission shall serve notice by first class mail.

B. Service by Parties.

(1) Except as otherwise provided in these regulations, a copy of every paper, form or document filed with the Commission by a party shall be served promptly on all other parties.

(2) If a party is represented by an attorney, service shall be made upon the attorney unless service on the party is directed by the Commission.

(3) Service may be made by:

(a) Handing the papers to the party or attorney;

(b) Leaving the papers at that person's office with an individual in charge, or, if there is no one in charge, leaving the papers in a conspicuous place in the office, or, if the office is closed or the person has no office, leaving the papers at the person's usual place of residence with an individual of suitable age and discretion residing there; or

(c) By mailing the papers to the address most recently stated in a paper filed by the party or attorney, or if not stated, to the last known address.

(4) Service by mail is complete upon mailing.

(5) Each paper filed that is required to be served shall be accompanied by a certificate of service, signed by the party or the party's attorney, showing the date and manner of making service on each of the other parties.

.04 Filing Forms and Documents with the Commission.

A. Forms and documents may be filed with the Commission by one of the following methods:

(1) electronically through the WFMS (Web-Enabled File Management System);

(2) in person; or

(3) by mail addressed to the Commission's principal office in Baltimore City.

B. All documents filed with the Commission after 4:30 p.m., electronically or otherwise, are considered to be received by the Commission on the next business day.

.05 Hours of Business.

Except for legal holidays, the hours of business of the Commission are Monday through Friday, 8 a.m. to 4:30 p.m.

.06 Waiver of Strict Compliance.

When justice so requires, the Commission may waive strict compliance with these regulations.

.07 Powers and Duties of Commissioners. (NEW)

A. A Commissioner shall:

(1) Conduct a full, fair, and impartial hearing;

(2) Take action to avoid unnecessary delay in the disposition of the proceedings; and

(3) Maintain order.

B. A Commissioner has the power to regulate the course of the hearing and the conduct of the parties and authorized representatives, including but not limited to the power to:

(1) Administer oaths and affirmations;

(2) Issue subpoenas for witnesses and the production of evidence;

(3) Rule upon offers of proof and receive relevant and material evidence;

(4) Consider and rule upon motions and requests;

(5) Examine witnesses and call witnesses as necessary to ensure a full and complete record;

(6) Limit repetitious testimony and reasonably limit the time for presentations;

(7) Grant a continuance of a hearing;

(8) Issue orders as are necessary to secure procedural simplicity and administrative fairness and to eliminate unjustifiable expense and delay;

(9) Conduct the hearing in a manner suited to ascertain the facts and safeguard the rights of the parties to the hearing; and

(10) Impose appropriate sanctions for failure to abide by this chapter or any lawful order of the Commissioner.

.08 Referral for Fraud.

A. Pursuant to Labor and Employment Article, §9-310.2(a), Annotated Code of Maryland, any party may request that the Commission refer the case to the Insurance Fraud Division of the Maryland Insurance Administration for investigation.

B. A party requesting a referral to the Insurance Fraud Division shall complete the Fraud Referral form provided by the Commission

.09 Web Enabled File Management System (NEW)

A. The WFMS is a subscriber-based web-enabled electronic file management system designed to facilitate the filing and adjudication of workers' compensation claims.

B. An attorney, employer, insurer, or healthcare provider may register for a no-cost subscription to the WFMS by:

(1) Completing an online application available at the Commission's website; and

(2) By satisfying the requirements applicable to the type of account (role).

C. After filing the online application, an attorney seeking to register for a subscription shall appear before a Commission official to validate his or her identify by:

(1) Scheduling an appointment with a court reporter at a remote hearing site; or

(2) Appearing before the public service unit at the Commission's principal office.

D. An attorney shall present a valid government-issued identification to validate his or her identity.

E. Each attorney seeking to use the WFMS shall register for and maintain his or her own individual subscription.

F. No law firm subscriptions are permitted.

G. Conditions of use.

(1) A subscriber shall:

(a) Provide the Commission with current contact information and update this information as it changes; and

(b) Abide by the terms of the service agreement

(2) A WFMS subscription may be suspended or terminated if the subscriber:

(a) Fails to provide the Commission with a current email address and contact information;

(b) Fails to protect the subscriber's user name and password;

(c) Uses the system in a manner inconsistent with its stated purpose;

(d) Permits unauthorized use of the subscriber's account; or

(e) Violates the terms of the service agreement.

G. Proxies.

(1) An attorney subscriber may authorize administrative or support staff to function as the attorney's proxy.

(2) The proxy designee shall complete an online proxy application.

(3) The attorney subscriber may validate the proxy's registration by entering the proxy's email information through the attorney's proxy list page in the attorney's subscriber account.

(4) An attorney may not designate another attorney as a proxy.

(5) Once approved and validated, the proxy may have access to all claim documents in all claims in which the attorney has entered the attorney's appearance.

(6) The attorney subscriber is responsible for all actions and conduct of the attorney's designated proxies.

.10 Notices Concerning Claims-----Posting by Employer.

The employer shall keep conspicuously posted at places of employment controlled or operated by the employer all written notices provided to the employer by the Commission or the employer's insurance carrier (or prepared by the employer, if self-insured) that give instructions or convey information to persons interested in or entitled to benefits under Labor and Employment Article, Title 9, Annotated Code of Maryland.

Draft COMAR 14.09.02 -- Requirements for Filing and Amending Claims

Draft: 06/27/2013

14.09.01 (downloaded 11/08/12)

.01 Definitions

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1)"Apostille" means a certificate issued under the Apostille Convention authenticating the origin of a public document.

(2) "Apostille Convention" means the Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents.

(3) "Authorization for Disclosure of Health Information" means the executed release authorizing the disclosure of protected health information in accordance with Labor and Employment Article § 9-709, 710 and 711, Annotated Code of Maryland.

(4) "Certified copy" means a duplicate of an original document that is certified as a true and accurate copy by the officer having custody of the original.

(5) "Competent authority" means an authority designated by a Contracting State as competent to issue apostilles.

(6) "Contracting State" means a State that has joined the Apostille Convention, whether or not the Convention is in effect for that State.

(7) "Foreign State" means a foreign sovereign state or country.

(8) "Notarized" means signed by the person(s) authorized or required to sign the document, the signing of which was witnessed by a notary public, accompanied by the notary's official notary seal.

(9) "State of origin" means the country where the document was created or issued.

(10) "State Party" means a State that has joined the Apostille Convention, for which the Convention is in effect.

.02 Requirements for Filing and Amending Claims. (transferred from 14.09.01.06)

A. Claim for Benefits.

(1) To initiate a claim for benefits, an employee shall file a claim form with the Commission.

(2) The Commission shall reject and return to the claimant a claim form that does not contain sufficient information to process the claim, including:

(a) The employee's name;

(b) The employee's address;

(c) The employee's date of birth;

(d) The date of the accident or occupational disease;

(e) The member of the body that was injured;

(f) A description of how the accidental injury or occupational disease occurred; and

(g) The employee's employer's name and address.

(3) If the information set forth in §A(2) of this regulation is unavailable or does not exist the claimant shall:

(a) Enter all zeros (0) in the spaces provided for the information; and

(b) Attach a signed statement certifying that the information is unavailable or does not exist.

(4) The employee shall sign the claim form certifying that the information submitted on the claim form is accurate.

(5) When completing the claim form, the claimant shall sign an authorization for disclosure of health information directing the claimant's health care providers to disclose to the claimant's attorney, the claimant's employer, the employer's insurer, or any agent thereof, the claimant's medical records that are relevant to:

(a) The member of the body that was injured by an accident or occupational disease, as indicated on the claim form; and

(b) The description of how the accidental injury or occupational disease occurred, as indicated on the claim form.

(6) Revocation of Authorization.

(a) A claimant may revoke an authorization for disclosure of health information in writing.

(b) The claimant shall serve a copy of the written revocation on all parties in the case.

(7) The Commission shall reject and return to the claimant a claim form that does not contain a signed authorization for disclosure of health information.

(8) Date of Filing.

(a) A claim is considered filed on the date that a completed and signed claim form, including the signed authorization for disclosure of health information, is received by the Commission.

(b) For any claim form that has not been rejected or returned as incomplete under §A(2) of this regulation, the Commission's date of receipt is determined by the date stamp affixed on the claim form.

(9) Electronic Submission.

(a) A claim that is submitted electronically is not considered filed until the signed claim form, including the signed authorization for disclosure of health information, is received by the Commission.

(b) The Commission's date of receipt is determined by the date stamp affixed on the claim form.

B. Social Security Number. (NEW)

(1) Voluntary Disclosure of Social Security Number.

(a) On the claim form, the Commission shall request the social security number of each claimant for workers' compensation benefits.

(b) The disclosure of the social security number by the claimant on the claim form is voluntary.

(2) Use of Social Security Number.

(a) The Commission may use the social security number for the following purposes:

(i) Verifying wage records of a claimant;

(ii) Verifying the identity of a claimant;

(iii) Identifying a claimant who has changed his or her name;

(iv) Verifying medical records necessary to adjudicate workers' compensation claims;

(v) The administration and enforcement of Maryland's workers' compensation laws;

(vi) The collection of any debts owed as a result of the claimant's failure to pay child support under Title 10 of the Family Law Article; and

(vii) Assisting in the enforcement of child support orders as required by State and federal laws.

(b) The Commission may not use the social security number for any purpose not authorized under this regulation or by state or federal law.

(3) Display of Social Security Number. A social security number may not be disclosed in a publicly accessible workers' compensation claim file or displayed on any documentation that may be subject to public inspection, except where required by federal law.

[B.]*C.* Amendment of Claim *to Add or Remove a Body Part*. (formerly 14.09.01.06B)

(1) A claimant may amend a claim to add or remove a member of the body by filing with the Commission a claim amendment form.

(2) A claimant shall serve a copy of a claim amendment form on the parties of record.

(3) The claimant shall sign the claim amendment form certifying that the information submitted on the claim amendment form is accurate.

(4) When completing the claim amendment form, the claimant shall sign an authorization for disclosure of health information authorizing the claimant's health care providers to disclose to the claimant's attorney, the claimant's employer, the employer's insurer, or any agent thereof, the claimant's medical records that are relevant to the member of the body identified by the claim amendment form.

(5) The Commission shall reject and return to the claimant a claim amendment form that does not contain a signed authorization for disclosure of health information.

.03 Amendment of Claim to Add an Additional Party, Including the Subsequent Injury Fund and Uninsured Employer's Fund

A. A party may amend a claim to add another party by filing a Request to Implead a Party form.

B. A party may amend a claim to add an employer, a statutory employer, an insurance carrier, the Subsequent Injury Fund or the Uninsured Employer's Fund.

C. Impleading the Subsequent Injury Fund.

(1) A party impleading the Subsequent Injury Fund more than 30 days before a scheduled hearing date shall file a Request to Implead a Party form and shall serve the SIF with a copy of the form.

(2) A party impleading the SIF within 30 days of a scheduled hearing date shall:

(a) File a Request to Implead a Party form;

(b) Serve the SIF with a copy of the form; and

(c) File with the form a declaration setting forth the moving party's prima facie case for alleging the involvement of the SIF, including, but not limited to, identification of the evidence the party intends to rely on to prove the liability of the SIF.

(3) Within 10 days of filing the Request to Implead a Party form, and any other required documents, the impleading party shall provide the following to the SIF and all other parties to the claim:

(a) Identify, by claim number if available, all prior awards or settlements to the claimant for permanent disability made or approved by the Commission, or by a comparable Commission of another state, or the District of Columbia;

(b) All relevant medical evidence relied on to implead the SIF; and

(c) A certification providing that a copy of the Request to Implead a Party form, along with all required information and documents, have been mailed to the SIF and all other parties to the claim.

(4) A party who fails to comply with this regulation or causes unreasonable delay without good cause is subject to an assessment of costs and reasonable attorney fees under Labor and Employment Article, §9-734, Annotated Code of Maryland.

.04 Claims for Death and Funeral Benefits. (formerly 14.09.01.06-1)

A. Election for Counties and Municipal Corporations.

(1) A county or municipal corporation may elect for the death benefits provisions of Labor and Employment Article, §§9-683.1—9-683.5, Annotated Code of Maryland, to apply to its public safety employees subject to the statutory presumption set forth in Labor and Employment Article, §9-503, Annotated Code of Maryland.

(2) A county or municipal corporation may make this election by:

(a) Completing an online form, available at the Commission's website; and

(b) Attaching a copy of the county or municipal corporation's ordinance or resolution making the election.

(3) The Commission shall issue a date-stamped notice advising the county or municipal government of its receipt of the election.

(4) The date stamp of the Commission's notice will be used as the effective date of the election.

(5) All death benefit claims arising out of a death that occurred after the date of election are subject to the death benefits provisions set forth in Labor and Employment Article, §§9-683.1—9-683.5, Annotated Code of Maryland.

B. Dependent Claim for Death Benefits.

(1) To initiate a claim for death benefits, a dependent of the deceased employee or an individual authorized to act on behalf of the dependent claimant shall file a dependent death benefits claim form with the Commission.

(2) The Commission may reject and return to the dependent claimant or authorized individual a claim form that does not contain sufficient information to process the claim including:

(a) The dependent claimant's name and, if applicable, the authorized individual's name;

(b) The dependent claimant's address and, if applicable, the authorized individual's address;

(c) The deceased employee's name;

(d) The deceased employee's address;

(e) The deceased employee's date of birth;

(f) The date of the accident or occupational disease;

(g) The member of the deceased employee's body that was injured;

(h) A description of how the accidental injury or occupational disease occurred;

(i) The deceased employee's date of death; and

(j) The deceased employee's employer's name and address.

(3) If the information set forth in §B(2) of this regulation is unavailable or does not exist the claimant shall:

(a) Enter all zeros (0) in the spaces provided for the information; and

(b) Attach a signed statement certifying that the information is unavailable or does not exist.

(4) Signature.

(a) The dependent claimant or authorized individual shall sign the dependent death benefit claim form.

(b) An authorized individual shall submit documentation establishing his or her authority to act on behalf of the dependent claimant with the claim form.

(5) Submission of Supporting Documentation.

(a) When completing the dependent death benefits claim form, the dependent claimant or authorized individual shall submit:

(i) An authorization for disclosure of health information signed by the dependent claimant or authorized individual, directing the deceased employee's health care providers to disclose to the dependent claimant's attorney, the deceased employee's attorney, the deceased employee's employer, the employer's insurer, or any agent thereof, the deceased employee's medical records that are relevant to:

1. The member of the body that was injured by an accident or occupational disease, as indicated on the claim form; and

2. The description of how the accidental injury or occupational disease occurred, as indicated on the claim form;

(ii) A certification of funeral expenses, if the dependent claimant is making a claim for funeral benefits, which shall:

1. Include the name of the deceased employee;

2. Include an attached itemized statement of the services performed and corresponding costs;

3. Be signed by the provider of the funeral services or undertaker;

4. Be signed by the person authorizing the burial or other services; and

5. Be notarized;

(iii) A certified copy of the certificate of death for the deceased employee;

(iv) A certified copy of the certificate of marriage for the dependent claimant and deceased employee, if the dependent claimant is the surviving spouse of the employee; and

(v) A certified copy of the certificate of birth for the dependent claimant, and order of adoption if applicable, if the dependent claimant is the surviving child of the deceased employee.

(b) Prior to the scheduled hearing on the death claim, the dependent claimant or authorized individual who filed the claim shall submit:

(i) Proof of family income at the date of the accidental personal injury or disablement;

(ii) An affidavit attesting to the authenticity of the documents submitted as proof of family income; and

(iii) If applicable, copies of any legal documents or orders directing the deceased employee to pay child support or alimony.

(c) Proof of family income may include:

(i) Payroll stubs or wage records covering the 14-week period prior to the accidental injury or date of disablement;

(ii) W-2s;

(iii) 1099 forms or other evidence of earnings from self-employment; and

(iv) Tax returns.

(d) If the dependent claimant or authorized individual does not have access to proof of income records for some alleged dependent claimants, the dependent claimant or

authorized individual shall submit evidence demonstrating the efforts made to obtain these records, including any Commission subpoenas.

(6) Revocation of Authorization.

(a) A dependent claimant or authorized individual may revoke an authorization for disclosure of health information in writing.

(b) The dependent claimant or authorized individual shall serve a copy of the written revocation on all the parties in the case.

(7) The Commission shall reject and return to the dependent claimant or authorized individual a dependent death benefits claim form that does not contain a signed authorization for disclosure of health information.

(8) Date of Filing.

(a) A claim is considered filed on the date that a completed and signed claim form, including the signed authorization for disclosure of health information, is received by the Commission.

(b) The Commission's date of receipt is determined by the date stamp affixed on the claim form.

(9) Electronic Submission.

(a) A dependent death benefits claim that is submitted electronically is not considered filed until the signed claim form, including the signed authorization for disclosure of health information, is received by the Commission.

(b) The Commission's date of receipt is determined by the date stamp affixed on the claim form.

C. Claim for Funeral Benefits Only.

(1) If the deceased employee has no dependents, any person or entity responsible for paying, or who has paid, the deceased employee's funeral expenses may initiate a claim for funeral benefits by filing with the Commission a signed funeral benefits only claim form certifying that the information submitted on the form is accurate.

(2) The Commission may reject and return to the filing party a funeral benefits only claim form that does not contain sufficient information to process the claim including:

(a) The filing party's name and address;

(b) The deceased employee's name and address;

(c) The deceased employee's employer's name and address;

(d) The date of accident or occupational disease; and

(e) The deceased employee's date of death.

(3) When the information set forth in §D(2) of this regulation is unavailable or does not exist, the claimant shall:

(a) Enter all zeros (0) in the spaces provided for the information; and

(b) Attach a signed statement certifying that the information is unavailable or does not exist.

(4) When completing the funeral benefits only claim form the filing party shall attach a certification of funeral expenses, which shall:

(a) Include the name of the deceased employee;

(b) Include an attached itemized statement of the services performed and corresponding costs;

(c) Be signed by the provider of the funeral services or undertaker;

(d) Be signed by the person authorizing the burial or other services; and

(e) Be notarized.

.05 Foreign Documents. (NEW)

A. When a document or public record required by this chapter was created or issued in a foreign State the Commission may not accept as supporting documentation:

(1) Photocopies;

(2) Facsimile copies;

(3) Notarized copies; or

(4) Documents with alterations or erasures.

B. When a document or public record required by this chapter was created or issued in a foreign State and the State of origin is a State Party to the Apostille Convention, the party submitting the document shall:

(1) Have a competent authority of the State of origin issue an apostille for the original or a certified copy of the document; and

(2) Attach to the apostilled document, an English translation of the document prepared pursuant to this regulation.

C. When a document or public record required by this chapter originated in a foreign State and the State of origin is not a State Party to the Apostille Convention, the party submitting the document shall:

(1) Submit the public document with a written declaration (certificate) authenticating the signature/seal/stamp, signed in the State of origin which, if falsely made, would subject the maker to a criminal penalty under the laws of that foreign State;

(2) Attach to the document and certificate, a final certification as to the genuineness of the signature and official position of:

(a) the individual executing the certificate; or

(b) any foreign official who certifies the genuineness of signature and official position of the executing individual, or is the last in a chain of certificates that collectively certify the genuineness of signature and official position of the executing individual; and

(3) Attach to the document and certificate(s), an English translation of the document prepared pursuant to this regulation.

D. A final certificate may be made by a secretary of an embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign State who is assigned or accredited to the United States.

D. English Translation.

(1) An English translation of any document authenticated by an apostille or by a final certificate shall include:

(a) The typed or printed name and telephone number of the interpreter or translator; and

(b) A signed certification by the interpreter or translator that the translation is true, accurate and complete.

(2) A party shall have the English translation prepared by:

(a) An interpreter or translator whose name appears on the State of Maryland Court Interpreter Registry; or

(b) The embassy of the State from which the document originates.

E. An attorney who advances the cost of having a foreign document authenticated, translated, or both, is entitled to recover the actual amount expended.

.06 Claim for Unpaid Compensation of Deceased Claimant (transferred from 14.09.01.08C)

A. A person seeking unpaid compensation payments as a dependent of a deceased covered employee under Labor and Employment Article, §§ 9-632, 9-640, or 9-646, Annotated Code of Maryland, shall file an Issue Form in the same claim.

B. A person seeking these benefits shall produce at the hearing proof of dependency and proof of death which may include a death certificate, marriage certificate, and birth certificate or order of adoption for any surviving children.

.07 Notice to Employer/Insurer of Claim (NEW)

A. After a claim is filed, the Commission shall send a Notice of Claim to all parties listed on the claim form and identified through the Commission's database of insurers and employers.

B. Insurer Identified.

(1) If an insurer has been identified, the Commission shall send a Response to Employee's Claim form to the insurer for completion

(2) The insurer shall file a completed Response to Employee's Claim form with the Commission.

C. No Insurer Identified.

(1) If no insurer has been identified, the Commission shall send a Response to Employee's Claim form to the employer.

(2) The employer shall file a completed Response to Employee's Claim form with the Commission.

(3) If an employer is not insured, the Commission shall send a Response to Notification to Employer for Insurance Information form to the employer and a questionnaire to the claimant.

(4) The employer shall file the completed form with the Commission and send copies of the completed form to the Uninsured Employers' Fund.

(5) The claimant shall file the completed questionnaire with the Commission.

(6) No hearings on issues filed by the claimant shall be scheduled until the claimant has completed and filed the claimant's questionnaire.

D. If no Response to Employee's Claim form is filed by the consideration date an automatic order will be issued finding the claim compensable.

Draft 14.09.03 – Hearing Procedures

DRAFT: 06/27/2013

ALL NEW

.01 Definitions (formerly 14.09.01.01)

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Person in interest" means:

(a) An adult on whom a health care provider maintains a medical record;

(b) A person authorized to consent to health care for an adult pursuant to a grant of authority; and

(c) A duly appointed personal representative of a deceased person.

.02 Filing and Withdrawing Issues. (ALL NEW)

A. A party may raise an issue by filing an Issues form, available on the Commission website.

B. The following kinds of issues may be raised by filing an Issues form:

(1) Whether the employee sustained an injury causally related to an accident that arose out of and in the course of employment;

(2) Whether the disability of the employee is causally related to the accidental injury;

(3) Whether the employee sustained a compensable hernia;

(4) Whether the employee sustained an occupational disease;

(5) Average weekly wage;

(6) Limitations;

(7) Jurisdiction;

(8) Statutory employment;

(9) Medical expenses;

(11) Attorneys fees/costs;

(12) Penalties;

(13) Whether the employee is entitled to temporary partial and temporary total disability benefits;

(14) The nature and extent of a permanent disability to specified body parts;

(15) Authorization for medical treatment; and

(16) Other issues when articulated with specificity.

C. On the Issues form, the party shall state with clarity issues to be determined and shall include, as relevant:

(1) The inclusive dates of any temporary total disability;

(2) For permanent disability, identify each part of the body affected, and any alleged psychiatric disability;

(3) Permanent total disability must be specifically pled;

(4) The specific medical treatment sought; and

(5) For any medical expenses, attach a list identifying each amount owed and to whom the amount is owed.

D. The party who has raised issues by filing an Issues form may withdraw those issues by:

(1) Filing a Request for Action on Filed Issues form; or

(2) Verbally requesting that the issues be withdrawn at the scheduled hearing.

E. A party that has filed issues and is not ready to proceed at the hearing shall withdraw the issues.

F. A party that withdraws issues may not refile the same issues for a period of 90 days.

G. A party may request an exemption from the prohibition against refiling issues within the 90-day period by filing a Request for Hearing on Previously Withdrawn Issues form. Any supporting documentation shall be attached to the form.

H. If the Commission grants the request for exemption, the Commission shall:

(1) Issue a memorandum granting the request; and

(2) Schedule a hearing on the previously withdrawn issues.

I. Prior to filing issues, the filing party shall possess relevant documentation to the issues to be filed, including medical documentation.

J. A party who fails to comply with this regulation, or causes unreasonable delay without good cause, may be subject to an assessment of costs and reasonable attorney fees under Labor and Employment Article, §9-734, Annotated Code of Maryland.

.03 Hearing Notices. (Formerly 14.09.01.14B)

A. The Commission shall schedule a hearing on the issues identified on the Issues form, unless a hearing is already scheduled or set to be scheduled, and shall send written notice to all parties of the scheduled hearing date.

B. A hearing notice issued by the Commission shall contain:

(1) the date the notice was issued;

(2) the date, time and place of the hearing; and

(3) a statement providing information concerning the procedures for making a request for an accommodation or an interpreter.

.04 Interpreters and Other Accommodations. (formerly 14.09.01.27) (amended)

A. Interpreter and Other Accommodations.

(1) If a party or witness cannot adequately hear, speak, or understand the spoken or written English language the Commission shall provide an interpreter or other reasonable accommodation service necessary for the party or witness to participate fully in the Commission proceedings.

(2) If a party, witness or individual having business with the Commission requires another form of accommodation to participate in Commission proceedings, the Commission shall take reasonable steps to provide a reasonable accommodation for the individual.

B. Request Required.

(1) Within 10 days of the date the Notice of Hearing is issued, an individual requiring an interpreter or other accommodation shall make a request to the Commission Interpreter Program Office that specifies:

(a) The identity of the individual requiring the service;

(b) Date and location of hearing;

(c) The language or other accommodation service being requested;

(d) Contact information for the service/accommodation requestor or their representative; and

(e) Any other information that may assist the Commission in providing the requested interpreter service or accommodation.

(2) A request for interpreter or accommodation may be made by:

(a) telephoning the Commission's LEP telephone line available on the Commission website;

(b) send an email to the email address for the Commission Interpreter Program Office available on the Commission website; or

(c) telephone the Commission's main telephone line through the TTY service through Maryland Relay available on the Commission's website.

(3) Upon receipt of a timely request for services, the Commission Interpreter Program Office shall:

(a) issue a reservation number to the requesting individual; and

(b) schedule an interpreter, or accommodation service; or

(c) engage in a dialogue about the requested accommodation.

C. Except as provided in §D of this regulation, the Commission shall pay the fee for interpreter or other reasonable accommodation service requested pursuant to this regulation.

D. Notification of Cancellation and Fees.

(1) An individual who has received a reservation number under §B(2) of this regulation may cancel the requested service by notifying the Commission Interpreter Program Office, in the manner prescribed by the Commission, that the requested service is no longer required.

E. An individual may be assessed the service minimum fee if:

(1) A matter is resolved more than 2 days prior to the hearing; and

(2) The service is not cancelled.

F. A party may not provide his or her own interpreter.

.05 Subpoenas (NEW)

A. Use of Subpoenas. A subpoena is required to compel the person to whom it is directed to attend, give testimony, and produce designated documents or tangible things at a Commission proceeding or at a deposition held pursuant to Labor and Employment Article, § 9-719(b), Annotated Code of Maryland.

B. Procedure for Obtaining Subpoena.

(1) On the request of an attorney entitled to the issuance of a subpoena the Commission may issue a subpoena signed and sealed but otherwise blank that shall be filled in before service.

(2) On the request of a non-attorney individual entitled to the issuance of a subpoena the Commission may provide a blank form of the subpoena which shall be filled in and returned to the Commission clerk to be signed and sealed before service.

(3) To the extent practicable, subpoenas shall be served at least 10 days before the hearing.

C. Form of Subpoena.

(1) Every subpoena shall contain:

(a) The caption of the claim and claim number,

(b) The name and address of the person to whom it is directed,

(c) The name of the person at whose request it is issued,

(d) The date, time and place where attendance is required, and

(e) A description of any documents or tangible things to be produced.

D. Medical Records Subpoenas.

(1) Every subpoena seeking the production of medical records shall comply with Health General Article, § 4-306, Annotated Code of Maryland.

(2) A party seeking medical records by subpoena shall:

(a) Complete the Notice of Intent to Subpoena Medical Records and Certificate of Service form; and

(b) Send by certified mail a copy of the Notice of Intent to Subpoena Medical Records to the person in interest and his or her counsel.

(3) Within 30 days of the date that the Notice of Intent to Subpoena Medical Records was mailed, a person in interest may oppose the disclosure of his or her medical records by:

(a) Filing the Objection to Subpoena of Medical Records form with the Commission; and

(b) Sending a copy of the Objection form to all parties by first class mail.

(5) Upon receipt of an Objection to Subpoena of Medical Records, the Commission shall schedule a hearing to determine:

(a) Whether the subpoena should be quashed;

(b) Whether the subpoena should be limited in scope or otherwise modified; and

(c) Other appropriate relief.

E. Service of Subpoenas.

(1) Subpoenas may be served by:

(a) Personal delivery by an individual 18 years old or older who is not a party to the proceeding or related by blood or marriage to a party to the proceeding; or

(b) Certified mail to the person at the address specified in the subpoena request.

(2) The subpoena may not be enforced pursuant to Labor and Employment Article, §9-717, Annotated Code of Maryland, absent proof of service by certified mail or personal delivery.

(3) Costs of certified mailing or personal delivery of the subpoena are the responsibility of the person requesting the service.

(4) Proof of service by certified mail or personal delivery is the responsibility of the person requesting the subpoena.

F. Return of service shall be made as follows:

(1) When service is by certified mail, by the filing of the original return receipt; or

(2) When service is by personal delivery, by the filing of an affidavit, signed by the individual who made service, containing:

(a) The name of the individual served;

(b) The date on which the individual was served;

(c) The particular place of service; and

(d) A statement that the server is 18 years old or older and not a party to the proceeding or related by blood or marriage to a party to the proceeding.

G. Enforcement of Subpoenas.

(1) If an individual fails to comply with a properly served subpoena, pursuant to Labor and Employment Article, §9-717, Annotated Code of Maryland, the party wishing to enforce the subpoena shall file with the Commission a letter requesting enforcement of the subpoena.

(2) The letter shall:

(a) state, with specificity:

(i) when and how the subpoena was served, and

(ii) why the testimony or documents sought are necessary for the resolution of the issue, and

(b) be accompanied by copies of the subpoena, and any certificate of service, return receipt, or affidavit.

(3) Upon determining that the subpoena was issued and served in compliance with the law, the Commission may apply to the appropriate circuit court for an order to show cause why the individual should not be imprisoned for failing to comply with a subpoena.

.06 Average Weekly Wage (formerly 14.09.017)

A. Preliminary Determination. For the purpose of making an initial award of compensation before a hearing in the matter, the Commission shall determine the claimant's average weekly wage from gross wages, including overtime, reported by the claimant on the employee's claim form.

B. Filing of Wage Statement. As soon as practicable, the employer/insurer shall file a wage statement containing the following information:

(1) The average wage earned by the claimant during the 14 weeks before the accident, excluding the time between the end of the last pay period and the date of injury, provided that periods of involuntary layoff or involuntary authorized absences are not included in the 14 weeks;

(2) Those weeks the claimant actually worked during the 14 weeks before the accident;

(3) Vacation wages paid; and

(4) Those items set forth in Labor and Employment Article, §9-602(a)(2), Annotated Code of Maryland.

C. Determination at First Hearing.

(1) Calculation of the average weekly wage shall be adjudicated and determined at the first hearing before the Commission.

(2) All parties shall be prepared to produce evidence from which the Commission can determine an accurate average weekly wage at the first hearing.

(3) If the Commission determines that an inaccurate average weekly wage resulted in the overpayment or underpayment of benefits, the Commission may order:

(a) A credit against future permanent disability benefits;

(b) The payment of additional compensation; or

(c) Any other relief the Commission determines is appropriate under the circumstances.

D. Uninsured Employers' Fund. The Uninsured Employers' Fund may contest the average weekly wage determined by the Commission under §A or B of this regulation, along with other issues as authorized by Labor and Employment Article, §9-1002, Annotated Code of Maryland, by filing issues on the form prescribed by the Commission.

.07 Disclosure of Medical Information. (formerly 14.09.01.10) (amended)

A. Parties' Continuing Duty to Disclose Medical Information.

(1) When a claim or an issue is filed with the Commission, each party promptly shall provide to all other parties copies of all relevant medical information in the possession of the party or that is subsequently received by the party, but not previously provided.

(2) For the purpose of this regulation, medical information in the possession of, or received by the party's agent or attorney, is considered to be in possession of the party.

(3) The duty to disclose applies to all medical information including reports, evaluations, tests, and bills, and continues during the pendency of the claim.

B. Duty to Provide Medical Authorization.

(1) Unless the Commission orders otherwise for good cause shown, a party shall provide to any other party, on written request, a medical authorization or release.

(2) The parties shall, in good faith, attempt to resolve any issues concerning the scope of the requested medical authorization or release.

(3) Failure to comply with this regulation may result in sanctions including attorneys fees and costs, delay, and the exclusion of any evidence not properly disclosed.

C. Motion to Compel Medical Authorization.

(1) Upon the failure of a party to provide an executed medical authorization, the party seeking the medical authorization may file a Motion to Compel Medical Authorization form.

(2) A Motion to Compel Medical Authorization shall:

(a) Be filed electronically;

(b) Be served by hand delivery or facsimile on all parties of record; and

(c) Contain the claimant's name, date of accident/disablement, the health care provider's name, and the body parts or medical conditions to which the authorization/release applies.

(3) A party may oppose the motion by filing a Response to Motion to Compel Medical Authorization form.

(4) A Response to Motion to Compel Medical Authorization shall:

(a) Be filed within seven days after receipt of the motion;

(b) Be filed electronically;

(c) Be served by hand delivery or facsimile on all parties of record; and

(d) State with particularity the reasons for failing to provide the requested medical authorization;

(5) The motion will be decided on the papers filed.

.08 Medical Examinations (formerly 14.09.01.11) (amended)

A. Medical Examinations Ordered by the Commission.

(1) The Commission may order that the claimant be examined, at the Commission's expense, by the Commission's medical examiner or by some other physician, psychologist, or psychiatrist selected by the Commission.

(2) The claimant shall report to the office of the examining physician at the time scheduled by the physician for the examination.

(3) If the claimant is physically unable to report to the physician's office, the examination may be conducted wherever the claimant is located or is physically able to report.

(4) When the examining physician's report is filed, the Commission shall serve on all parties:

(a) a copy of the report; and

(b) a notice that any written objection to the report shall be filed within 15 days after the date of the notice.

(5) A written objection may be made by written letter filed with the Commission and shall state clearly the reasons for objecting to the examining physicians report.

(6) If no written objection is timely filed, the Commission may consider the report, along with any other admissible evidence presented, in deciding the claim.

(7) If an objection is timely filed, the Commission shall schedule a hearing on the matter.

B. Medical Examination Requested by a Party.

(1) A party may schedule a medical examination of the claimant with a physician, psychologist, or psychiatrist of his or her choosing, by providing to the claimant and claimant's counsel reasonable notice of the examination in writing,

(2) The party scheduling a medical examination of the claimant shall be responsible for all reasonable expenses associated with the examination.

(3) The parties shall, in good faith, attempt to resolve any differences in scheduling and scope of examination.

(4) If a claimant fails to appear, refuses to submit, or fails to cooperate with the medical examination, the party requesting the examination may file an Issues form for a hearing to compel a medical examination.

C. Appearance by Examining Physician. A party requesting the appearance of an examining physician, psychologist, or psychiatrist at a hearing, shall pay the appearance fee imposed by the provider.

.09 Hearing Exhibits and Witnesses (formerly 14.09.01) (amended)

A. Mandatory Exchange of Hearing Exhibits

(1) At least three business days prior to the scheduled hearing date each party shall send to the other parties, including the Subsequent Injury Fund and the Uninsured Employers' Fund, copies of all the exhibits that the party intends to introduce at the time of hearing.

(2) Failure to comply with this provision may result in sanctions.

B. Confidential Information

(1) If sensitive material must be brought to the attention of a Commissioner for the proper adjudication of a matter in dispute, the party seeking the admission of the sensitive or restricted material:

(a) may request to brief the Commissioner in-chambers regarding the subject matter;

(b) after providing notice to opposing counsel.

(2) A request to admit sensitive or restricted material shall be granted or denied at the Commissioner's discretion.

C. General Rules Concerning Hearings

(1) On any genuine issue, each party is entitled to call witnesses, offer evidence, and cross-examine any witness who testifies.

(2) A hearing shall be called to order by the Commissioner. The Commissioner may allow the parties to present preliminary matters.

(3) Witnesses shall be sworn or put under affirmation to tell the truth.

(4) A Commissioner may admit evidence that reasonable and prudent individuals commonly accept in the conduct of their affairs, and give probative effect to that evidence.

D. Hearing Exhibits

(1) Each party shall prepare an exhibit that:

(a) Includes all documents that have not been filed previously with the Commission that are relevant and necessary to decide the issue or issues to be heard;

(b) Is paginated; and

(c) Includes a Table of Contents that indicates the first page of each document contained in the exhibit, and the name of the health care provider, the date of the report, and date of treatments.

E. Sequestration of Witnesses.

(1) Upon request by a party, the Commissioner may exclude witnesses other than parties from the hearing room, except when testifying.

(2) A party, representative, witness, or spectator may not disclose to a witness excluded under this section the nature, substance, or purpose of testimony, exhibits, or other evidence introduced during that witness's absence.

(3) A party that is not an individual may designate an employee or officer as its representative to remain in the hearing room, even though the employee or officer may be a witness.

(4) An expert witness who is to render an opinion based on testimony given at the hearing may remain during the testimony.

(5) The Commissioner may exclude the testimony of a witness who receives information in violation of this section, or take other appropriate action.

F. Stipulations.

(1) The parties may, in accordance with law, agree to any substantive or procedural matter.

(2) A stipulation may be filed in writing or entered on the record at the hearing.

(3) The Commissioner may require additional development of stipulated matters.

(4) The parties filing a stipulation shall attach to the stipulation, or submit to the Commissioner at the hearing, documentation supporting the stipulation.

G. Expert Testimony

(1) If a party wishes to have an expert witness appear and testify, other than a vocational rehabilitation counselor, the party must seek prior approval from the Chairman.

(2) The party shall submit a letter stating why oral testimony is necessary in lieu of documentary evidence.

(3) The party producing the expert witness shall be responsible for any fees charged by the expert for appearing and testifying.

(4) If vocational rehabilitation counselor is called as an expert witness, the employer/insurer shall be responsible for any fees charged by the expert for appearing and testifying.

.10 Consequence of Nonappearance by Claimant. (formerly 14.09.01.15)

A. When a claimant, without good cause, fails to appear at a hearing on issues contesting the compensability of a claim, the Commission may dismiss the claim.

B. When a claimant, without good cause, fails to appear at a hearing on issues in a compensable claim, the Commission may proceed ex parte and may decide the issues based on information on file with the Commission, together with any evidence presented at the hearing.

.11 Request for Emergency Hearing. (formerly 14.09.01.14C)

A. A party may request an emergency hearing by filing a Request for Emergency Hearing form.

B. A party may request an emergency hearing on the following bases:

(1) Continuing temporary total disability and exigent circumstances causing undue financial hardship,

(2) Proposed urgent medical treatment, or

(3) Other truly exigent circumstances causing undue hardship.

C. A request for an emergency hearing shall be accompanied by supporting medical documentation and other documentation that establishes the nature of the emergency condition or circumstance.

D. A Request for Emergency Hearing on temporary total disability shall contain a detailed statement showing that any delay will cause the claimant undue financial hardship.

E. Unless exceptional circumstances are demonstrated, the Commission shall deny a Request for Continuance made by the party upon whose request the emergency hearing was scheduled.

F. A Request for Emergency Hearing will be decided based on the papers filed.

.12 Request for Continuance. (formerly 14.09.01.17)(amended)

A. Prior to filing a Request for Continuance of a scheduled hearing, the party seeking the continuance shall contact the other parties to the case and seek their consent.

B. A party seeking a continuance shall file a Request for Continuance form setting forth the reasons for the continuance at least 30 days prior to the scheduled hearing.

C. Requests for Continuance filed more than 30 days prior to a scheduled hearing, to which the parties have consented, shall routinely be granted.

D. A Request for Continuance filed less than 30 days before the hearing may be granted subject to the discretion of the Commissioner.

E. A Request for Continuance will be decided based on the papers filed.

.13 Motion for Modification. (formerly 14.09.01.16)

A. A party seeking modification of a prior finding or order shall file the form captioned Motion for Modification and simultaneously file an Issues form identifying the issue to be resolved.

B. A party seeking modification must file a Motion for Modification within 5 years of the later of the date of the accident, the date of disablement, or the date of the last compensation payment.

C. The motion shall state specifically the finding or order that the party wishes modified and the facts and law upon which the party is relying as grounds for the modification.

D. When a party seeks an increase in a prior award for permanent partial disability, the parties shall comply with Regulation .06 of this Chapter and COMAR 14.09.04.

.14 Motion for Rehearing. (formerly 14.09.01.14D)

A. Within 15 days after the date of decision, a party seeking reconsideration of a decision shall file a Motion for Rehearing form, available on the Commission's website.

B. If the motion is based on an alleged error of law, the motion shall state specifically the error and the applicable case and statutory law.

C. If the motion is based on newly discovered evidence, the motion shall describe specifically the newly discovered evidence and the reasons why that evidence was not known and could not have been discovered by due diligence at the time of the prior hearing.

D. The motion shall be accompanied by copies of all documentary evidence upon which the motion is based.

E. An answer to a motion for rehearing may be filed with the Commission within 10 days after the motion is filed.

F. The Commission may decide the motion with or without a hearing.

.15 Miscellaneous Forms. (NEW)

A. The Request for Action on Filed Issues Form shall be used:

(1) By the filing party, to withdraw issues previously filed;

(2) By the claimant, to request dismissal of the claim;

(3) By the filing party, to request that the issues raised on the issue form be set for hearing with the pending issues in related claims; and

(4) By any party, to request a change in venue.

B. The Request for Document Correction form may be used to correct an error when:

(1) There is an undisputed typographical error; or

(2) All parties agree that the factual error is undisputed.

C. The Request for Document Correction form may not be used to:

(1) Obtain reconsideration or rehearing of an issue;

(2) Correct a factual matter over which there is a dispute.

Draft 14.09.04 -- Legal Representation and Fees.

Draft: 06/25/2013

.01 Legal Representation. (formerly COMAR 14.09.01.23) (amended)

[A. Who May Practice. Only an attorney admitted by the Court of Appeals to practice in this State or an out-of-State attorney specially admitted under Business Occupations and Professions Article, §10-215, Annotated Code of Maryland, may practice before the Commission.]

A. Representation.

(1) A party may be represented before the Commission by:

(a) An attorney admitted by the Court of Appeals to practice in this State;

(b) An out-of-State attorney specially admitted by order of the circuit court pursuant to the Business Occupations and Professions Article, §10-215, Annotated Code of Maryland; or

(c) A party, who is an individual, may appear on the individual's own behalf pursuant to Business Occupations and Professions Article, §10-102, Annotated Code of Maryland.

(2) All parties, other than an individual electing to represent him or herself, may be represented only by an attorney.

B. Attorney Registration with Commission.

(1) An attorney wishing to practice before the Commission shall complete and file an Attorney Registration form and submit the attorney registration fee.

(2) Following verification and completion of the registration, the Commission shall issue the attorney a five-digit attorney code.

[B.]*C.* Entry of Appearance.

(1) An attorney representing a party in a claim shall complete and file an Entry of Appearance form with the Commission to establish an attorney of record.

(2) Within 10 days of the filing of issues by any party, an insurer[, as defined in COMAR 14.09.06.01B(2),] shall have an attorney complete and file an Entry of Appearance form with the Commission to establish an attorney of record.

(3) [Thereafter,] *After an entry of Appearance has been filed by an attorney on behalf of the insurer,* all papers filed on behalf of the insurer shall be filed by the attorney of record until the claim becomes undisputed.

[C.]*D.* Notices.

(1) If a party is represented by an attorney, notices to the party may be mailed to the attorney of record only.

(2) An employer may designate a person who shall receive a courtesy copy of each Notice of Employee's Claim filed against the employer.

[D.]*E.* Termination of Representation. An attorney whose appearance has been entered on behalf of a party to a claim remains the attorney of record for the party to that claim until:

(1) The attorney:

(a) Files a Withdrawal of Appearance form;

(b) Certifies that a copy of the withdrawal was mailed to all parties; and

(c) Certifies that notice of any pending hearing was mailed to the attorney's client; or

(2) The party requests that the Commission strike the appearance of the attorney.

.02 Attorney's Fee and Medical Evaluation Fee — Application or Petition for Approval. (formerly 14.09.01.24)

A. Request for Fee Not in Excess of Schedule.

[(1) When approval is sought for an attorney's fee not exceeding the maximum amount set forth in Regulation .25 of this chapter, the application for approval shall be made on a Claimant's Consent to Pay Attorney Fee and Doctor Fee form signed by the claimant.

(2) The application shall include the amount of any medical evaluation fee requested to be approved.

(3) The consent is not binding on the Commission.

(4) An award by the Commission approving an attorney's fee under this regulation shall be notice to the party responsible for payment to reserve in escrow the amount of fee approved. That party shall remit the approved fee to the attorney immediately after the expiration of the 30-day appeal period if an appeal is not filed. If an appeal is timely filed, the party responsible for payment shall continue to reserve in escrow the amount of the fee approved by the Commission pending final determination of the appeal. If the parties agree that an appeal will not be filed, the fee may be remitted to the attorney before expiration of the 30-day period.]

(1) An attorney seeking approval of an attorney's fee that does not exceed the maximum amount set forth in Regulation .03 of this chapter, may request approval of the fee by filing the Claimant's Consent to Pay Attorney and Doctor Fee form.

(2) A completed Claimant's Consent to Pay Attorney and Doctor Fee form shall:

(a) Be signed by the claimant;

(b) Include the amount of any medical evaluation fee requested to be approved;

(c) Include any amount of costs advanced by claimant's attorney for which the attorney is seeking payment; and

(d) Include any appeal fee requested under Regulation .03B(9) of this chapter.

(3) An attorney shall substantiate a request for medical evaluation fee, costs or a fee under Regulation .03B(9) of this chapter by:

(a) Submitting medical bills, receipts, or other evidence of costs;

(b) Submitting evidence establishing that:

(i) The prior compensation award was appealed to the circuit court and tried on appeal;

(ii) The prior compensation award was appealed to an appellate court, briefed and decided on the merits;

(iii) The prior compensation award was appealed to the circuit court but not resolved by trial;

(iv) The prior compensation award was appealed to an appellate court but not briefed and decided on the merits; or

(v) The prior order of the Commission on the issue of compensability of the claim was appealed to the circuit court and the claim was determined to be compensable by the circuit court or jury.

(4) The claimant's consent to the fee is not binding on the Commission.

(5) An award by the Commission approving an attorney's fee under this regulation shall be notice to the party responsible for payment to reserve in escrow the amount of fee approved.

(6) If an appeal is not filed within 30 days, the party responsible for payment shall remit the approved fee to the attorney immediately after the expiration of the 30-day appeal period.

(7) If an appeal is filed timely, the party responsible for payment shall continue to reserve in escrow the amount of the fee approved by the Commission pending final determination of the appeal.

(8) If the parties agree that an appeal will not be filed, the fee may be remitted to the attorney before expiration of the 30-day appeal period.

B. Petition for Fee in Excess of Schedule.

(1) An attorney seeking an attorney's fee exceeding the maximum amount set forth in Regulation .03, shall draft and file with the Commission a written petition.

(2) The petition shall contain the following:

(a) A clear and concise description of the legal services rendered to the claimant;

(b) The amount of attorney's fee requested to be approved;

(c) A detailed statement of the reasons for a fee in excess of the maximum amount set forth in Regulation .03;

(d) A detailed statement establishing the exceptional circumstances that warrant an excess fee;

[d]*(e)* The claimant's signed acknowledgement of the fact that the attorney is requesting approval of an attorney's fee in excess of the schedule, in the amount specified and for the services described;

[e] *(f)* The amount of any medical evaluation fee requested to be approved; and

(g) A certificate of service indicating that a copy of the petition has been served on the claimant, as well as the other parties to the case.

[(3) The petition shall be accompanied by an original and the number of copies of a proposed order as may be specified from time to time by the Commission.]

(4) A petition for approval of an attorney's fee ordinarily shall be considered by the Commissioner who issued the award of compensation.

[C. Unreasonable Proceeding—Attorney Fee Award. Compliance with §A or B is not required for the Commission to award to an opposing party a reasonable attorney's fee under Labor and Employment Article, §9-734, Annotated Code of Maryland, for any proceeding that the Commission determines not to have been brought on a reasonable ground. A fee allowed under this section is immediately payable unless the award of the fee is appealed.]

C. Unreasonable Proceeding—Attorney Fee Award.

(1) Pursuant to Labor and Employment Article §9-734, Annotated Code of Maryland, the Commission may award to an opposing party a reasonable attorney's fee in any proceeding that the Commission determines not to have been brought on a reasonable ground.

(2) The Commission may make the attorney's fee award on its own initiative or at the request of any party.

(3) Unless the award of the fee is appealed, the fee allowed under this section is payable immediately.

[D. Judicial Review of Award of Attorney's Fees. A party seeking judicial review of a decision granting or denying attorney's fees shall:

(1) File a petition for judicial review in accordance with Maryland Rules 7-201—7-210; and

(2) Serve a copy of the petition for judicial review on the Assistant Attorney General assigned to represent the Commission at the Commission's principal office in Baltimore City.]

.03 Schedule of Attorney's Fees. (formerly 14.09.01.25)

A. The Commission shall approve attorney's fees in accordance with the schedule of fees established by the Commission and set forth in § B of this regulation.

B. Schedule of Fees.

(1) Definitions.

(a) In this section, the following terms have the meanings indicated.

(b) Terms Defined.

(i) "Final award" means the award of compensation determined by the Commission after exhaustion of all applicable appeals, regardless of whether the award is increased or decreased as a result of any appeal.

(ii) "Formal set-aside allocation" means a document reflecting a comprehensive analysis and projection of future injury-related medical needs and associated costs.

(iii) "State average weekly wage" means the State average weekly wage in effect on the date of the accident or date of disablement.

(2) Fee in Excess of Limits. The Commission may approve an attorney's fee in excess of the limits set forth in this section only if exceptional circumstances are shown.

(3) Permanent Partial Disability.

(a) General. Except as otherwise provided in §B(3)(b), in a case in which a final award of compensation is made for permanent partial disability, the Commission may approve an

attorney's fee in a total amount not exceeding 20 times the State average weekly wage and computed as follows:

(i) Up to 20 percent of the amount due for the first 75 weeks of an award of compensation awarded;

(ii) Up to 15 percent of the amount due for the next 120 weeks of an award of compensation; and

(iii) Up to 10 percent of the amount due for an award of compensation in excess of 195 weeks.

(b) Disability Due to Amputation or Loss of Vision. In a case in which a final award of compensation is made for permanent partial disability due to the amputation of an arm, leg, hand, or foot, or total loss of vision in one eye, and the sole issue before the Commission is the nature and extent of disability, the Commission may approve an attorney's fee in an amount up to 5 percent of the compensation awarded, but not exceeding 6 times the State average weekly wage.

(4) Permanent Total Disability.

(a) General. Except as otherwise provided in §B(4)(b), in a case in which a final award of compensation is made for permanent total disability, the Commission may approve an attorney's fee in an amount not exceeding 20 times the State average weekly wage.

(b) Special Cases. The Commission may approve an attorney's fee in a case in which:

(i) compensability is not an issue;

(ii) an award of compensation is made for permanent total disability established pursuant to Labor and Employment Article, §9-636(b), Annotated Code of Maryland, for the loss of two or more scheduled members; and

(iii) in an amount not exceeding 13 times the State average weekly wage.

(5) Temporary Total and Temporary Partial Disability. The Commission may not approve an attorney's fee in a case in which final award of compensation is made for temporary total or temporary partial disability or temporary total disability paid while a claimant is receiving vocational rehabilitation services unless the claimant's right to the compensation is contested and the issue is resolved by evidentiary hearing or by stipulation. In such a contested case, the fee may be in an amount not exceeding 10 percent of the compensation that has accrued as of the date of the award.

(6) Dependency Claims.

(a) In a case involving a claim of dependency, if compensability is not contested, but the extent of dependency, partial or total, or the identity of a dependent, or both is contested, the Commission may approve a total attorney's fee for attorneys representing all dependents in an amount not exceeding five times the State average weekly wage in a case of partial dependency and not exceeding 12 times the State average weekly wage in a case of total dependency.

(b) In a case involving a claim of dependency, if neither compensability nor dependency is contested and a record is being made solely to determine to whom payments of compensation shall be made, the Commission may approve an attorney's fee in an amount not exceeding two times the State average weekly wage.

(c) In a case involving a claim of dependency, if compensability and dependency are contested, the Commission may approve an attorney's fee in an amount calculated under §B(3)(a) in a case of partial dependency and calculated under §B(4)(a) in a case of total dependency.

(7) Settlement Agreements.

(a) In a case in which an agreement of final compromise and settlement is approved, the Commission may approve an attorney's fee in accordance with this regulation.

(b) For a settlement amount that is less than or equal to 14 times the State average weekly wage, the attorney's fee shall be 20 percent of the amount of the settlement.

(c) For a settlement amount that is greater than 14 times the State average weekly wage but less than or equal to 35 times the State average weekly wage, the attorney's fee shall be:

(i) 20 percent of 14 times the State average weekly wage; plus

(ii) 15 percent of the difference between the settlement amount, and 14 times the State average weekly wage.

(d) For a settlement amount that is greater than 35 times the State average weekly wage, the attorney's fee shall be:

(i) 20 percent of 14 times the State average weekly wage; plus

(ii) 15 percent of 21 times the State average weekly wage; plus

(iii) 10 percent of the difference between the settlement amount and 35 times the State average weekly wage.

(e) The total amount of an attorney's fee in a case in which an agreement of final compromise and settlement is approved may not exceed 20 times the State average weekly wage.

(f) In calculating the attorney's fee, an attorney may not include as part of the settlement any amounts paid or payable in the case for medical services and prescription drugs including but not limited to:

(i) Any monies allocated to future medical expenses through a formal set-aside allocation;

(ii) Any monies apportioned to future medical benefits; and

(iii) Any monies already paid or owing for medical services and prescription drugs.

(g) The Commission may not regulate the attorney's fees charged for the administration of the formal set-aside allocation once a case is resolved by an agreement of final compromise and settlement.

(8) Increase in Last Award of Compensation for Permanent Partial Disability.

(a) Except as otherwise provided in §B(8)(b)—(c) of this regulation, if the claimant is entitled to additional compensation as a result of an increase in a permanent partial disability award, the Commission may approve an additional attorney's fee in an amount not exceeding the difference between the fee approved for all prior awards and the fee computed under §B(3) or (4)(a) of this regulation on the increased award.

(b) If the claimant is entitled to additional compensation as a result of a final compromise and settlement, and was previously awarded permanent partial disability, the Commission may approve an attorney's fee calculated using the methodology set forth in §B(7) of this regulation.

(c) If the claimant is entitled to additional compensation as a result of an increase in a permanent partial disability award or a final compromise and settlement, and the attorney previously was awarded the maximum fee authorized under §B(3) of this regulation, the Commission may approve an additional attorney's fee in an amount up to 5 percent of the difference between the prior awards of compensation and the increased award of compensation, but not to exceed five times the State average weekly wage.

(9) Additional Fees for Appeals of Compensation Awards.

(a) When a compensation award of the Commission is appealed to a circuit court and the case is tried on appeal, the Commission may approve an additional attorney's fee in an amount up to 5 percent of the *first* final *indemnity* award [of compensation] *issued following the circuit court action,* but not exceeding six times the State average weekly wage.

(b) When a decision of a circuit court on an appeal from a compensation award of the Commission is appealed to a higher appellate court and the appeal is briefed and decided on its merits, the Commission may approve an additional attorney's fee for each appeal in an amount up to 5 percent of the *first* final *indemnity* award *issued following the appellate action*, but not exceeding six times the State average weekly wage.

(c) When an appeal from a compensation award of the Commission to a circuit court is not tried, or an appeal to a higher appellate court is not briefed and decided on its merits, the Commission may approve an additional attorney's fee in an amount up to 2.5 percent of the *first* final *indemnity* award *issued following the appellate action or circuit court action*, but not exceeding three times the State average weekly wage.

(d) When a decision of the Commission on the issue of compensability of a claim is appealed to a circuit court, if the claim is determined on appeal to be compensable, the Commission, upon remand, may approve an additional attorney's fee in an amount up to 5 percent of the *first* final *indemnity* award issued following the remand, but not exceeding six times the State average weekly wage.

(e) An attorney may be awarded an appeal fee under only one subparagraph of Regulation .03B(9) for a circuit court action or appellate court action.

(f) Once an appeal fee has been awarded for a circuit court action or appellate action, the Commission may not award an additional appeal fee based on the same circuit court action or appellate action.

C. Attorney's Fee Not Allowed.

(1) Absent exceptional circumstances, the Commission may not approve an attorney's fee in a case in which it is determined that the claimant is not entitled to any compensation or benefits.

(2) Absent exceptional circumstances, the Commission may not approve an attorney's fee in a case involving issues such as medical care and treatment, or vocational rehabilitation, in which the claimant does not receive any monetary award.

.04 Attorneys' Fees for Multiple Counsel (NEW)

A. An attorney who no longer represents a claimant and wishes to pursue a fee lien shall draft and file a petition for attorneys' fees.

B. The petition for attorneys' fees shall include:

(1) a statement of the work performed and the basis of the fee; and

(2) a certificate of service.

C. The filing of the petition for attorneys' fee constitutes a fee lien that shall be noted and held until the permanency award or settlement.

D. Unless the parties have otherwise agreed, upon the issuance of a permanency award or settlement, any attorney's fee awarded shall be held in escrow until the distribution of the fee to be resolved by:

(1) a hearing; or

(2) agreement of the attorneys on the division of the attorney's fee.

Draft COMAR 14.09.06 -- Payment of Awards and Assessments and Termination of Benefits

Draft 06/26/2013

[.09].*01* Payment [of Claims]*Prior to Filing of Claim*. (formerly 14.09.01.09)

[A. Before a claim is filed with the Commission, an employer or insurer may not pay, in whole or in part, any compensation under Labor and Employment Article, Title 9, Annotated Code of Maryland, for the disability or death of a covered employee.]

A. If a covered employee or dependent has not filed a claim with the Commission for the death or disability of the covered employee, an employer or insurer may not pay, in whole or in part, any compensation under Labor and Employment Article, Title 9, Annotated Code of Maryland.

[B. An employer or insurer may pay or contest charges for medical and other services under Labor and Employment Article, Title 9, Subtitle 6, Part IX or Part XIII, even if the employee does not file a claim, but shall pay uncontested charges promptly after receipt.]

B. If a covered employee or dependent has not filed a claim with the Commission for the death or disability of the covered employee, an employer or insurer may pay or contest charges for medical and other services under Labor and Employment Article, Title 9, Subtitle 6, Part IX or Part XIII.

C. An employer or insurer shall pay uncontested medical charges promptly after receipt.

[.22].*02* Claims for Medical Expenses; Notice; Penalty. (formerly 14.09.01.22)

A. Notice. Within 5 days after receipt of an order of the Commission on a claim for payment for medical services, the claimant shall serve a copy of the order on the provider of the medical services for which payment was granted or denied.

B. Penalty for Late Payment for Treatment or Services.

(1) The Commission may assess against an employer or insurer a fine not to exceed 20 percent of any fee approved but not timely paid pursuant to Labor and Employment Article, §9-664, Annotated Code of Maryland.

(2) The Commission shall determine the amount of the fine on a case-by-case basis.

[.21].*03 Payment of* Assessments. (formerly 14.09.01.21)

A. Time for Payment. Assessments payable for the SIF and the UEF shall be paid within 30 days after the date of the award of compensation *or approval of a settlement.*

B. Assessments shall be paid in accordance with Labor and Employment Article, § 9-806, § 9-1007, and § 9-1008, Annotated Code of Maryland, as ordered by the Commission.

.04 Termination of Temporary Total Disability and Medical Benefits (NEW)

A. Termination of Monetary Benefits Requiring Notice

(1) Prior to terminating payment of temporary total disability benefits, an insurer shall give written notice to the claimant by:

(a) Completing the Insurer's Termination of Temporary Total Disability Benefits form; and

(b) Sending a copy of the form to the claimant, counsel and to the Commission.

(2) The Insurer's Termination of Temporary Total Disability Benefits form may be used to provide notice to the claimant of the termination of disability benefits when:

(a) The employee is working for another employer other than the employer where the accident or occupational disease occurred;

(b) No medical evidence supports continued payment;

(c) The employee failed to appear for a medical evaluation requested by the employer/insurer;

(d) A physician other than the employee's chosen treating physician has determined that the employee has reached maximum medical improvement; and

(e) Other reasons supported by law.

B. Termination of Monetary Benefits – No Notice Required

(1) An insurer may terminate payment of temporary total disability benefits without providing written notice, pursuant to Labor & Employment Article, § 9-733(a), Annotated Code of Maryland, if:

(a) The employee has returned to his or her current employment;

(b) A treating physician chosen by the employee has advised that the employee has reached maximum medical improvement; and

(c) The termination is made after the termination date contained in an order of the Commission.

C. Termination of Medical Benefits

(1) Prior to terminating the payment of medical benefits, an insurer shall give written notice to the claimant and the claimant's treating physician or health care provider of the date that benefits will be terminated.

(2) Written notice of the date that medical benefits will be terminated shall:

(a) Include the reasons for terminating the medical benefits;

(b) Include a statement that the claimant has the right to request a hearing before the Commission on the issue of termination; and

(c) Be supported by a medical record or report attached to the notice.

(3) A copy of the termination notice provided to the claimant shall be filed with the Commission.

Draft 14.09.05 Uninsured Employer's Fund Claims

Draft 06/27/2013

[14.09.07] *14.09.05* Uninsured Employer's Fund Claims

[.01 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Claimant" means a person filing a workers' compensation claim and includes:

(a) An employee;

(b) A surviving spouse of a deceased employee; or

(c) A surviving child of a deceased employee.

(2) "Commission" means the Workers' Compensation Commission or its designee.

(3) "Contested claim" means a new claim in which issues have been filed.

(4) "Disputed claim" means:

(a) A contested claim; or

(b) An existing claim in which issues have been filed.

(5) "Fund" means the Uninsured Employer's Fund.

(6) "Uninsured employer" means an employer who fails to secure payment of compensation to the covered employees of the employer in accordance with Labor and Employment Article, §9-402, Annotated Code of Maryland.]

[.02].*01* Notification and Response of Uninsured Employer *and Claimant.*

A. If a workers' compensation claim is received by the Commission and the Commission's records indicate that the employer is uninsured, the Commission shall notify the employer of the claim by sending the employer:

(1) A [copy of the initial claim] *Notice of the Claim form*;

(2) An uninsured employer's questionnaire; and

(3) A request for verification of the employer's workers' compensation insurance policy.

B. The Commission shall send a copy of the Notice of the Claim form to all parties of record.

[B]*C.* Within 21 days of the date the [notification] *Notice of the Claim form* was [mailed] *sent* by the Commission, the uninsured employer shall [file]:

(1) Begin paying temporary total benefits; or

(2) File issues, if the employer contests the claim; and

[(1)] *(3)* [One] *File one* of the following:

(a) The signed and completed uninsured employer's questionnaire; or

(b) The verification of the employer's workers' compensation insurance policy, if applicable[; and].

[(2) Issues, if the employer contests the claim; or]

D. Within 21 days of the date the Commission sends the Notice of the Claim form to the parties of record, the claimant must complete and file the claimant's questionnaire in accordance with COMAR 14.09.02.

[.03].*02* Review of Claim Contested by Uninsured Employer.

A. The Commission shall set a hearing to review any claim contested by an uninsured employer pursuant to Regulation [.02B] *.02C* of this chapter.

B. Upon completion of the hearing the Commission shall:

(1) Dismiss the claim; or

(2) Issue an award requiring that the appropriate compensation be paid by the uninsured employer to the claimant.

[.04].*03* Review of Uncontested Claims.

If an uninsured employer does not contest the claim by filing issues within 21 days after the Commission *served* [mailed] the [notice] *Notice of the Claim form* to the employer, [then] the Commission *may* [shall either]:

A. Review the claim for legal sufficiency; and

B. Either:

(1) Dismiss the claim; or

(2) Issue an [award requiring that the appropriate compensation be paid by the uninsured employer to the claimant.] *automatic award finding the claim compensable.*

[.05].*04* Notification and Payment of the Award.

The uninsured employer [must]*shall* pay an award issued under Regulation .03 or .04 of this chapter within 30 days of the date the Commission [mails or otherwise delivers] *serves* notice of the award to the parties.

[.06 Proof of Nonpayment of the Award.

A. The Commission shall include a noncompliance form and a claimant's questionnaire with the copy of the award mailed to the claimant.

B. If the uninsured employer fails to pay an award as provided in Regulation .05 of this chapter, the claimant shall complete the noncompliance form and the claimant's questionnaire and return both to the Commission not earlier than 30 days after the date the award was issued.

C. No action will be taken against an employer or the UEF if the noncompliance form and the claimant's questionnaire are not returned to the Commission.]

[.07].*05* Request for Payment by the Fund.

[A. If the uninsured employer does not comply with the Commission's order then the claimant may request payment from the Fund.

B. A request for payment by the Fund may be included in the noncompliance form filed under Regulation .06 of this chapter.]

A. If the uninsured employer fails to pay an award and does not file for review of the award, the claimant may:

(1) Send a request for payment, a copy of the order, and claimant's questionnaire to the UEF;

(2) File a copy of the request for payment and the claimant's questionnaire with the Commission.

B. No action will be taken against an employer or the UEF if the request for payment and the claimant's questionnaire are not filed with the Commission.

[.08].*06* [Notification and] Response of [Fund] *UEF and Impleader of Other Employer or Insurer*.

[A. If the Commission receives proof of noncompliance, the claimant's questionnaire, and a request for payment by the Fund under Regulations .06 and .07 of this chapter, the Commission shall notify the Fund by sending a copy of the:

(1) Commission's award;

(2) Completed noncompliance form;

(3) Completed claimant's questionnaire;

(4) Request by claimant for payment by the Fund;

(5) Completed uninsured employer's questionnaire, if it was completed and returned by the uninsured employer; and

(6) Initial claim.]

[B.] *A.* Within 21 days after the date [of the notice referred to in §A of this regulation] *claimant filed a copy of the request for payment and claimant's questionnaire,* the Fund shall respond by:

(1) Paying the award; or

(2) [Disputing the award]*Filing issues.*

[.09 Impleader of Other Employer or Insurer.]

B. If the [Fund]*UEF* raises issues of statutory employment, or the existence of another employer or insurer, the [Fund]*UEF* shall implead the employer *and the* insurer, *if known.*

C. The UEF shall implead the employer and the insurer:

(1) at the time the issues are filed with the Commission;

(2) By filing a Request to Implead a Party form in compliance with COMAR 14.09.02.03.

[.10].*07* Notification and Response of Impleaded Employer or Insurer.

A. If the [Fund]*UEF* impleads an employer or insurer the Commission shall [notify]*serve* the impleaded party [by sending] a copy of [the:

(1) Employee's initial claim; and

(2) Commission's award.] *the Notice of the Claim form.*

B. The impleaded party shall respond within 21 days after the date of the notice referred to in §A of this regulation, by:

(1) Paying the award; or

(2) [Disputing the award] *Filing issues*.

[.11].*08* Review of Disputed Claim.

A. If the [Fund]*UEF* or an impleaded party disputes a claim under Regulation [.08].*06* or [.10].*07* of this chapter, the Commission shall set a hearing to review the claims of all parties on all issues.

B. Upon completion of the hearing, the Commission shall:

(1) Dismiss the claim; or

(2) Issue an award [requiring that the appropriate compensation be paid to the claimant].

Draft COMAR 14.09.09

Draft (06/24/2013)

[Guide for Evaluation of] Permanent [Impairment] Disability

.01 Incorporation by Reference.

Guides to the Evaluation of Permanent Impairment (American Medical Association, Fourth Edition, 1993) is incorporated by reference.

.02 Filing Issues *(formerly 14.09.01.12A)*

A. A claimant alleging permanent disability shall file with the Commission an Issues Form that:

(1) explicitly claims permanent partial or permanent total disability;

(2) identifies the body parts at issue; and

(3) identifies any alleged psychiatric disability.

B. Prior to filing an Issues Form raising permanent disability, the party filing the issue shall have obtained a written evaluation of permanent impairment prepared by a physician, psychologist, or psychiatrist in accordance with Regulation .03 of this chapter.

.03 **[.02 General Guidelines]*Evaluation of Permanent Impairment.***

A. *Written Evaluation Required.*

(1) As evidence of permanent impairment, a party [may] *shall* submit:

(a) A written evaluation of permanent impairment prepared by a physician*; or*

(b) In claims where the issue concerns psychiatric impairment, a written evaluation of permanent psychiatric impairment prepared by a licensed psychologist or psychiatrist.

B. When preparing an evaluation of permanent impairment, a physician*, psychologist or psychiatrist* shall:

(1) Generally conform the evaluation with the format set forth in §2.2 ("Reports") of the American Medical Association's "Guides to the Evaluation of Permanent Impairment";

(2) Use the numerical ratings for the impairment set forth in the American Medical Association's "Guides to the Evaluation of Permanent Impairment", provided that a physician, *psychologist or psychiatrist* is not required to use the inclinometer evaluation technique specified in §3.3, but instead may use the goniometer technique specified in the "Addendum to Chapter 3";

(3) Include the items listed under the heading "Comparison of the results of analysis with the impairment criteria . . ." in §2.2 ("Reports") of the American Medical Association's "Guides to the Evaluation of Permanent Impairment"; and

(4) Include information on the items required by Labor and Employment Article, §9-721, Annotated Code of Maryland[, which include]:

(a) Loss of function, endurance, and range of motion, and

(b) Pain, weakness, and atrophy.

C. *Numerical Ratings.*

(1) A physician, *psychologist or psychiatrist* preparing an evaluation of permanent impairment may include numerical ratings not set forth in the American Medical Association's "Guides to the Evaluation of Permanent Impairment" for the items listed in §B(4) of this regulation.

(2) If the physician, *psychologist or psychiatrist* [does so] *uses other numerical ratings* [the physician] *he or she* shall include in the evaluation the detailed findings that support those numerical ratings.

D. When reviewing an evaluation for permanent impairment, the Commission shall consider all the items listed in §B and §C of this regulation.

E. The Commission may not approve payment of a physician's, *psychologist's or psychiatrist's* fee for an evaluation that does not comply with this regulation.

F. This regulation shall apply to all evaluations prepared on or after July 1, 1990.

.04 Stipulation for Permanent Disability. *(formerly 14.09.01.12C)*

A. A written stipulation to an award for permanent disability shall be filed using the Stipulation of Parties and Award of Compensation form and contain the following information:

(1) The claimant's average weekly wage;

(2) The inclusive dates of any temporary total disability;

(3) The inclusive dates and rate of any temporary partial disability;

(4) A copy of any medical evaluation relied upon;

(5) The percentage of claimant's loss of use or industrial loss of use and the benefits weeks payable;

(6) Any medical expenses claimed;

(7) Any attorney's fees sought by claimant's attorney; and

(8) The signatures of all parties if a written stipulation is submitted.

B. If the claimant is not represented by an attorney, the stipulation shall be accompanied by the following:

(1) All medical information in the possession of other parties; and

(2) A statement signed by the claimant acknowledging that the claimant understands that the stipulation does not foreclose the claimant's future right to benefits under the

Workers' Compensation Law, including the right to reopen and the right to continuing medical treatment.

C. The stipulation is not binding on the Commission.

Draft 14.09.10 – Settlements and Lump Sum Payments

Draft 06/21/13

[**.18].*01* Lump Sum Payment.** (formerly 14.09.01.18)

A. A claimant seeking a lump sum payment shall file an application with the Commission[.] *that: [*The application shall]

(1) [state] *states* specifically the facts and circumstances that the claimant contends justify the lump sum payment*;* and

(2) [shall be] *is* accompanied by any documents upon which the claimant [is relying] *relies* [to] *in* support *of* the application.

B. The party who may be required to make the lump sum payment shall file with the Commission a statement showing the outstanding balance of payments due the claimant and indicating whether that party objects to the granting of the application.

C. A hearing on the application shall be scheduled [only] if:

(1) [an objection and a request for hearings are filed] *the employer or insurer files issues*, or

(2) [on] the [Commission's own initiative] Commission, upon review of the application, determines a hearing is warranted .

[.19].*02* Agreements for Final Compromise and Settlement. (formerly 14.09.01.19)

A. General Requirements. An agreement for final compromise and settlement of a claim that is submitted to the Commission for approval as required by Labor and Employment Article, §9-722, Annotated Code of Maryland, shall contain the following:

(1) The total amount of settlement proposed;

(2) A payment allocation sheet including the amount of any deductions for attorney's fees, medical fees, and other costs;

(3) The inclusive dates of any temporary total disability;

(4) The date on which the payments under the agreement are to begin;

(5) If any compensation was previously awarded or paid, a statement indicating whether the settlement includes, is in addition to, or is in place of all or part of that compensation;

(6) A statement indicating the rate of payment and whether all or part of the settlement is to be paid in a lump sum;

(7) The claimant's average weekly wage;

(8) The claimant's date of birth and age in years and months;

(9) The total amount of all indemnity benefits paid to claimant;

(10) [A statement that the insurer shall reimburse Medicare for any provisional or conditional payments made by Medicare, up to the date of the settlement, that are determined to be the responsibility of the employer/insurer in a non-compromise case;

(11)] The gross total of all future payments to be paid pursuant to an annuity (not present value);

[(12)]*(11)* If the insurer makes an assignment of any of its obligations to a third party, the settlement agreement shall contain affirmative language confirming that the employer/insurer shall resume its obligation for all remaining payments in the event of default by the third party; [and]

[(13)]*(12)* The date of disablement by accidental injury or occupational disease[.]*; and*

(13) A completed copy of the Settlement Worksheet form, available on the Commission website, attached to the settlement.

B. Future Medical Expenses.

(1) A settlement involving future medical expenses, including future pharmaceutical expenses, may be approved by the Commission provided that the settlement agreement:

(a) Contains a detailed statement explaining how the interests of Medicare have been considered in reaching the settlement; and

(b) Identifies the amount of the proposed settlement:

(i) Apportioned to future medical expenses; or

(ii) Set aside for future medical expenses through a formal set-aside allocation.

(2) The apportionment of the amount of the settlement associated with future medical expenses shall be supported by medical evidence such as a medical opinion or evaluation.

(3) A formal set-aside allocation shall comply with the guidelines established by Medicare for set-aside allocations.

(4) In determining whether a set-aside allocation and settlement may be reviewed and approved by the Centers for Medicare and Medicaid Services (CMS), the Commission shall apply the most current Medicare review thresholds set forth in the memoranda or regulations available on the CMS website.

(5) A settlement within the Medicare review thresholds may be approved by the Commission provided that, in addition to the requirements set forth in §B(1) of this regulation, the settlement agreement contains a statement acknowledging:

(a) That the settlement is within the CMS review thresholds;

(b) That the parties voluntarily have elected not to submit the settlement and formal set-aside allocation to CMS for review and approval; and

(c) That the parties are aware that CMS may refuse to pay for services related to the injury and may assert a recovery claim against any entity, including a claimant, provider, supplier, physician, attorney, or private insurer.

(6) A settlement involving future medical expenses may not be approved if the proposed settlement contains contingency provisions from which the Commission can not determine the amount of medical expenses, if any, subject to assessment under Labor and Employment Article, § 9-806(a)(2) and § 9-1007(a)(2), Annotated Code of Maryland.

C. Special Requirements.

(1) Resolution of Third-Party Liability Claims. When a third-party liability claim has been resolved by settlement or judgment, the agreement settling the workers' compensation claim shall be submitted to the Commission for approval, comply with §§A and B of this regulation, and contain or be accompanied by the following:

(a) A statement of the full amount of compensation paid or to be paid by the employer and insurer;

(b) A statement of the total amount of compensation paid or payable, the amount the employer or insurer is waiving reimbursement from the third-party settlement, the amount of the third-party settlement, the amount of attorney's fee charged in the third-party case; and

(c) A copy of the executed release or judgment.

(2) Dependency Claims.

(a) When the settlement arises in connection with a claim involving a surviving dependent, the agreement submitted to the Commission for approval, in addition to complying with §§A and B, shall contain:

(i) A statement setting forth in factual detail the position of the parties on each issue involved in the claim; and

(ii) The name and address, if known, of any dependent for whom a claim has not been filed or a statement that no other dependents are known to the parties.

(b) The parties shall file with the agreement, if not previously filed in the case, certified copies of the following:

(i) The certificate of death of the deceased employee;

(ii) The autopsy report for the deceased employee, if applicable;

(iii) The certificate of marriage for the dependent and deceased employee, if the dependent is the surviving spouse of the employee; and

(iv) The birth certificate of the dependent, if the dependent is the surviving child of the employee.

(c) When a document or public record required by this chapter was created or issued in a foreign State, the party submitting the document shall comply with the authentication requirements for foreign documents set forth in COMAR 14.09.02.05.

D. Structured Settlements. Agreements for the structured settlement of a claim shall be determined on a case-by-case basis.

E. Medical Report.

(1) An agreement for final compromise and settlement shall be accompanied by all medical reports evaluating the nature and extent of the claimant's disability.

(2) On written request of the parties, the Commission may waive the requirement under §E(1) of this regulation if:

(a) The claim being settled is contested on an issue that denies the claimant's right to any benefits under Labor and Employment Article, Title 9;

(b) The claim has been disallowed by the Commission and is pending on appeal; or

(c) Good cause, that does not involve solely the question of the nature and extent of the claimant's disability, is shown for not requiring a medical report.

F. Hearing.

(1) The Commission may not approve an agreement for final compromise and settlement without a hearing unless the agreement is accompanied by the affidavit of the claimant, on the form prescribed by the Commission, waiving the hearing.

(2) The Commission may, at its discretion, require a hearing even when the affidavit is filed.

[.21].*03* Assessments on [Awards] *Third Party and Structured Settlements* (formerly 14.09.01.21 ¶C, D)

[C.]*A.* Third-Party Settlements. In [case of] *a* final compromise and settlement involving third-party liability under Labor and Employment Article, Title 9, Subtitle 9, Annotated Code of Maryland, the assessments for SIF and UEF shall be computed on the amount of compensation paid or to be paid by the employer or insurer for which the employer or insurer may not be reimbursed from the third-party settlement.

[D.]*B.* Structured Settlements.

(1) In case of a structured settlement of a claim, the assessments for SIF and UEF shall be computed on the premium payable by the employer or insurer for any annuity policy purchased on behalf of the employee.

(2) If the parties fail to disclose to the Commission the amount of premium payable by the employer or insurer, then the assessments shall be computed on the total amount of money guaranteed to be paid under the settlement agreement.

Draft COMAR 14.09.11 Judicial Review Procedures. (NEW and formerly 14.09.01.14F and 14.09.01.24D)

06/26/2013

.01 Petition for Judicial Review.

A. A party seeking judicial review of a decision of the Commission may file a petition for judicial review in the circuit court within 30 days after the date the Commission's order was mailed in accordance with Labor and Employment Article, § 9-737, Annotated Code of Maryland, and the Maryland Rules, 7-200, *et seq*.

B. A party filing a petition for judicial review shall serve a copy of the petition on the Commission in accordance with Labor and Employment Article, § 9-737, Annotated Code of Maryland, and Maryland Rule 7-202(d).

C. A party seeking judicial review of a decision granting or denying attorney's fees shall serve a copy of the petition for judicial review on the Assistant Attorney General assigned to represent the Commission at the Commission's principal office in Baltimore City.

.02 Transcript of Proceedings.

A. Unless the parties agree that a transcript is not necessary for review, or the court so orders, the first petitioner shall request and pay for a copy of the transcript of the proceedings before the Commission in accordance with Maryland Rule 7-206.

B. The first petitioner shall file with the Court Reporter Division a written request that the transcript be prepared containing:

(1) The Commission case number;

(2) The date and place of the Commission hearing;

(3) The circuit court case number if known;

(4) The name of the first petitioner; and

(5) An acknowledgement that the first petitioner shall pay the cost of transcription.

C. Upon receipt of the request, the court reporter who recorded the hearing shall advise the first petitioner in writing of the estimated cost of the transcript.

D. The first petitioner shall pay the cost of the transcription.

.03 Circuit Court Proceedings.

A. Following the disposition of a petition for judicial review by trial or motion, the prevailing party shall notify the Commission of the circuit court disposition 30 days after disposition.

B. A Cover Sheet for Action on Claims on Appeal shall be used to notify the Commission of the circuit court disposition and shall be accompanied by:

(1) A true test copy of circuit court order or verdict; and

(2) A copy of docket entries.

C. If a hearing is required, the prevailing party shall file an Issues Form with the cover sheet.

.04 Appellate Proceedings.

A. Following the disposition of a case on appeal to the appellate courts, the prevailing party shall notify the Commission of the appellate court disposition.

B. A Cover Sheet for Action on Claims on Appeal shall be used to notify the Commission of the appellate court disposition and shall be accompanied by:

(1) The appellate court opinion and order; and

(2) The appellate court mandate.

C. If a hearing is required, the prevailing party shall file an Issues form with the cover sheet.

.05 Record of Subsequent Proceeding Where Case on Appeal. (formerly 14.09.01.14F)

A. If review of a decision of the Commission has been sought in the circuit or appellate courts, and the Commission exercises its continuing jurisdiction under Labor and Employment, § 9-742, Annotated Code of Maryland, to decide an issue, the first petitioner/appellant shall file with the Commission a written letter within 5 days of disposition:

(1) requesting that the Commission prepare a copy of the record of the proceeding in which the Commission exercised its continuing jurisdiction; and

(2) transmit that record to the circuit or appellate court in which judicial review/appeal is pending within 60 days of the date of the Commission's order.

B. The written letter shall contain:

(1) The workers' compensation claim number;

(2) Claimant's name;

(3) The caption of the case on appeal including the parties, the name of the court and case number.

C. Any transcript of the proceeding that is required for inclusion in the record shall be requested by and paid for by the first petitioner or appellant.

D. The petitioner/appellant shall file the written request as soon as possible.

Draft COMAR 14.09.12 Responsibilities of Insurers (NEW TITLE)

Draft 06/27/2013

[.09.14.06]*14.09.12* [**Local Office Requirements for Insurers]** ***Responsibilities of Insurers***

.01 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Competent Individual" means an individual who has sufficient skill, knowledge, and experience to handle and adjust disputed claims and who has authority to resolve claims without having to routinely contact an out-of-State representative of the insurer.

(2) "Commission designee" means the National Council on Compensation Insurance or any other entity that the Commission, from time to time, may designate as its representative to receive notices required by this regulation.

(3) "Insurance policy" means a policy or binder for workers' compensation insurance under Labor and Employment Article, Title 9, Annotated Code of Maryland.

[.05].*02* Notices of Insurance, Cancellation, Reinstatement, and Election of Coverage.

[A. Definitions. In this regulation, the following terms have the meanings indicated:

(1) "Commission designee" means the National Council on Compensation Insurance or any other entity that the Commission, from time to time, may designate as its representative to receive notices required by this regulation.

(2) "Insurance policy" means a policy or binder for workers' compensation insurance under Labor and Employment Article, Title 9, Annotated Code of Maryland.

(3) "Insurer" means a stock corporation, mutual association, or the Injured Workers' Insurance Fund.]

[B.] *A.* Notice of Insurance. When an insurance policy is issued or renewed, the insurer issuing or renewing it shall file a Notice of Insurance with the Commission designee within 30 days after the effective date of the policy.

[C.] *B.* Notice of Cancellation.

(1) Required Filing. When an insurance policy is cancelled by the insurer or by the insured, the insurer shall file a Notice of Cancellation with the Commission designee.

(2) Time for Filing.

(a) Cancellation by Insurer.

(i) If the insurer cancels the insurance policy for nonpayment of premium, the Notice of Cancellation shall be filed at least 10 days before the effective date of the cancellation, in compliance with Insurance Article, §19-406(f), Annotated Code of Maryland.

(ii) If the insurer cancels the insurance policy for any other reason, the Notice of Cancellation shall be filed at least 30 days before the effective date of the cancellation, in compliance with Insurance Article, §19-406(a), Annotated Code of Maryland.

[(iii) If the Commission designee receives the Notice of Cancellation less than the required number of days before the effective date of cancellation set forth in the notice, the Commission shall amend the notice to provide a new cancellation effective date by adding 10 days or 30 days, as applicable, to the date of receipt.]

(b) Cancellation by Insured. When the cancellation is initiated by the insured, the Notice of Cancellation shall be filed by the insurer within 15 days after the effective date of the cancellation.

[D]*C*. Notice of Reinstatement—Time of Filing. When an insurance policy is reinstated, the insurer shall file a Notice of Reinstatement with the Commission designee within 15 days after the effective date of the reinstatement.

[E]*D*. Notice of Insurance, Cancellation, and Reinstatement—Form and Content. A notice of insurance, cancellation, or reinstatement shall contain all the following information:

(1) The employer's name;

(2) All names under which the employer trades;

(3) All nontemporary business addresses of the employer in Maryland;

(4) The employer's federal identification number or, if the employer is not required to have a federal identification number, the employer's social security number;

(5) The insurance policy number; and

(6) The policy period.

[F]*E*. Notice of Election of Inclusion or Exemption of Coverage. [Officers of closed corporations and officers of farm corporations or professional service corporations who are authorized by Labor and Employment Article, §9-206(b), Annotated Code of Maryland, to elect to be exempted from coverage as employees, and sole proprietors and partners who are authorized by Labor and Employment Article, §9-219(b) or 9-227(b), Annotated Code of Maryland, to elect to be covered as employees, shall file a Notice of Election with the Commission and with the insurer. A new election is required and notice pursuant to this section shall be filed whenever the employer changes insurers.]

(1) A person may elect to be a covered employee by filing a Notice of Election with the Commission and with the insurer.

(2) The following types of persons may elect to be covered employees:

(a) Pursuant to Labor and Employment Article, § 9-227(b), Annotated Code of Maryland, sole proprietors; and

(b) Pursuant to Labor and Employment Article, § 9-219(b), Annotated Code of Maryland, partners.

(3) A person may elect to be exempt from coverage as an employee by filing a Notice of Election with the Commission and the insurer.

(4) The following types of persons may elect to be exempted from coverage:

(a) Pursuant to Labor and Employment Article § 9-206(b)(1), officers of a closed corporation;

(b) Pursuant to Labor and Employment Article § 9-206(b)(2) and (c), officers of a corporation, other than closed corporation;

(c) Pursuant to Labor and Employment Article § 9-206(b)(3) and (4), officers of a farm corporation or professional services corporation; and

(d) Pursuant to Labor and Employment Article § 9-206(b)(5), members of a limited liability company.

(5) If an employer changes insurers, a person must file a new Notice of Election with the Commission and with the new insurer.

[.02].*03* Handling and Adjusting Disputed Claims.

A. An insurer that provides workers' compensation insurance in Maryland shall have in the State competent individuals who:

(1) Handle and adjust each disputed workers' compensation claim for the insurer; and

(2) Possess the knowledge and experience to handle and adjust each disputed claim.

B. If an insurer files issues to dispute a claim, the filing shall be done in the State by competent individuals who:

(1) Handle and adjust each disputed workers' compensation claim for the insurer; and

(2) Possess the knowledge and experience and adjust each disputed claim.

C. Within 10 days of an insurer filing issues to dispute a claim, the insurer shall have an attorney complete and file an Entry of Appearance form in accordance with COMAR14.09.04.01C(2).

C. Each insurer shall register with the Commission the name, address, telephone number, and email address of a designated representative who can identify the competent individual handling and adjusting each disputed claim.

D. Upon inquiry, the designated individual shall provide the name, address, telephone number, and email address of the competent individual handling and adjusting a claim within 2 business days.

E. If any of the information in §C of this regulation changes, the insurer shall notify the Commission immediately.

F. An insurer that provides workers' compensation insurance in Maryland shall establish a toll-free telephone number through which an insured or claimant, or a representative of an insured or claimant, may make direct telephone inquiries during regular business hours.

[.03].*04* Failure to Comply.

A. Fine.

(1) An insurer found in violation of Regulation [.02].*03* of this chapter may be fined up to $1,000 per offense.

(2) Each day a violation is continued after the first fine is a separate offense.

B. Revocation of Self-Insurance Approval. A violation of Regulation [.02].*03* of this chapter that jeopardizes prompt and fair compensation of a Maryland workers' compensation claim may be grounds for the revocation of an employer's self-insurance approval under Labor and Employment Article, §9-403(e)(1), Annotated Code of Maryland.

[.04].*05* Hearing Procedure.

A. Notice of Agency Action.

(1) If the Commission has reasonable cause to believe that an insurer has violated Regulation [.02].*03* of this chapter, the Commission shall give reasonable notice of the alleged violation and the action the Commission proposes to take.

(2) The notice shall state:

(a) The facts that are asserted;

(b) If the facts cannot be stated in detail when the notice is given, the issues that are involved;

(c) The potential penalty that could be imposed;

(d) That the recipient has a right to request a hearing;

(e) That any request for a hearing shall be in writing and received by the Commission within 20 days of the date of the notice; and

(f) That if a hearing is not requested within the time allowed, the Commission shall render its decision on the basis of its own investigation.

B. Notice of Hearing.

(1) If a hearing is requested, the Commission shall mail a notice of the hearing 20 days before the date set for the hearing.

(2) The notice shall state:

(a) The date, time, place, and nature of the hearing;

(b) That the insurer may submit a written statement 5 days before the hearing;

(c) That the insurer may present oral argument at the hearing;

(d) That the insurer may call witnesses and submit documents or other evidence relative to the issues contained in the notice; and

(e) That the insurer may agree to the evidence and waive its right to appear at the hearing.

C. Postponement.

(1) An insurer may request a postponement in writing 5 days before the hearing.

(2) If an insurer fails to appear at a hearing, and has not requested a postponement, the Commission may either:

(a) Proceed with the hearing; or

(b) Make its decision on the record before it.

D. Disposition. A hearing may not be adjourned or continued except upon [an] order of the Commission.

[.28].*06* Penalty for Failure to Submit Required Case Payment Report.

A. The Commission may assess against an insurer[, self-insurer, or the Injured Workers' Insurance Fund] a fine not to exceed $1,000 for any unexcused failure to file a [quarterly] case payment report as required under Labor and Employment Article, §9-313(b), Annotated Code of Maryland.

B. Schedule of Assessments. The schedule of assessments established by the Commission is as follows:

Date	Amount Not To Exceed	Type Action
41st day	$ 100	Initial Notice
51st day	250	2nd Notice
61st day	500	3rd Notice
91st day	1,000	Final Notice
120th day	1,000	Referral to Central Collection Unit and Insurance Commissioner

C. In calculating the imposition of an assessment *on an insurer*, each failure to submit a required report or the submission of an inaccurate or incomplete report is considered a separate violation subject to assessment.

[.05].*07* Appeal.

An appeal from a decision made under this chapter shall be made in accordance with Maryland Rules [7-201—7-210] *7-200, et seq. and COMAR 14.09.11*.