

WORKERS' COMPENSATION DIVISION[876]

[Prior to 9/24/86, see Industrial Commissioner[500]. Renamed Division of Industrial Services under the "umbrella" of Employment Services Department by 1986 Iowa Acts, Senate File 2175]
 [Prior to 1/29/97 see Industrial Services Division[343]. Reorganized under "umbrella" of the Department of Workforce Development[871] by 1996 Iowa Acts, chapter 1186]
 [Prior to 7/29/98 see Industrial Services Division[873]]

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CHAPTER 1
PURPOSE AND FUNCTION

[Prior to 9/24/86 see Industrial Commissioner[500]]

[Prior to 1/29/97 see Industrial Services Division[343]]

[Prior to 7/29/98 see Industrial Services Division[873]Ch 1]

876—1.1(86,17A) Purpose and function. The function of the division of workers' compensation of the department of workforce development is to adjudicate the rights and duties of persons provided for in Iowa Code chapters 85, 85A, 85B, 86, and 87 and these rules, and to administer and enforce the provisions of chapters 85, 85A, 85B, 86, and 87 and these rules. The indicated chapters provide for the rights and duties of persons injured in employment and the responsible employers and insurance carriers. The chapters are commonly referred to as the workers' compensation chapters of the Iowa Code. The Iowa workers' compensation commissioner is the executive head of the division of workers' compensation who serves a six-year term, appointed by the governor and confirmed by the senate. Two major sections within the division, compliance and adjudication, carry out the purpose of the division as set out by the laws of this state.

The compliance section prepares and distributes literature concerning the workers' compensation law, rates, judicial decisions, and statistics; responds to written and oral inquiries regarding the law; conducts conferences and training sessions; provides appropriate forms for use in matters under the jurisdiction of the division; establishes and monitors files arising from claims of work-related injuries and illness; and informs parties to a claim of their rights and responsibilities.

The adjudication section determines, by adjudicative means, the rights and liabilities of parties in a disputed claim by conducting hearings and rendering decisions; approving settlements in accordance with the statutes; and conducting appeals within the division.

876—1.2(86,17A) Location. Interested persons may contact the Iowa Workers' Compensation Commissioner, 1000 East Grand Avenue, Des Moines, Iowa 50319; telephone (515)281-5387 or 1-800-Job-Iowa (1-800-562-4692). The fax number is (515)281-6501. The Web site address is <http://www.iowaworkforce.org/wc>.

These rules are intended to implement Iowa Code sections 17A.3(1) "a" and "b" and 84A.5.

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CHAPTER 2
GENERAL PROVISIONS

[Prior to 9/24/86 see Industrial Commissioner[500]]

[Prior to 1/29/97 see Industrial Services Division[343]]

[Prior to 7/29/98 see Industrial Services Division[873]Ch 2]

876—2.1(86) Extending time and continuances. For good cause the workers' compensation commissioner or the commissioner's designee may modify the time to comply with any rule.

876—2.2(85A,85B,86,87) Applicability. When appropriate, all rules shall apply to Iowa Code chapters 85A, 85B, 86 and 87 as well as chapter 85.

876—2.3(86,87) Representative within the state. All licensed insurers, foreign and domestic, insuring workers' compensation and all employers relieved from insurance pursuant to Iowa Code section 87.11 shall designate one or more persons geographically located within the borders of this state, which person or persons shall be knowledgeable of the Iowa Workers' Compensation Law and Rules and shall be given the authority and have the responsibility to expedite the handling of all matters within the scope of Iowa Code chapters 85, 85A, 85B, 86, and 87.

The Iowa workers' compensation commissioner shall be advised by letter of the name, address, and telephone number of each of the persons so designated. Any change in the identity, address or telephone number of the persons so designated shall be reported to the Iowa workers' compensation commissioner within ten days after such change occurs.

876—2.4(85,86) Guides to evaluation of permanent impairment. The Guides to the Evaluation of Permanent Impairment, Fifth Edition, published by the American Medical Association are adopted as a guide for determining permanent partial disabilities under Iowa Code section 85.34(2) "a" to "s." The extent of loss or percentage of permanent impairment may be determined by use of the Fifth Edition of the guides and payment of weekly compensation for permanent partial scheduled injuries made accordingly. Payment so made shall be recognized by the workers' compensation commissioner as a prima facie showing of compliance by the employer or insurance carrier with the foregoing sections of the Iowa workers' compensation Act. Nothing in this rule shall be construed to prevent the presentations of other medical opinions or other material evidence for the purpose of establishing that the degree of permanent disability to which the claimant would be entitled would be more or less than the entitlement indicated in the Fifth Edition of the AMA guides.

This rule is intended to implement Iowa Code sections 85.34(2) and 86.8.

876—2.5(85,85A,85B,86,87) Electronic filing. Rescinded IAB 9/23/98, effective 10/28/98.

876—2.6(85,85A,85B,86) Information to employees. An employer or its insurance carrier filing a final subsequent report of injury (SROI) with the workers' compensation commissioner (see 876—subrule 3.1(2)) shall also mail a copy of the information contained on the final subsequent report of injury to the employee at the employee's last-known address.

This rule is intended to implement Iowa Code sections 85.26, 86.8, 86.11 and 86.13.

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CHAPTER 3 FORMS

[Prior to 9/24/86 see Industrial Commissioner[500]]

[Prior to 1/29/97 see Industrial Services Division[343]]

[Prior to 7/29/98 see Industrial Services Division[873]Ch 3]

876—3.1(17A) Forms. The following forms are available from the division of workers' compensation for use in matters under the jurisdiction of the workers' compensation commissioner. Insurance carriers, self-insured employers, or their adjusting agents may reproduce the forms in which event the name, address, telephone number, and identification number may be imprinted. The current revision of the form must be used. Each form is identified by a form number. This form number follows each form name listed below and is used when requesting that specific form.

3.1(1) *First report of injury.* The first report of injury (FROI) contains general information concerning the employee, the employer and the claimed injury. It is to be filed whether or not an adjudication or admission of liability for the injury exists and is to be filed as provided in Iowa Code section 86.11 and 876—Chapter 11. The first report of injury is to be filed when demanded by the commissioner pursuant to Iowa Code section 86.12 and when an employer is served with an original notice and petition that alleges an injury for which a first report has not been filed. If an original notice and petition alleges multiple injury dates, only one first report of injury should be filed, and the date of injury reported should be the date the reporter uses when adjusting the claim.

3.1(2) *Subsequent report of injury (SROI).* The subsequent report of injury (SROI) provides for filing of notice of commencement of payments, correcting erroneous claim information, supplying additional information, denying compensability, agreeing to rate and agreeing to make payments under the Workers' Compensation Act, reporting the status of a claim, or recording benefits paid. Notice of commencement of payments shall be filed within 30 days of the first payment. When liability on a claim is denied, a letter shall be sent to claimant stating reasons for denial. The subsequent report of injury (SROI) shall also be filed when compensation is terminated or interrupted. Medical data supporting the action taken shall be filed when temporary total disability or temporary partial disability exceeds 13 weeks or when the employee sustains a permanent disability. In the event the transmission of a subsequent report of injury (SROI) contains errors (TE), the errors shall be corrected within 15 days of the date of notification by the agency.

3.1(3) *Form No. 2A—claim activity report.* (Form No. 14-0003) Rescinded IAB 3/6/02, effective 4/10/02.

3.1(4) *Form No. 2B—supplemental information report.* (Form No. 14-9999) Rescinded IAB 3/6/02, effective 4/10/02.

3.1(5) *Form No. 12—waiver on account of physical defect.* (Form No. 14-0029) Rescinded IAB 10/25/06, effective 11/29/06.

3.1(6) *Form—rehabilitation referral and acknowledgment.* (Form No. 309-5051) This form contains information relevant to referral of an employee for consideration of rehabilitation services under the jurisdiction of RESB.

3.1(7) *Form—original notice and petition.* The following forms are types of original notice and petition: original notice and petition—Form 100 (Form No. 14-0005); original notice, petition, answer and order concerning independent medical examination—Form 100A (Form No. 14-0007); original notice, petition, answer and order concerning vocational rehabilitation program benefit—Form 100B (Form No. 14-0009); original notice, petition, and answer concerning application for alternate medical care—Form 100C (Form No. 14-0011); original notice and petition for full commutation of all remaining benefits of ten weeks or more 876 IAC 6.2(6)—Form 9 (Form No. 14-0013); checklist for full commutation (Form No. 14-0015); original notice and petition and order for partial commutation—Form 9A (Form No. 14-0017); and checklist for partial commutation (Form No. 14-0019). See rule 876—4.6(85,86,17A) for further descriptions.

3.1(8) *Form No. 15—subpoena.* (Form No. 14-0035) This form is the witness subpoena which is used to require a witness to appear and testify. Form No. 14-0033 is the Subpoena Duces Tecum which is used to require a witness to appear and to bring specified books and records.

3.1(9) *Form—corporate officer exclusion.* (Form No. 14-0061) This form is the corporate officer exclusion which is used for corporate officers to reject workers' compensation or employers' liability.

3.1(10) *Form—attorney lien.* (Form No. 14-0039) Rescinded IAB 3/6/02, effective 4/10/02.

3.1(11) *Form—application and consent order for payment of benefits.* (Form No. 14-0037) This form is the application and consent order for payment of benefits under Iowa Code section 85.21 which is used by an employer or an insurance carrier to pay weekly and medical benefits without admitting liability and to be able to seek reimbursement from another carrier or employer.

3.1(12) Rescinded IAB 1/29/97, effective 3/5/97.

3.1(13) *Form—dispute resolution conference report.* (Form No. 14-0041) This form is the dispute resolution conference report which is used to provide information for a dispute resolution pursuant to rule 876—4.40(73GA,ch1261).

3.1(14) *Form—forms order blank.* (Form No. 14-0031) This form is the forms order blank which is used to order other forms used by the agency.

3.1(15) *Form—agreement for settlement.* (Form No. 14-0021) Rescinded IAB 10/25/06, effective 11/29/06.

3.1(16) *Form—contested case settlement.* (Form No. 14-0025) Rescinded IAB 10/25/06, effective 11/29/06.

3.1(17) *Form—authorization for release of information regarding claimants seeking workers' compensation benefits.* (Form No. 14-0043) This form is used for the release of information concerning an employee's physical or mental condition relative to a workers' compensation claim.

3.1(18) *Form No. 9—original notice and petition and order for commutation of all remaining benefits of ten weeks or more 876 IAC 6.2(6).* (Form No. 14-0013) This form contains data relevant to benefits paid and those to be paid by commutation when all unaccrued benefits are due. Signatures of the parties are necessary. Approval by the workers' compensation commissioner or a deputy commissioner is necessary. The form contains language of release.

3.1(19) *Form No. 9A—original notice and petition and order for partial commutation.* (Form No. 14-0017) This form contains the same data and requirements as Form No. 9. However, all remaining benefits are not commuted. No language of release is contained.

3.1(20) *Form—prehearing conference report.* (Form No. 14-0049) Rescinded IAB 10/25/06, effective 11/29/06.

3.1(21) *Form—agreement for settlement.* (Form No 14-0021) This form is used to file an agreement for settlement pursuant to Iowa Code Supplement section 85.35(2).

3.1(22) *Form—compromise settlement.* (Form No. 14-0025) This form is used to file a compromise settlement pursuant to Iowa Code Supplement section 85.35(3).

3.1(23) *Form—combination settlement.* (Form No. 14-0159) This form is used to file a combination settlement pursuant to Iowa Code Supplement section 85.35(4).

3.1(24) *Form—contingent settlement.* (Form No. 14-0161) This form is used to file a contingent settlement pursuant to Iowa Code Supplement section 85.35(5).

3.1(25) *Form—claimant's statement.* (Form No. 14-0163) This form is used for any type of settlement when the claimant is not represented by an attorney.

These rules are intended to implement Iowa Code section 17A.3(1) "b."

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[◇] Two or more ARCs

¹ See IAB Industrial Services, Division of [343]

CHAPTER 4
CONTESTED CASES

[Prior to 9/24/86 see Industrial Commissioner[500]]

[Prior to 1/29/97 see Industrial Services Division[343]]

[Prior to 7/29/98 see Industrial Services Division[873]Ch 4]

876—4.1(85,85A,85B,86,87,17A) Contested cases. Contested case proceedings before the workers' compensation commissioner are:

- 4.1(1) Arbitration (Iowa Code section 86.14).
- 4.1(2) Review of award or settlement (review-reopening, section 86.14).
- 4.1(3) Benefits under section 85.27.
- 4.1(4) Death and burial benefits (sections 85.28, 85.29, 85.31).
- 4.1(5) Determination of dependency (sections 85.42, 85.43, 85.44).
- 4.1(6) Equitable apportionment (section 85.43).
- 4.1(7) Second injury fund (section 85.63 et seq.).
- 4.1(8) Vocational rehabilitation benefits (section 85.70).
- 4.1(9) Approval of fees under section 86.39.
- 4.1(10) Commutation (section 85.45 et seq.).
- 4.1(11) Employee's examination (section 85.39).
- 4.1(12) Employer's examination or sanctions (section 85.39).
- 4.1(13) Determination of compliance with chapters 85, 85A, 85B, 86, and 87.
- 4.1(14) Applications for alternate medical care (section 85.27).
- 4.1(15) Determination of liability, reimbursement for benefits paid and recovery of interest (section 85.21).
- 4.1(16) Interest (section 85.30).
- 4.1(17) Penalty (section 86.13).
- 4.1(18) Application for approval of third-party settlement (section 85.22).
- 4.1(19) Matters that would be a contested case if there were a dispute over the existence of material facts.
- 4.1(20) Any other issue determinable upon evidential hearing which is under the jurisdiction of the workers' compensation commissioner.

This rule is intended to implement the provisions of Iowa Code sections 17A.2(2) and 86.8 and the statutory sections noted in each category of the rule.

876—4.2(86) Separate evidentiary hearing or consolidation of proceedings. A person presiding over a contested case proceeding in a workers' compensation matter may conduct a separate evidentiary hearing for determination of any issue in the contested case proceeding which goes to the whole or any material part of the case. An order determining the issue presented shall be issued before a hearing is held on the remaining issues. The issue determined in the separate evidentiary hearing shall be precluded at the hearing of the remaining issues. If the order on the separate issue does not dispose of the whole case, it shall be deemed interlocutory for purposes of appeal.

When any contested case proceeding shall be filed prior to or subsequent to the filing of an arbitration or review-reopening proceeding and is of such a nature that it is an integral part of the arbitration or review-reopening proceeding, it shall be deemed merged with the arbitration or review-reopening proceeding. No appeal to the commissioner of a deputy commissioner's order in such a merged proceeding shall be had separately from the decision in arbitration or review-reopening unless appeal to the commissioner from the arbitration or review-reopening decision would not provide an adequate remedy.

Entitlement to denial or delay benefits provided in Iowa Code section 86.13 shall be pled, and if pled, discovery shall be limited to matters discoverable in the absence of such pleading unless it is bifurcated. The claimant may bifurcate the denial or delay issue by filing and serving a notice of bifurcation at any

time before a case is assigned for hearing, in which case discovery on that issue may proceed only after the final decision of the agency on all other issues.

This rule is intended to implement Iowa Code sections 86.13, 86.18 and 86.24.

876—4.3(85,85A,86,87) Compliance proceedings. If the workers' compensation commissioner shall have reason to believe that there has not been compliance with the workers' compensation law by any person or entity, the commissioner may on the commissioner's own motion give notice to the person or entity and schedule a hearing for the purpose of determining whether or not there has been compliance by the person or entity. The notice shall state the time and place of the hearing and a brief statement of the matters to be considered. The notice of hearing may be given by ordinary mail and may be given to the insurer for the employer in lieu of the employer as permitted by Iowa Code section 87.10 if the insurer has filed a report, pleading or motion that acknowledges that it is the insurer for the claim at issue. Following the hearing, the commissioner may issue a finding regarding compliance. In the event a failure to comply is found, the commissioner may impose sanctions in accordance with Iowa Code sections 86.12, 86.13 or 86.13A or order compliance within a specified time and under specified circumstances. The workers' compensation commissioner may file a certified copy of the order in an appropriate district court and may file a certified copy of the order with the Iowa insurance division [commerce department] with a request for action by the insurance division upon failure to comply with the order.

Nothing in this rule shall prevent the workers' compensation commissioner from conducting an informal conference with any person or entity concerning problems of compliance prior to the initiation of a compliance proceeding.

876—4.4(86) Request for hearing. Unless otherwise ordered a hearing shall not be held in proceedings under 4.1(8) to 4.1(12), unless requested in writing by the petitioner in the original notice or petition or by the respondent within ten days following the time allowed by these rules for appearance.

876—4.5(86) Commencement by commissioner. In addition to an aggrieved party, the commissioner may initiate proceedings under 4.1(9). The proceeding may be held before a deputy commissioner or the commissioner. The workers' compensation commissioner shall be the only person to commence a proceeding under 4.1(13), unless such authority is specifically delegated by the workers' compensation commissioner to a deputy commissioner concerning a specific matter.

876—4.6(85,86,17A) Original notice and petition. A petition or application must be delivered or filed with the original notice unless original notice Form 100, Form 100A or Form 100B of the division of workers' compensation is used.

The original notice Form 100, Form 100A, Form 100B, Form 100C, or a determination of liability reimbursement for benefits paid and recovery of interest form shall provide for the data required in Iowa Code section 17A.12(2) and shall contain factors relevant to the contested case proceedings listed in 876—4.1(85,85A,85B,86,87,17A). Form 100 is to be used for all contested case proceedings except as indicated in this rule. Form 100A is to be used for the contested case proceedings provided for in subrules 4.1(11) and 4.1(12). Form 100B is to be used for the contested case proceeding provided for in subrule 4.1(8). Form 100C is to be used for the contested case proceeding provided for in subrule 4.1(14) and rule 876—4.48(17A,85,86). The application and consent order for payment of benefits under Iowa Code section 85.21 is to be used for contested case proceedings brought under Iowa Code section 85.21. When a commutation is sought, Form No. 9 or Form No. 9A must be filed in addition to any other document. The petition for declaratory order, approval of attorney fees, determination of compliance and other proceedings not covered in the original notice forms must accompany the original notice.

At the same time and in the same manner as service of the original notice and petition, the claimant shall serve a patient's waiver using Form 14-0043 (authorization for release of information regarding claimants seeking workers' compensation benefits), or a substantially equivalent form, which shall not be revoked until conclusion of the contested case. The claimant shall provide the patient's waivers in other

forms and update the patient's waivers as necessary to permit full disclosure of discoverable information whenever requested by a medical practitioner or institution.

For all original notices and petitions filed on or after January 1, 2003, a separate original notice and petition shall be filed for each claim that seeks benefits due to the occurrence of an injury, occupational disease or occupational hearing loss. The original notice and petition shall allege a specific date of occurrence consisting of a day, month and year. Alternate or multiple dates of occurrence may be alleged in the same original notice and petition if the claim or claims arose from the same occurrence or series of occurrences and uncertainty exists concerning the correct date of occurrence or the number of occurrences. An employee may join any number of employers or insurance carriers in the same original notice and petition if the claim is made against them jointly, severally or in the alternative. The remedy for misjoinder must be requested by motion within a reasonable time after the grounds become known, but in no event later than the claimant's case preparation completion date. All remedies will be applied without prejudice to any claim or defense. In addition to the remedies contained in Iowa Rule of Civil Procedure 1.236, the workers' compensation commissioner may order that parts of a claim be severed and proceeded with separately or that separate related claims be joined or consolidated for administrative convenience or for any good cause. If a correction is ordered but not made by a date specified in the order, the original notice and petition may be dismissed without further notice. If the correction is made within the specified time, the correction relates back to the date of the initial filing for purposes of the statute of limitations.

This rule is intended to implement the provisions of Iowa Code sections 85.27, 85.45, 85.48, and 17A.12.

876—4.7(86,17A) Delivery of notice, orders, rulings and decisions. Delivery of the original notice shall be made by the petitioning party as provided in Iowa Code section 17A.12(1) except that a party may deliver the original notice on a nonresident employer as provided in Iowa Code section 85.3. A proposed or final decision, order or ruling may be delivered by the division of workers' compensation to any party by regular mail. On or after July 1, 2009, a proposed or final decision, order or ruling may be delivered by the division of workers' compensation to any party by E-mail.

This rule is intended to implement Iowa Code sections 85.3 and 17A.12.
[ARC 7818B, IAB 6/3/09, effective 7/1/09]

876—4.8(86) Filing of notice.

4.8(1) A contested case is commenced by filing the original notice and petition with the workers' compensation commissioner. No action shall be taken by the workers' compensation commissioner on any contested case against an adverse party unless the adverse party has answered or unless it can be shown by proper proof that the adverse party has been properly served. The original notice and petition if required by 876—4.6(85,86,17A) shall be accompanied by proof that the petitioner has deposited copies of such documents with the U.S. post office for delivery by certified mail, return receipt requested, upon the respondent or has submitted such copies to a proper person for delivery of personal service as in civil actions.

4.8(2) Filing fee.

a. For all original notices and petitions for arbitration or review-reopening relating to weekly benefits filed on account of each injury, gradual or cumulative injury, occupational disease or occupational hearing loss alleged, a filing fee shall be paid at the time of filing. The filing fee for original notices and petitions filed on or after July 1, 1988, but before July 1, 2009, is \$65. The filing fee for petitions filed on or after July 1, 2009, is \$100. No filing fee is due for the filing of other actions where the sole relief sought is one of the following or a combination of any of them: medical and other benefits under Iowa Code section 85.27; burial benefits, Iowa Code section 85.28; determination of dependency, Iowa Code sections 85.42, 85.43, and 85.44; equitable apportionment, Iowa Code section 85.43; second injury fund, Iowa Code sections 85.63 to 85.69; vocational rehabilitation benefits, Iowa Code section 85.70; approval of legal, medical and other fees under Iowa Code section 86.39; commutation, Iowa Code sections 85.45 to 85.48; employee's examination, Iowa Code section

85.39; employee's examination or sanctions, Iowa Code section 85.39; application for alternate care, Iowa Code section 85.27; determination of liability, reimbursement for benefits paid and recovery of interest, Iowa Code section 85.21; interest, Iowa Code section 85.30; penalty, Iowa Code section 86.13; application for approval of third-party settlement, Iowa Code section 85.22; and petitions for declaratory orders or petitions for interventions filed pursuant to 876—Chapter 5. An amendment to a petition that was filed on or after July 1, 1988, that alleges an additional or alternate date of occurrence does not require payment of an additional filing fee if a filing fee was paid when the petition was filed.

b. One filing fee shall be required for as many original notices and petitions as are filed on the same day on account of one employee against a single alleged employer or against entities alleged to be employers in the alternative or alleged to be dual employers. If filing fees have been overpaid, the amount overpaid shall be refunded to the party who made the overpayment.

c. and *d.* Rescinded IAB 11/27/02, effective 1/1/03.

e. If the correct filing fee or fees are not paid at the time of filing of the original notice and petition, the workers' compensation commissioner shall enter an order requiring payment of the correct filing fee or fees. If the required correction is not made by a date specified in the order, the original notice and petition shall automatically be dismissed without prejudice without entry of further order. See rule 876—4.36(86). If correction is made within the specified time, the initial filing shall be sufficient to have tolled the statute of limitations.

If no filing fee is paid at the time of filing of the original notice and petition, the workers' compensation commissioner shall return the original notice and petition to the party filing it. Filing an original notice and petition without paying the fee shall not toll the statute of limitations. Tendering an amount less than required will be considered failure to pay a filing fee.

f. The filing fee may be taxed as a cost to the losing party in the case. If the filing fee would impose an undue hardship or be unjust in the circumstances for the losing party, the filing fee may be taxed as costs to the winning party in the case. If an original notice and petition is erroneously accepted for filing without payment of the correct filing fee or fees, any unpaid fees may be taxed as costs. See rule 876—4.33(86).

g. The filing fee shall be paid at the same time the petition is filed. Checks should be made payable to the "Iowa Division of Workers' Compensation." If the payment of the filing fee is made by an insufficient funds check or a check on which payment is stopped or a check on which payment is otherwise not honored, it will be treated as a failure to pay the correct filing fee. See 4.8(2) "e." One check may be submitted for payment of more than one filing fee if more than one filing fee is due from a petitioner for cases filed on account of an employee. Separate checks must be submitted for each petitioner's case or cases.

h. The workers' compensation commissioner may accept for filing an original notice and petition without prepayment of the filing fee if in the discretion of the workers' compensation commissioner the petitioner is unable to pay the fee at the time of filing. A deferral of payment of the filing fee shall only be granted upon written application by the petitioner. The application shall be filed at the same time the original notice and petition is filed. The application shall be in the form required by the workers' compensation commissioner and shall include an affidavit signed by the petitioner. When payment of the filing fee is deferred, provisions for payment of the filing fee must be included in any settlement submitted to the workers' compensation commissioner for approval or taxed as costs. When the application for deferral of payment of the filing fee is denied, the filing fee shall be paid as ordered. See 4.8(2) "e."

i. Rescinded IAB 1/29/97, effective 3/5/97.

This rule is intended to implement Iowa Code section 17A.12.

[ARC 7818B, IAB 6/3/09, effective 7/1/09]

876—4.9(17A) Appearance and responses, pleading and motions. Responses to pleadings and motions shall be made as follows:

4.9(1) Respondent—appearance. A respondent shall appear by filing an answer or a motion within 20 days after the service of the original notice and petition upon the respondent. The appearance shall include the E-mail address and the fax number of the respondent, if available, if the respondent is not

represented by counsel. The caption of an answer shall disclose the file number of the compliance file in which the first report of injury was filed for the injury that is alleged in the original notice and petition.

4.9(2) Motions. Motions attacking a pleading must be served before responding to a pleading or, if no responsive pleading is required, upon motion made by a party within 20 days after the service of the pleading on such party.

4.9(3) Pleading. Rescinded IAB 11/23/05, effective 1/1/06.

4.9(4) Time after motions attacking pleadings and special appearances. If a motion attacking a pleading is so disposed of as to require further pleading, such further pleading shall be served within ten days after notice of the action of the workers' compensation commissioner or deputy workers' compensation commissioner. If the further pleading requires a response, the response shall be filed within ten days after service of the further pleading.

4.9(5) Amendments to pleadings. A party may amend a pleading as a matter of course at any time before the party's discovery is closed, or if no order is entered closing the party's discovery, at any time before the case is assigned for hearing. Otherwise, a party may amend a pleading only by leave of the workers' compensation commissioner or deputy workers' compensation commissioner or by written consent of the adverse party. Leave to amend, including leave to amend to conform to proof, shall be freely given when justice so requires.

4.9(6) Form, submission and ruling on motions. All motions, including pre-answer motions, motions for summary judgment and applications for adjudication of law points, shall have appended to them a concise memorandum brief and argument. All motions and applications for adjudication of law points except motions for summary judgment shall be deemed submitted without hearing on the record presented on the tenth day following filing. Motions for summary judgment shall be deemed submitted as provided in Iowa Rule of Civil Procedure 1.981. Resistances to motions and applications for adjudication of law points shall have appended to them a concise memorandum brief and argument, and shall be filed on or before the date of submission. Briefs and arguments are waived unless appended to the motion, application or resistance.

An order may be entered consolidating any motion for ruling with hearing of the contested case. Any party desiring a ruling on a motion prior to hearing may concisely set forth the necessity of prior ruling in the motion, application or resistance. If a pre-answer motion alleging lack of jurisdiction is overruled or consolidated with hearing of the contested case, the party shall plead to the merits and proceed to hearing of the contested case without submitting to the jurisdiction of the workers' compensation commissioner. If a motion attacking a pleading is consolidated with hearing of the contested case, the party shall respond to the pleading in the same manner as if the motion had been overruled.

4.9(7) Consolidation. Any party may file a motion to consolidate common questions of fact and law surrounding an injury or a series of injuries. The motion shall be deemed approved if no resistance to the motion is filed with the workers' compensation commissioner within ten days of the filing of the motion. No order granting the motion will be filed by the workers' compensation commissioner. As an alternative, the parties may make an oral motion to consolidate common questions of fact or law at the time of the pretrial hearing. A ruling on the motion will be included with the order issued from the pretrial hearing.

4.9(8) Withdrawal of counsel. Counsel may withdraw if another counsel has appeared or if the client's written consent accompanies the withdrawal.

Under all other circumstances, counsel may withdraw only upon the order of the workers' compensation commissioner after making written application. Counsel shall give the client written notice that the client has the right to object to the withdrawal by delivering written objections and a request for a hearing to the Division of Workers' Compensation, 1000 East Grand Avenue, Des Moines, Iowa 50319, within ten days following the date the notice was mailed or personally delivered to the client. Counsel's application shall be accompanied by proof that a copy of the application and notice was sent by certified mail addressed to the client's last-known address or was delivered to the client personally. If no objections are timely filed, the withdrawal will become effective when approved by the workers' compensation commissioner. If objections are timely filed, a hearing on the application will be held. No withdrawal under this subrule will be effective without the approval of the workers'

compensation commissioner. The filing of an application to withdraw stays all pending matters until a ruling is made on the application.

4.9(9) Requests for default. Requests or motions for default shall be as provided in Iowa Rules of Civil Procedure 1.971 to 1.977 except that entry of default shall be by order of the workers' compensation commissioner or a deputy workers' compensation commissioner.

This rule is intended to implement the provisions of Iowa Code section 17A.12.

876—4.10(86,87) Insurance carrier as a party. Whenever any insurance carrier shall issue a policy with a clause in substance providing that jurisdiction of the employer is jurisdiction of the insurance carrier, the insurance carrier shall be deemed a party in any action against the insured.

This rule is intended to implement Iowa Code section 87.10.

876—4.11(86) Signatures on documents and papers. All documents and papers required by these rules, the Iowa rules of civil procedure as applicable, or a statutory provision shall be signed by the party if unrepresented or the party's attorney if represented. The party's signature in addition to the attorney's signature shall be necessary only when otherwise required by these rules, the Iowa rules of civil procedure as applicable, and any statutory provision.

This rule is intended to implement Iowa Code section 17A.12.

876—4.12(86) Service on parties. Any document or paper not delivered under 876—4.6(85,86,17A) and 876—4.7(86,17A) which is to be filed, or which seeks relief from or action of or against another party, or which makes argument, or which has any significant effect on any contested case, shall be served on each party of record under 876—4.13(86).

This rule is intended to implement Iowa Code sections 17A.12 and 86.18.

876—4.13(86) Method of service. Except as provided in 876—4.6(85,86,17A) and 876—4.7(86,17A), service of all documents and papers to be served according to 876—4.12(86) and 876—4.18(85,86,17A) or otherwise upon a party represented by an attorney shall be made upon the attorney unless service upon the party is ordered by the workers' compensation commissioner. Service upon the attorney or party shall be made by delivery of a copy to or mailing a copy to the last-known address of the attorney or party, or if no address is known, by filing it with the division of workers' compensation. Delivery of a copy within this rule means: Handing it to the attorney or party; leaving it at the office of the attorney or party's office or with the person in charge of the office; or if there is no one in charge of the office, leaving it in a conspicuous place in the office; or if the office is closed or the person to be served has no office, leaving it at the person's dwelling house, or usual place of abode with some person of suitable age and discretion who is residing at the dwelling or abode. Service by mail under this rule is complete upon mailing. No documents or papers referred to in this rule shall be served by the workers' compensation commissioner.

This rule is intended to implement Iowa Code sections 17A.12 and 86.18.

876—4.14(86) Filing of documents and papers. All documents and papers required to be served on a party under rule 876—4.12(86) shall be filed with the workers' compensation commissioner either before service or within a reasonable time thereafter. However, unless otherwise ordered by the workers' compensation commissioner or deputy workers' compensation commissioner, no deposition, notice of deposition, notice of service of interrogatories, interrogatories, request for production of documents, request for admission, notice of medical records and reports required to be served by 876—4.17(86), and answers and responses thereto shall be filed with or accepted for filing by the workers' compensation commissioner unless its use becomes otherwise necessary in the action, in which case it shall be attached to the motion or response to motion requiring its use, or unless offered as evidence at hearing of the contested case.

This rule is intended to implement Iowa Code section 86.18.

876—4.15(86) Proof of service. Proof of service of all documents and papers to be served on another party under 876—4.12(86) shall be filed with the division of workers' compensation promptly, and in

any event, before action is to be taken thereon by the workers' compensation commissioner or any party unless a responsive pleading has been filed. The proof shall show the date and manner of service and may be by written acknowledgment of service, by certification of a member of the bar of this state, by affidavit of the person who served the papers, or by any other proof satisfactory to the workers' compensation commissioner.

This rule is intended to implement Iowa Code section 86.18.

876—4.16(86) Request for copy. No person requesting a mailed file-stamped copy of a filing made in a contested case shall receive such a copy unless the request shall be accompanied by a self-addressed envelope with sufficient postage. In addition, no party requesting a file-stamped copy of a filing made by the party in a contested case shall receive such a copy unless the request shall be accompanied by sufficient copies to allow the requesting party to receive a copy.

This rule is intended to implement Iowa Code section 86.18.

876—4.17(17A,85,86) Service of records and reports. Each party to a contested case shall serve all records received pursuant to a patient's waiver (Form 14-0043—authorization for release of information regarding claimants seeking workers' compensation benefits) and medical records and reports concerning the injured worker in the possession of the party upon each opposing party not later than 20 days following filing of an answer or, if not then in possession of a party, within 10 days of receipt. Medical records and reports are records of medical practitioners and institutions concerning the injured worker. Medical practitioners and institutions are medical doctors, osteopaths, chiropractors, dentists, nurses, podiatrists, psychiatrists, psychologists, counselors, hospitals, clinics, persons engaged in physical or vocational rehabilitation or evaluation for rehabilitation, all other practitioners of the healing arts or sciences, and all other institutions in which the healing arts or sciences are practiced. Each party shall serve a notice accompanying the records and reports identifying the records and reports served by the name of the practitioner or institution or other source and date of the records and reports and, if served later than 20 days following filing of the answer, stating the date when the records and reports were received by the party serving them. Pursuant to 876—4.14(86), the notice and records and reports shall not be filed with the workers' compensation commissioner. A party failing to comply with the provisions of this rule shall, if the failure is prejudicial to an opposing party, be subject to the provisions of 876—4.36(86). This rule does not require a party to serve any record or report that was previously served by another party in a contested case proceeding.

For hearings on or after July 1, 2004, compliance with this rule does not permit a record or report to be received into evidence if the record or report was not served prior to an applicable deadline established by rule or order for completing discovery or service of exhibits.

This rule is intended to implement Iowa Code sections 86.8 and 86.18.

876—4.18(17A,85,86) Medical evidence and discovery. Discovery in workers' compensation proceedings is governed by the rules of civil procedure pursuant to 876—4.35(86). Any relevant medical record or report served upon a party in compliance with these rules prior to any deadline established by order or rule for service of the records and reports shall be admissible as evidence at hearing of the contested case unless otherwise provided by rule. Any party against which a medical record or report may be used shall have the right, at the party's own initial expense, to cross-examine by deposition the medical practitioner producing the record or report and the deposition shall be admissible as evidence in the contested case.

This rule is intended to implement Iowa Code sections 86.8 and 86.18.

876—4.19(86) Prehearing procedure.

4.19(1) Prehearing procedure in contested cases shall be administered in accordance with these rules and the orders issued by the workers' compensation commissioner or a deputy workers' compensation commissioner.

4.19(2) Counsel of record and pro se litigants have a duty to exercise reasonable diligence to bring the contested case to hearing at the earliest reasonable opportunity.

4.19(3) For contested cases that were filed on or after July 1, 2004, the following time limits govern prehearing procedure, completion of discovery and case management in contested cases, except proceedings under rules 876—4.46(17A,85,86) and 876—4.48(17A,85,86) and except when otherwise ordered by the workers' compensation commissioner or a deputy workers' compensation commissioner.

a. Within 120 days, but not less than 60 days, following filing of a petition, the counsel of record for all parties and all pro se litigants shall jointly contact the hearing administrator by telephone at (515)281-6621 between the hours of 8:30 a.m. and 11 a.m. central time, Monday through Friday, excluding holidays, or by E-mail at dwc.hearing@iwd.state.ia.us to schedule a hearing date, place and time. Claimant has primary responsibility for initiating the contact. The parties shall identify the case by file number and the names of the parties and request that the hearing be set at a specific date, place and time that is shown to be available on the hearing scheduler published on the division's Web site. Primary and backup times must be requested for hearings in venues other than Des Moines. When the contact is made by E-mail, a copy of the request shall be sent to each opposing party, and the hearing administrator will reply indicating whether or not the case is assigned at the time requested. If a request is denied, the parties shall continue to contact the hearing administrator by telephone or E-mail until the case is scheduled or a prehearing conference is ordered. A joint scheduling contact may be initiated by any party at any other time agreeable to the parties. If more than 120 days have elapsed since the petition was filed, any party may move to schedule the hearing at a particular date, time and place that is available and the hearing administrator may assign the case for hearing at that date, time and place. The hearing date shall be within 12 months following the date the petition was filed or as soon thereafter as reasonably practicable as determined by the hearing administrator. If the parties fail to schedule the hearing with the hearing administrator, the case will be scheduled at the discretion of the hearing administrator without prior notice to the parties.

b. A party who intends to introduce evidence from an expert witness, including a rebuttal expert witness, shall certify to all other parties the expert's name, subject matter of expertise, qualifications, and a summary of the expert's opinions within the following time period: (1) claimant—120 days before hearing; (2) employer/second injury fund of Iowa—90 days before hearing; (3) rebuttal—60 days before hearing. Certification is not required to introduce evidence from an examining physician pursuant to Iowa Code section 85.39, a treating physician, or a vocational consultant if the expert witness is known by all parties to have personally provided services to the claimant and the witness's reports are served on opposing parties prior to the date when certification is required. The parties may alter these times by written agreement.

c. Discovery responses must be supplemented as required in Iowa Rules of Civil Procedure 1.503(4) and 1.508(3). Discovery responses shall be supplemented within 20 days after a party requests supplementation. All discovery responses, depositions, and reports from independent medical examinations shall be completed and served on opposing counsel and pro se litigants at least 30 days before hearing. The parties may alter these times by written agreement.

d. At least 30 days before hearing, counsel of record and pro se litigants shall serve a witness and exhibit list on all opposing counsel and pro se litigants and exchange all intended exhibits that were not previously required to be served. The witness list shall name all persons, except the claimant, who will be called to testify at the hearing or who will be deposed prior to the hearing in lieu of testifying at the hearing. The exhibit list must specifically identify each exhibit in a way that permits the opposing party to recognize the exhibit. The description for a document should include the document's date, number of pages and author or source. Exhibits that were specifically identified when served pursuant to rule 876—4.17(17A,85,86) or in a discovery response may be collectively identified by describing the service such as "exhibits described in the notices served pursuant to rule 876—4.17(17A,85,86) on May 7, June 11 and July 9, 2004." Blanket references such as "all medical records," "personnel file" or "records produced during discovery" do not specifically identify an exhibit. A party may serve a copy of the actual intended exhibits in lieu of an exhibit list. Evidentiary depositions pursuant to Iowa Code section 86.18(2) may be taken at any time before the hearing in lieu of the witness testifying at the hearing.

e. If evidence is offered at hearing that was not disclosed in the time and manner required by these rules, as altered by order of the workers' compensation commissioner or a deputy workers' compensation commissioner or by a written agreement by the parties, the evidence will be excluded if the objecting party shows that receipt of the evidence would be unfairly prejudicial. Sanctions may be imposed pursuant to 876—4.36(86) in addition to or in lieu of exclusion if exclusion is not an effective remedy for the prejudice.

f. Counsel and pro se litigants shall prepare a hearing report that defines the claims, defenses, and issues that are to be submitted to the deputy commissioner who presides at the hearing. The hearing report shall be signed by all counsel of record and pro se litigants and submitted to the deputy when the hearing commences.

876—4.20(86) Prehearing conference. A deputy commissioner or the workers' compensation commissioner may order parties in the case to either appear before the commissioner or a deputy commissioner for a conference, or communicate with the commissioner or the commissioner's designee and with each other in any manner as may be prescribed to consider, so far as applicable to the particular case:

1. The necessity or desirability of amending pleadings by formal amendment or prehearing order;
2. Agreeing to admissions of facts, documents or records not really controverted, to avoid unnecessary proof;
3. Limiting the number of witnesses;
4. Settling any facts of which the commissioner or deputy commissioner is to be asked to take official notice;
5. Stating and simplifying the factual and legal issues to be determined;
6. Specifying the items and amounts of compensation claimed;
7. Specifying all proposed exhibits and proof thereof;
8. Consolidation, separation for hearing, and determination of points of law;
9. Specifying all witnesses expected to testify;
10. Possibility of settlement;
11. Filing of advance briefs, if any;
12. Setting or altering dates for completion of discovery or completion of medical evidence by each party;
13. Any other matter which may facilitate, expedite, or simplify any contested case.

This rule is intended to implement Iowa Code sections 86.17 and 86.18.

876—4.21(86) Prehearing conference record. At the request of any attorney in the case, or at the discretion of a deputy commissioner or the workers' compensation commissioner, the entire prehearing conference or any designated part thereof shall be recorded and the cost of the reporter shall be assessed to the requesting party, or if directed by the commissioner or deputy commissioner, assessed as costs.

This rule is intended to implement Iowa Code sections 86.17 and 86.18.

876—4.22(86) Orders. The deputy commissioner or workers' compensation commissioner may enter an order reciting any action taken at the conference or pursuant to any other procedures prescribed which will control the subsequent course of action relative to matters which it includes, unless modified to prevent manifest injustice.

This rule is intended to implement Iowa Code sections 86.17 and 86.18.

876—4.23(86) Assignment for hearing. Contested cases shall be set for hearing within the discretion of the workers' compensation commissioner as soon as practicable after the parties have had adequate opportunity to prepare for hearing. A party may request in writing that no hearing in a contested case be held until such time as specified matters have been accomplished or specified events have occurred. Continuances of hearings in contested cases shall be granted only by the workers' compensation commissioner or the commissioner's designee. Continuances are governed by Iowa Rules of Civil

Procedure 1.910-1.912. Requests for continuance shall also state in detail the reasons for the request and whether the opposing party accedes to the request.

Defendants shall promptly notify the workers' compensation commissioner of settlements.

This rule is intended to implement Iowa Code sections 86.8 and 86.18.

876—4.24(17A,86) Rehearing. Any party may file an application for rehearing of a proposed decision in any contested case by a deputy commissioner or a decision in any contested case by the workers' compensation commissioner within 20 days after the issuance of the decision. A copy of such application shall be timely mailed by the applicant to all parties of record not joining therein. An application for rehearing shall be deemed denied unless the deputy commissioner or workers' compensation commissioner rendering the decision grants the application within 20 days after its filing. For purposes of this rule, motions or requests for reconsideration or new trial or retrial or any reexamination of any decision, ruling, or order shall be treated the same as an application for rehearing.

876—4.25(17A,86) Appeal when rehearing requested. An appeal to or review on motion of the workers' compensation commissioner must be filed within 20 days after the application for rehearing of a proposed decision by a deputy workers' compensation commissioner under 876—4.24(17A,86) has been denied or deemed denied or a decision on rehearing has been issued. If a notice of appeal is filed by one party and an application for rehearing is filed by a different party, the deputy retains jurisdiction to act on the application for rehearing, and the notice of appeal is stayed and deemed to have been filed on the day after the application for rehearing is denied or deemed denied or the decision on rehearing is issued.

This rule is intended to implement Iowa Code sections 17A.15, 17A.16 and 86.24.

876—4.26 Rescinded, effective July 1, 1977.

876—4.27(17A,86) Appeal. Except as provided in 876—4.2(86) and 876—4.25(17A,86), an appeal to the commissioner from a decision, order or ruling of a deputy commissioner in contested case proceedings shall be commenced within 20 days of the filing of the decision, order or ruling by filing a notice of appeal with the workers' compensation commissioner. If two or more contested cases were consolidated for hearing, a notice of appeal in one of the cases is an appeal of all the cases. The date the notice of appeal is filed shall be the date the notice of appeal is received by the agency. *Miller v. Civil Constructors*, 373 N.W.2d 115 (Iowa 1985). The notice shall be served on the opposing parties as provided in 876—4.13(86). An appeal shall be heard in Polk County or in any location designated by the workers' compensation commissioner.

An interlocutory decision, order or ruling can be appealed only as hereinafter provided. A decision, order or ruling is interlocutory if, when issued, it does not dispose of all issues in the contested case that are ripe for adjudication. If the sole issue remaining for determination is claimant's entitlement to additional compensation for unreasonable denial or delay of payment pursuant to Iowa Code section 86.13, the decision is not interlocutory. An adjudication that awards ongoing payments of weekly compensation under Iowa Code section 85.33 or 85.34(1) is not interlocutory. The workers' compensation commissioner may, upon application from any party or on the commissioner's own motion, and upon such terms as the commissioner orders, grant an appeal from an interlocutory decision, order or ruling if the commissioner finds that the ruling affects substantial rights, that the ruling will materially affect the final decision and that determination of the correctness of the ruling will better serve the interests of justice.

A cross-appeal may be taken under this rule or 876—4.25(17A,86) in the same manner as an appeal within the 20 days for the taking of an appeal or within 10 days after filing of the appeal, whichever is later.

This rule is intended to implement Iowa Code sections 17A.15 and 86.24.

876—4.28(17A,86) Briefing requirements on appeal. The commissioner shall decide an appeal upon the record submitted to the deputy workers' compensation commissioner unless the commissioner

is satisfied that there exists additional material evidence, newly discovered, which could not with reasonable diligence be discovered and produced at the hearing. A party must file a request for taking additional evidence within 20 days after the notice of appeal was filed. Any briefs required or allowed by this rule shall be filed promptly following service.

4.28(1) *Time for serving briefs.* Appellant shall serve its brief within 50 days after the date on which notice of appeal was filed, or within 20 days after filing of the hearing transcript, whichever date is later. Appellee shall serve its brief within 20 days after service of the brief of appellant. If appellant serves a reply brief, it shall be done within 10 days after service of appellee's brief.

4.28(2) *Cross-appeals.* In the event of a cross-appeal, appellee (cross-appellant) shall serve its brief within 20 days after service of the brief of appellant. Appellant (cross-appellee) shall serve its responsive reply brief within 20 days after service of the brief of appellee. Appellee (cross-appellant) may serve a reply brief within 10 days after service of appellant's reply brief. When both parties appeal, the first to serve notice of appeal shall be appellant unless both serve their notice on the same date, in which case the claimant shall be appellant.

4.28(3) *Multiple adverse parties.* In cases involving multiple appeals involving multiple claimants, employers, insurance carriers or the second injury fund, the workers' compensation commissioner shall enter an order establishing a briefing schedule.

4.28(4) *Form of briefs.* Respective briefs and exceptions on appeal shall include the following:

- a. Statement of the case.
- b. Statement of the issues on appeal.
- c. An argument corresponding to the separately stated issues and contentions of appellant with respect to the issues presented and reasons for them, with specific reference to the page or pages of the transcript which are material to the issues on appeal.
- d. A short conclusion stating the precise relief sought.

The appellee may submit a brief on appeal replying to the issues presented by the appellant, unless a cross-appeal is made in which case the brief of appellee shall contain the issues and argument involved in the cross-appeal as well as the response to the brief of appellant.

4.28(5) *Length of briefs.* See rule 876—4.45(17A,86).

4.28(6) *Extensions.* One extension of up to 30 days will be granted if a motion to extend the time is served on or before the date service of the brief is required by this rule. A subsequent extension requires a motion showing good cause. The commissioner may grant a party the right to serve and file a brief after the time to do so has expired if the appeal or cross-appeal has not been dismissed or decided, the party moves for relief within 60 days from the date service of the brief was due, and the motion shows that the failure to timely serve the brief was due to a good cause that could not have been avoided through the exercise of reasonable diligence.

4.28(7) *Issues considered on appeal.* The appeal will consider the issues presented for review by the appellant and cross-appellant in their briefs and any issues necessarily incident to or dependent upon the issues that are expressly raised, except as provided in 876—4.29(86,17A). An issue will not be considered on appeal if the issue could have been, but was not, presented to the deputy. An issue raised on appeal is decided de novo and the scope of the issue is viewed broadly. If the ruling from which the appeal was taken made a choice between alternative findings of fact, conclusions of law, theories of recovery or defenses and the alternative selected in the ruling is challenged as an issue on appeal, de novo review includes reconsideration of all alternatives that were available to the deputy.

4.28(8) *Sanctions.* If an appellant's brief or cross-appellant's brief is not served and filed within the time required by this rule, including any extension, the party defending against the appeal or cross-appeal may move for dismissal. If an appellant's brief or cross-appellant's brief is not served within 30 days after the time required by these rules, including any extension, the workers' compensation commissioner will notify the party in default that upon 15 days from service of the notification the appeal or cross-appeal will be dismissed for want of prosecution unless the default is remedied within that period. If the default is not remedied, the appeal or cross-appeal will be dismissed. If an appellee's brief or cross-appellee's brief is not served and filed, the appeal will be decided without reference to that brief.

This rule is intended to implement Iowa Code section 86.24.

876—4.29(86,17A) Review upon motion. Except as provided in 876—4.25(17A,86) the commissioner may review the decision, order or ruling of a deputy commissioner in any contested case upon the commissioner's own motion. Except as provided in 876—4.25(17A,86), the motion to review a decision, order or ruling in all contested cases must be filed within 20 days of the filing of the decision, order or ruling. The commissioner shall specify in a notice mailed to the parties by certified mail, return receipt requested, on the date of filing of the motion the issues to be reviewed and the additional evidence, if any, to be obtained by the parties. The hearing under this rule shall be heard in Polk County or in any locality designated by the workers' compensation commissioner.

This rule is intended to implement Iowa Code sections 17A.15 and 86.24.

876—4.30(86,17A) Transcript on appeal or review. When an appeal to or review on motion of the commissioner is taken pursuant to 876—4.27(17A,86) or 876—4.29(86,17A), a transcript of the proceedings before the workers' compensation commissioner shall be filed with the workers' compensation commissioner within 30 days after the notice of the appeal is filed with the workers' compensation commissioner. The appealing party shall bear the initial cost of transcription on appeal and shall pay the certified shorthand reporter or service for the transcript. In the event there is a cross-appeal, the appellant and cross-appellant shall share the cost of the transcript. In the event the cost of the transcript has been initially borne by a nonappealing party prior to appeal, the nonappealing party is entitled to reimbursement within 30 days after serving on the appealing party proof of the cost of the transcript. If not so reimbursed, the appeal may be dismissed.

This rule is intended to implement Iowa Code sections 17A.12, 17A.15, 86.19, 86.24 and 86.40.

876—4.31(86) Completion of contested case record. No evidence shall be taken after the hearing.

This rule is intended to implement Iowa Code section 86.18.

876—4.32(86,17A) Recording of proceedings. The workers' compensation commissioner may arrange for the attendance of a certified shorthand reporter or mechanical means to record proceedings in contested cases. The workers' compensation commissioner may require the defendant employer or on appeal to the commissioner, the appellant, to arrange for the attendance of a certified shorthand reporter or adequate mechanical means of recording the proceedings. The charges for attendance shall be paid initially to the certified shorthand reporter or service by the employer or on an appeal to the commissioner, the appellant. The charges shall be taxed as costs. The party initially paying the expense shall be reimbursed by the party taxed with the cost. If the expense is unpaid, it shall be paid by the party taxed with the cost.

This rule is intended to implement Iowa Code section 86.19.

876—4.33(86) Costs. Costs taxed by the workers' compensation commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, (8) costs of persons reviewing health service disputes. Costs of service of notice and subpoenas shall be paid initially to the serving person or agency by the party utilizing the service. Expenses and fees of witnesses or of obtaining doctors' or practitioners' reports initially shall be paid to the witnesses, doctors or practitioners by the party on whose behalf the witness is called or by whom the report is requested. Witness fees shall be paid in accordance with Iowa Code section 622.74. Proof of payment of any cost shall be filed with the workers' compensation commissioner before it is taxed. The party initially paying the expense shall be reimbursed by the party taxed with the cost. If the expense is unpaid, it shall be paid by the party taxed with the cost. Costs are to be assessed at the discretion of

the deputy commissioner or workers' compensation commissioner hearing the case unless otherwise required by the rules of civil procedure governing discovery.

This rule is intended to implement Iowa Code section 86.40.

876—4.34(86) Dismissal for lack of prosecution. It is the declared policy that in the exercise of reasonable diligence, all contested cases before the workers' compensation commissioner, except under unusual circumstances, shall be brought to issue and heard at the earliest possible time. To accomplish such purpose the workers' compensation commissioner may take the following action:

4.34(1) Any contested case, where the original notice and petition is on file in excess of two years, may be subject to dismissal after the notice in 4.34(2) is sent to all parties and after the time as provided for in the notice.

4.34(2) After the circumstances provided in 4.34(1) occur, all parties to the action, or their attorneys, shall be sent notice from the division of workers' compensation by certified mail containing the following:

- a. The names of the parties;
- b. The date or dates of injury involved in the contested case or appeal proceeding;
- c. Counsel appearing;
- d. Date of filing of the petition or appeal;
- e. That the contested case proceeding will be dismissed without prejudice on the thirtieth day following the date of the notice unless good cause is shown why the contested case proceeding should not be dismissed.

4.34(3) The action or actions dismissed may at the discretion of the workers' compensation commissioner and shall upon a showing that such dismissal was the result of oversight, mistake or other reasonable cause, be reinstated. Applications for such reinstatement, setting forth the grounds, shall be filed within three months from the date of dismissal.

This rule is intended to implement Iowa Code sections 86.8, 17A.3(1)“b” and 86.18.

876—4.35(86) Rules of civil procedure. The rules of civil procedure shall govern the contested case proceedings before the workers' compensation commissioner unless the provisions are in conflict with these rules and Iowa Code chapters 85, 85A, 85B, 86, 87 and 17A, or obviously inapplicable to the workers' compensation commissioner. In those circumstances, these rules or the appropriate Iowa Code section shall govern. Where appropriate, reference to the word “court” shall be deemed reference to the “workers' compensation commissioner” and reference to the word “trial” shall be deemed reference to “contested case hearing.”

This rule is intended to implement Iowa Code sections 17A.1, 17A.12, 17A.13, 17A.14, and 86.8.

876—4.36(86) Compliance with order or rules. If any party to a contested case or an attorney representing such party shall fail to comply with these rules or any order of a deputy commissioner or the workers' compensation commissioner, the deputy commissioner or workers' compensation commissioner may impose sanctions which may include dismissing the action without prejudice, excluding or limiting evidence, assessing costs or expenses, and closing the record in whole or in part to further activity by the party.

This rule is intended to implement Iowa Code section 86.8.

876—4.37(86,17A) Waiver of contested case provisions. The parties who wish to waive the contested case provisions of chapter 17A shall file a written stipulation of such waiver with the workers' compensation commissioner before such waiver shall be recognized. The waiver shall specify the provisions waived such as a consent to delivery, waiver of original notice, or waiver of hearing.

This rule is intended to implement Iowa Code section 17A.10.

876—4.38(17A) Recusal.

4.38(1) The workers' compensation commissioner, a chief deputy workers' compensation commissioner or a deputy workers' compensation commissioner shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

- a.* Has a personal bias or prejudice concerning a party or a representative of a party;
- b.* Has personally investigated, prosecuted or advocated in connection with that case the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;
- c.* Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;
- d.* Has acted as counsel to any person who is a private party to that proceeding within the past two years;
- e.* Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;
- f.* Has a spouse or relative within the third degree of relationship that (1) is a party to the case, or an officer, director or trustee of a party; (2) is a lawyer in the case; (3) is known to have an interest that could be substantially affected by the outcome of the case; or (4) is likely to be a material witness in the case;
- g.* Has even the appearance of impropriety; or
- h.* Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

4.38(2) The term "personally investigated" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term "personally investigated" does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person's investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other agency functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17 and rule 876—4.38(17A).

4.38(3) In a situation where the workers' compensation commissioner, chief deputy workers' compensation commissioner or deputy workers' compensation commissioner knows of information which might reasonably be deemed to be a basis for recusal and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

4.38(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 4.38(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for recusal but must establish the grounds by the introduction of evidence into the record.

If the workers' compensation commissioner, chief deputy workers' compensation commissioner or deputy workers' compensation commissioner determines that recusal is appropriate, that person shall withdraw. If that person determines that withdrawal is not required, that person shall enter an order to that effect.

This rule is intended to implement Iowa Code section 17A.17.

876—4.39(17A,86) Filing by facsimile transmission (fax). All documents filed with the agency pursuant to this chapter and Iowa Code section 86.24 except an original notice and petition requesting a contested case proceeding (see Iowa Code section 17A.12(9)) may be filed by facsimile transmission

(fax). A copy shall be filed for each case involved. A document filed by fax is presumed to be an accurate reproduction of the original. If a document filed by fax is illegible, a legible copy may be substituted and the date of filing shall be the date the illegible copy was received. The date of filing by fax is the date the document is received by the agency. The agency will not provide a mailed file-stamped copy of documents filed by fax. The agency fax number is (515)281-6501.

876—4.40(73GA,ch1261) Dispute resolution. The workers' compensation commissioner or the workers' compensation commissioner's designee (hereinafter collectively referred to as the workers' compensation commissioner) shall have all power reasonable and necessary to resolve contested cases filed under Chapter 4 of these rules. This power includes, but is not limited to, the following: the power to resolve matters pursuant to initiation of mandatory dispute resolution proceedings by the workers' compensation commissioner; the power to resolve matters pursuant to a request by the parties; the power to impose sanctions; and the power to require conduct by the parties. However, no issue in a contested case may be finally resolved under this rule without consent of the parties.

An employee of the division of workers' compensation who has been involved in dispute resolution shall not be a witness in any contested case proceeding under this chapter.

4.40(1) Mandatory proceedings. The workers' compensation commissioner may require that the parties participate in dispute resolution in the following situation:

- a. The oldest one-fourth of contested cases which are not scheduled for hearing.
- b. All cases where discovery deadlines have been set pursuant to a prehearing order and the deadlines have passed.
- c. All cases where the principal dispute is medical benefits.
- d. All cases where the only dispute is the extent of disability.
- e. All cases involving liability disputes of alleged workers' compensation insurance carriers and alleged employers pursuant to Iowa Code section 85.21.
- f. Equitable apportionment of compensation payments pursuant to Iowa Code section 85.43.
- g. All cases where the workers' compensation commissioner determines that dispute resolution would be in the best interest of the parties.

4.40(2) Voluntary proceedings. The parties may voluntarily agree to submit to dispute resolution.

4.40(3) The parties must comply with the good faith requirements of rule 876—10.1(17A,85,86) before requesting a voluntary proceeding pursuant to subrule 4.40(2).

4.40(4) See 876—subrule 10.1(5) regarding informal dispute resolution.

4.40(5) Rescinded IAB 9/14/94, effective 10/19/94.

This rule is intended to implement Iowa Code sections 17A.10, 86.8 and 86.13 and 1990 Iowa Acts, chapter 1261, section 3.

876—4.41(17A,86) Evidence. Rescinded IAB 1/29/97, effective 3/5/97.

876—4.42(17A,86) Binding arbitration. Rescinded IAB 1/29/97, effective 3/5/97.

876—4.43(17A,85,86) Summary trial. Rescinded IAB 9/14/94, effective 10/19/94.

876—4.44(17A,85,85A,85B,86,87) Expedited proceeding—criteria. Rescinded IAB 1/29/97, effective 3/5/97.

876—4.45(17A,86) Length of briefs. Except by permission of the presiding deputy workers' compensation commissioner or by permission of the workers' compensation commissioner when an appeal pursuant to rule 876—4.27(17A,86) has been filed, principal briefs shall not exceed 50 Arabic-numbered pages. Reply briefs shall not exceed 25 Arabic-numbered pages. Permission may be granted ex parte. In the event of a cross-appeal, appellant's (cross-appellee's) responsive reply brief shall be considered a principal brief. The type used shall not be smaller than pica type and each line shall contain an average of no more than 60 characters. If a brief is submitted in excess of the length allowed in this rule, the portion exceeding the allowable length will not be considered. This rule does

not prohibit a presiding deputy workers' compensation commissioner or the workers' compensation commissioner from limiting the length of a brief. An exception to this rule is the length of briefs (three pages) in an application for alternate care. See subrule 4.48(11).

This rule is intended to implement Iowa Code sections 17A.12, 17A.15, 86.8, 86.18 and 86.24.

876—4.46(17A,85,86) Contested case proceedings—health service disputes.

4.46(1) See rule 876—10.3(17A,85,86) for informal resolution procedures and definitions. The following definition also applies to this rule:

"Petitioning party" means the person who requests or initiates a contested case proceeding.

4.46(2) If utilization of the procedures given in rule 876—10.3(17A,85,86) does not resolve the dispute and the parties have complied with the good faith requirements of rule 876—10.1(17A,85,86), a contested case may be initiated. The procedures given in rule 876—10.3 (17A,85,86) must be used prior to initiation of a contested case. The provider or the responsible party that is unwilling to accept the determination of the person making a determination after reviewing the dispute as provided in rule 876—10.3(17A,85,86) shall initiate the contested case proceeding. The proceeding shall be initiated as provided in this chapter and Iowa Code chapter 17A and shall follow the provisions of this rule. The proceeding must be initiated within 30 days of the date of the determination made pursuant to rule 876—10.3(17A,85,86). If a contested case proceeding is not initiated or is not initiated within the time provided in this rule, the allowed amount of the charge by the provider shall be the amount determined pursuant to rule 876—10.3(17A,85,86).

4.46(3) The evidence submitted in the contested case proceeding shall be limited to the evidence submitted pursuant to rule 876—10.3(17A,85,86) and a copy of the determination made pursuant to rule 876—10.3(17A,85,86). This evidence shall be filed by the party requesting the contested case proceeding at the time the contested case proceeding is initiated. However, the workers' compensation commissioner may request that additional evidence be submitted or may grant submission of additional evidence if the commissioner is satisfied that there exists additional material evidence, newly discovered, which could not with reasonable diligence be discovered and produced pursuant to rule 876—10.3(17A,85,86). The issues of the contested case proceeding shall be limited to the dispute considered in rule 876—10.3(17A,85,86).

4.46(4) The petitioning party has the burden of proof.

4.46(5) If the petitioning party wishes to file a brief, it must be filed with the request for contested case proceeding.

4.46(6) The opposing party must file a response within 30 days of the date of service of the request for contested case proceeding.

4.46(7) If the opposing party wishes to file a brief, it must be filed with the response.

4.46(8) Sixty days after the request for contested case is filed with the workers' compensation commissioner, the workers' compensation commissioner will review the matter. The notice of the review to the parties shall be the provisions of this rule and no other notice will be given.

4.46(9) The workers' compensation commissioner shall review the matter and make a decision as soon as practicable after the review. The decision shall be as provided in this chapter and Iowa Code chapter 17A.

This rule is intended to implement Iowa Code sections 17A.10, 17A.12, 17A.14, 85.27, 86.8 and 86.39.

876—4.47(17A,85,86) Second injury fund benefits contested cases. Rescinded IAB 6/22/94, effective 7/1/94.

876—4.48(17A,85,86) Application for alternate care.

4.48(1) *Effective date.* This rule is effective for applications for alternate care received on or after July 1, 1992.

4.48(2) *Purpose.* The purpose of this rule is to establish the procedures for issuing decisions on applications for alternate care within the time provided in Iowa Code section 85.27.

4.48(3) Definitions. The following definitions apply to this rule:

"Application for alternate care," hereinafter referred to as "application," shall mean a contested case proceeding filed with the workers' compensation commissioner which requests alternate care pursuant to Iowa Code section 85.27.

"Employer" means the person who is liable for payment of medical services provided pursuant to the Iowa workers' compensation laws and includes an employer, an employer who has been relieved from insurance pursuant to Iowa Code section 87.11, and an insurance carrier which provides an employer workers' compensation insurance.

"Proper application" means an application for alternate care that complies with the requirements of this rule.

4.48(4) Dissatisfaction—basis. Prior to filing the application the employee must communicate the basis of dissatisfaction of the care to the employer.

4.48(5) Application. The application shall: be filed on the form provided by the workers' compensation commissioner; concern only the issue of alternate care; state the reasons for the employee's dissatisfaction with the care chosen by the employer; be served on the employer; contain proof of service on the employer; and specify whether a telephone or in-person hearing is requested.

4.48(6) Fee. No filing fee is due. See 4.8(2) "a."

4.48(7) Employer liability. Application cannot be filed under this rule if the liability of the employer is an issue. If an application is filed where the liability of the employer is an issue, the application will be dismissed without prejudice. (Petitions for alternate care where liability of the employer is an issue should be filed pursuant to rule 876—4.1(85,85A,85B,86,87,17A).)

4.48(8) Notice of hearing. The workers' compensation commissioner will notify the parties by ordinary mail or by facsimile transmission (fax) of the time, place and nature of hearing. No notice will be made until a proper application is received by the workers' compensation commissioner. The notice will specify whether the hearing will be by telephone or in person.

4.48(9) Discovery and evidence. All discovery must be completed prior to the contested case hearing. See subrule 4.48(10) on motions on discovery matters. Any written evidence to be used by the employer or the employee must be exchanged prior to the hearing. All written evidence must be filed with the agency before the date of the hearing. Written evidence shall be limited to ten pages per party.

4.48(10) Motions. All motions except as provided in this subrule will be considered at the hearing. A timely motion to change the type of hearing (telephone or in-person) may be considered prior to the hearing. The workers' compensation commissioner will make no rulings on discovery matters or motions.

4.48(11) Briefs. Hearing briefs, if any, must be filed with the agency before the date of the hearing and shall be limited to three pages.

4.48(12) Hearing. The hearing will be held either by telephone or in person in Des Moines, Iowa. The employer shall have the right to request an in-person hearing if the employee has requested a telephone hearing in the application. The employer shall on the record respond to the allegations contained in the application. The hearing will be electronically recorded. If there is an appeal of a proposed decision or judicial review of final agency action, the appealing party is responsible for filing a transcript of the hearing.

If the hearing was electronically recorded, copies of the tape will be provided to the parties. A transcript shall be provided by the appealing party pursuant to Iowa Code subsection 86.24(4) and a copy thereof shall be served on the opposing party at the time the transcript is filed with the workers' compensation commissioner unless the parties submit an agreed transcript. If a party disputes the accuracy of any transcript prepared by the opposing party, that party shall submit its contentions to the workers' compensation commissioner for resolution. Any transcription charges incurred by the workers' compensation commissioner in resolving the dispute shall be initially paid pursuant to Iowa Code subsection 86.19(1) by the party who disputes the accuracy of the transcript prepared by the appellant.

4.48(13) Represented party. A party may be represented as provided in Iowa Code section 631.14. The presiding deputy may permit a party who is a natural person to be assisted during a hearing by any

person who does so without cost to that party if the assistance promotes full and fair disclosure of the facts or otherwise enhances the conduct of the hearing. The employer and its insurance carrier shall be treated as one party unless their interests appear to be in conflict and a representative of either the employer or its insurance carrier shall be deemed to be a representative of both unless notice to the contrary is given.

4.48(14) Decision. A decision will be issued within 10 working days of receipt of a proper application when a telephone hearing is held or within 14 working days of receipt of a proper application when an in-person hearing is held.

This rule is intended to implement Iowa Code sections 17A.12, 85.27, 86.8 and 86.17.

876—4.49(17A,85,86) Method of holding hearing. Any hearing held under this chapter may be by voice or video technology including but not limited to Internet-based video.

This rule is intended to implement Iowa Code sections 17A.12, 85.27, 86.8, 86.17 and 86.18.

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CHAPTER 5
DECLARATORY ORDERS

[Prior to 9/24/86 see Industrial Commissioner[500]]
[Prior to 1/29/97 see Industrial Services Division[343]]
[Prior to 7/29/98 see Industrial Services Division[873]Ch 5]

876—5.1(17A) Petition for declaratory order. Any person may file a petition with the workers' compensation commissioner for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the workers' compensation commissioner, at the office of the workers' compensation commissioner. A petition is deemed filed when it is received by that office. The workers' compensation commissioner shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the agency an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BEFORE THE WORKERS' COMPENSATION COMMISSIONER		
Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).	}	PETITION FOR DECLARATORY ORDER

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.
8. Any request by petitioner for a meeting provided for by rule 876—5.7(17A).

The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative and a statement indicating the person to whom communications concerning the petition should be directed.

876—5.2(17A) Notice of petition. Within five working days after receipt of a petition for a declaratory order, the workers' compensation commissioner shall give notice of the petition to all persons not served by the petitioner pursuant to rule 876—5.6(17A) to whom notice is required by any provision of law. The workers' compensation commissioner may also give notice to any other persons.

876—5.3(17A) Intervention.

5.3(1) Nondiscretionary intervention. Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 15 working days of the filing of a petition for declaratory order and before 30-day time for agency action under rule 876—5.8(17A) shall be allowed to intervene in a proceeding for a declaratory order.

5.3(2) Discretionary intervention. Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the workers' compensation commissioner.

5.3(3) *Filing and form of petition for intervention.* A petition for intervention shall be filed at the office of the workers' compensation commissioner. Such a petition is deemed filed when it is received by that office. The workers' compensation commissioner will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BEFORE THE WORKERS' COMPENSATION COMMISSIONER	
Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in Original Petition). Petition for intervention by (Name of Intervenor).	}
	PETITION FOR INTERVENTION

The petition for intervention must provide the following information:

1. Facts supporting the intervenor's standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
4. A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
5. The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented.
6. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications should be directed.

876—5.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The workers' compensation commissioner may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

876—5.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the Workers' Compensation Commissioner, 1000 E. Grand, Des Moines, Iowa 50319-0209.

876—5.6(17A) Service and filing of petitions and other papers.

5.6(1) *Service.* Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with their filing. The party filing a document is responsible for service on all parties and other affected or interested persons. All documents filed shall indicate all parties or other persons served and the date and method of service.

5.6(2) *Filing.* All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Workers' Compensation Commissioner, 1000 E. Grand, Des Moines, Iowa 50319-0209.

5.6(3) *Method of service, time of filing, and proof of service.* Method of service and proof of service shall be as provided by rules 876—4.13(86) and 4.15(86). All documents are considered filed when received by the agency.

876—5.7(17A) Consideration. Upon request by petitioner, the workers' compensation commissioner must schedule a brief and informal meeting between the original petitioner, all intervenors, and the workers' compensation commissioner or a member of the staff of the workers' compensation commissioner to discuss the questions raised. The workers' compensation commissioner may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the workers' compensation commissioner by any person.

876—5.8(17A) Action on petition.

5.8(1) Time frames for action. Within 30 days after receipt of a petition for a declaratory order, the workers' compensation commissioner or the commissioner's designee shall take action on the petition as required by Iowa Code section 17A.9(5).

5.8(2) Date of issuance of order. The date of issuance of an order or of a refusal to issue an order is the date the order or refusal is filed unless another date is specified in the order.

876—5.9(17A) Refusal to issue order.

5.9(1) The workers' compensation commissioner shall not issue a declaratory order where prohibited by Iowa Code section 17A.9(1), and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

1. The petition does not substantially comply with the required form.
2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the workers' compensation commissioner to issue an order.
3. The workers' compensation commissioner does not have jurisdiction over the questions presented in the petition.
4. The questions presented by the petition are also presented in a current rule making, contested case, or other agency or judicial proceeding, that may definitively resolve them.
5. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.
6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
7. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.
8. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge an agency decision already made.
9. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.
10. The petitioner requests the workers' compensation commissioner to determine whether a statute is unconstitutional on its face.

5.9(2) Action on refusal. A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final agency action on the petition.

5.9(3) Filing of new petition. Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the workers' compensation commissioner's refusal to issue an order.

876—5.10(17A) Contents of order—effective date. In addition to the ruling itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

A declaratory order is effective on the date of issuance.

876—5.11(17A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

876—5.12(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the workers' compensation commissioner, the petitioner, and any intervenors who consent to be bound and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the workers' compensation commissioner. The issuance of a declaratory order constitutes final agency action on the petition.

876—5.13(17A) Filing fee. No filing fee is due for filing a petition for declaratory order or a petition for intervention. See 876—paragraph 4.8(2)“a.”

These rules are intended to implement Iowa Code section 17A.9.

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CHAPTER 6
SETTLEMENTS AND COMMUTATIONS

[Prior to 9/24/86 see Industrial Commissioner[500]]

[Prior to 1/29/97 see Industrial Services Division[343]]

[Prior to 7/29/98 see Industrial Services Division[873]Ch 6]

876—6.1(85,86) Settlements under Iowa Code Supplement section 85.35. All proposed settlements shall be submitted to the workers' compensation commissioner for approval. An agreement for settlement pursuant to Iowa Code Supplement section 85.35(2) shall be on Form 14-0021. A compromise settlement pursuant to Iowa Code Supplement section 85.35(3) shall be on Form 14-0025. A combination settlement pursuant to Iowa Code Supplement section 85.35(4) shall be on Form 14-0159. A contingent settlement pursuant to Iowa Code Supplement section 85.35(5) shall be on Form 14-0161.

6.1(1) Evidence that a settlement should be approved as required by Iowa Code Supplement section 85.35(7) shall accompany the settlement or be incorporated into the settlement forms. It is presumed that the showing required by Iowa Code Supplement section 85.35(7) has been made if the claimant is represented by an attorney licensed to practice law in this state.

6.1(2) The documents for a compromise settlement shall identify either the specific date or dates of injury or the specific injurious condition or conditions, or both. The documents for a compromise settlement, including any addendum to the documents, shall not contain any language that either expressly states or implies that the proposed compromise settlement is a final settlement of any and all injuries, known or unknown, that an employee may have sustained while employed by the employer. If a compromise settlement is submitted that does not comply with this subrule, the workers' compensation commissioner shall return the proposed compromise settlement to the party who submitted it.

6.1(3) Approval of a compromise settlement pursuant to Iowa Code Supplement section 85.35(3) is a final bar to rights under the Iowa Workers' Compensation Law, and the approved compromise settlement is not subject to review under Iowa Code section 85.26(2).

6.1(4) Nothing in this rule shall prohibit the approval of settlements in other appropriate cases when allowed by Iowa Code Supplement section 85.35(7).

This rule is intended to implement Iowa Code Supplement section 85.35.

876—6.2(85,86) Commutation. The following requirements must be met before an uncontested commutation will be considered or granted:

6.2(1) A first report of injury, an acknowledgment of compensability and an updated supplemental claim activity report must be filed.

6.2(2) The commutation forms provided for in 6.4(85,86) must be filed.

6.2(3) All doctors' and practitioners' reports relevant to the disability of the claimant involved in the commutation must be attached to the commutation forms.

6.2(4) Claimant's condition as a result of the injury as shown by the medical reports cannot be one which will be expected to deteriorate. When a partial commutation is sought, this paragraph shall diminish in importance.

6.2(5) Claimant's condition as a result of the injury shown by the doctors' and practitioners' reports cannot be one which will be expected to require future treatment unless the future treatment is adequately provided for. When a partial commutation is sought, this paragraph shall diminish in importance.

6.2(6) A detailed statement of claimant's need or other reason for a lump sum of money must be attached to the application. The analysis shall include disclosure of any attorney fee amount to be paid from the full commutation. A commutation of less than ten weeks' benefits is presumed to be not in the best interest of the claimant.

6.2(7) When multiple dependents are involved, a signed stipulation or order of apportionment identifying the proportion of benefits to be received by each dependent shall be attached to the commutation form.

6.2(8) A signed stipulation as to the degree of permanent disability shall be attached to the commutation form.

6.2(9) Rescinded IAB 10/25/06, effective 11/29/06.

This rule is intended to implement Iowa Code sections 85.45 and 85.47.

876—6.3(85,86) Commutation tables. The following tables are to be used in determining the sum to be paid in appropriate commutation proceedings. Nothing in this rule is to prevent waiver of the discount in subrule 6.3(2) by the employer or insurance carrier.

6.3(1) Life expectancy table. The life expectancy is determined by taking the age of the person, set forth in the “age” column and comparing it to the “weeks” column, which indicates the weeks an individual at the age indicated will be expected to continue to live.

LIFE EXPECTANCY TABLE

AGE	WEEKS	AGE	WEEKS	AGE	WEEKS
0-1	4020	34-35	2335	68-69	832
1-2	3994	35-36	2288	69-70	801
2-3	3942	36-37	2236	70-71	764
3-4	3895	37-38	2189	71-72	728
4-5	3843	38-39	2142	72-73	697
5-6	3791	39-40	2090	73-74	666
6-7	3739	40-41	2044	74-75	629
7-8	3687	41-42	1997	75-76	598
8-9	3635	42-43	1950	76-77	572
9-10	3583	43-44	1903	77-78	541
10-11	3531	44-45	1856	78-79	510
11-12	3484	45-46	1810	79-80	484
12-13	3432	46-47	1763	80-81	458
13-14	3380	47-48	1716	81-82	432
14-15	3328	48-49	1669	82-83	406
15-16	3276	49-50	1622	83-84	385
16-17	3224	50-51	1576	84-85	359
17-18	3177	51-52	1534	85-86	338
18-19	3125	52-53	1487	86-87	317
19-20	3078	53-54	1446	87-88	302
20-21	3026	54-55	1399	88-89	281
21-22	2980	55-56	1357	89-90	265
22-23	2928	56-57	1310	90-91	250
23-24	2881	57-58	1269	91-92	234
24-25	2829	58-59	1227	92-93	224
25-26	2782	59-60	1186	93-94	208
26-27	2730	60-61	1144	94-95	198
27-28	2683	61-62	1102	95-96	187
28-29	2631	62-63	1061	96-97	177
29-30	2584	63-64	1024	97-98	166
30-31	2532	64-65	983	98-99	156
31-32	2486	65-66	946	99-100	151
32-33	2434	66-67	910	100+	140
33-34	2387	67-68	868		

6.3(2) Discount. When an original notice and petition for commutation of remaining future weekly benefits, either full or partial, is filed, the remaining future weekly benefits may be commuted to present dollar value. If the remaining future weekly benefits are converted to a present dollar value, the present dollar value shall be determined as provided in this subrule. A discount will be used to convert the value of remaining future weekly benefits to present dollar value. The discount will be based on a compound interest rate calculated pursuant to Iowa Code section 668.13(3) and in effect on the date informal agreement between the parties is reached for commutation and the number of weeks of remaining future benefits. The interest rate used to determine the discount shall be specified on the original notice and petition for commutation filed for approval by the commissioner.

6.3(3) Life expectancy and remarriage probability table. This table expresses in weeks the combined probability of life expectancy and remarriage. The column on the left indicates the age of the surviving spouse at the time of the work-related death. Columns A through E indicate, respectively, the first through fifth years following the date of death that the surviving spouse remains unmarried. For example, if the date of death was July 1, 2005, and the surviving spouse was age 20 at the time of the decedent's death, a commutation sought on the second anniversary of the death, July 2, 2007, would result in an expected duration of 550.02 weeks, the amount found in Column B which indicates the second year of unmarried status following age 20. Following the second anniversary of the date of death and including the third anniversary, Table C would be applicable. Begin in the left-hand column in the line indicating the age at *date of death*—not the age at which a commutation is sought. Then move to the column which is indicative of the number of years the surviving spouse has remained unmarried.

A surviving spouse, 20 years old on the date of the decedent's death who seeks a commutation after the fifth anniversary of the date of death, would use Table F. The fact that the surviving spouse has remained unmarried for over five years negates use of Columns A through E. A commutation sought during the fifth year of remaining unmarried would result in an expected duration of 1031.64 weeks. For example, if the surviving spouse, who was 20 years old on the date of the decedent's death, is 30 years old at the time a commutation is sought and seeks a commutation *after* the tenth anniversary of the date of death, start in Column F in line 20 at the age column. For each year beyond the sixth anniversary of the death, move *down* Column F one line for each year. [Note the left-hand age column plays no part at this point.] In this example, the 30-year-old surviving spouse who seeks a commutation after the tenth anniversary of the date of death would have an expected duration of 1247.07 weeks.

EXPECTED DURATION OF LIFE AND REMARRIAGE IN WEEKS

AGE	A	B	C	D	E	F
19	452.18	505.55	640.75	788.27	905.44	993.12
20	495.82	550.02	683.69	828.42	943.01	1031.64
21	541.23	596.18	729.80	868.87	982.17	1071.64
22	589.23	646.05	776.66	911.67	1023.48	1115.36
23	640.88	696.92	825.34	956.43	1068.72	1157.99
24	693.76	749.90	875.77	1005.20	1113.34	1200.77
25	748.61	804.49	929.45	1053.51	1158.36	1247.07
26	804.72	861.90	982.20	1102.07	1206.94	1290.45
27	863.24	917.91	1034.48	1153.43	1252.42	1332.79
28	919.92	972.96	1089.02	1201.54	1296.56	1376.65
29	975.76	1029.70	1140.04	1248.06	1342.09	1415.27
30	1034.13	1083.96	1190.18	1296.47	1382.06	1450.83
31	1087.87	1135.18	1239.43	1337.76	1419.17	1482.26
32	1140.84	1187.76	1283.95	1376.65	1452.19	1514.63
33	1195.00	1235.69	1325.54	1411.36	1486.03	1539.38
34	1244.19	1281.06	1363.39	1447.25	1512.62	1560.28

AGE	A	B	C	D	E	F
35	1290.62	1322.51	1402.06	1475.89	1535.47	1577.36
36	1333.45	1365.12	1433.98	1501.08	1554.46	1590.73
37	1377.93	1401.32	1462.76	1522.96	1570.28	1595.37
38	1414.42	1432.95	1486.92	1540.28	1575.74	1600.95
39	1447.51	1460.93	1507.65	1548.65	1583.08	1603.12
40	1476.55	1484.88	1519.19	1558.50	1586.74	1601.68
41	1501.23	1499.62	1531.97	1564.58	1586.80	1590.32
42	1517.04	1515.76	1541.35	1567.27	1577.19	1581.72
43	1533.81	1528.55	1547.54	1560.49	1570.28	1564.36
44	1546.84	1537.33	1543.96	1556.10	1554.65	1543.01
45	1556.54	1537.28	1543.60	1543.67	1534.98	1519.60
46	1555.21	1538.43	1533.33	1526.06	1512.93	1499.07
47	1556.30	1530.44	1518.64	1506.46	1493.84	1463.67
48	1547.08	1517.04	1500.92	1489.22	1459.61	1432.74
49	1532.42	1499.98	1484.71	1456.21	1429.75	1399.10
50	1514.59	1485.36	1453.56	1427.91	1396.88	1364.95
51	1496.96	1453.45	1424.86	1395.28	1363.33	1322.96
52	1464.50	1426.08	1393.79	1362.79	1321.79	1286.44
53	1433.32	1393.23	1359.71	1320.40	1285.68	1242.63
54	1401.59	1361.60	1319.99	1285.81	1242.14	1199.73
55	1367.01	1320.16	1283.74	1241.95	1199.37	1155.90
56	1324.97	1284.38	1240.69	1199.62	1155.55	1111.53
57	1286.93	1239.69	1196.89	1154.69	1110.98	1070.85
58	1243.31	1197.46	1153.84	1111.07	1070.21	1025.48
59	1200.31	1153.99	1109.49	1069.88	1024.57	986.90
60	1156.15	1109.74	1069.03	1024.18	985.85	944.55
61	1111.72	1069.39	1023.90	985.32	943.26	902.07
62	1052.14	1009.56	976.00	938.77	899.17	866.59
63	1010.13	974.17	936.60	898.84	866.01	822.92
64	975.20	935.34	897.28	866.19	822.35	786.37
65	935.81	895.62	864.23	822.48	785.91	752.62
66	896.90	863.56	821.55	786.69	752.25	713.35
67	864.14	820.43	785.30	752.93	712.94	681.47
68	821.01	784.34	751.79	713.70	681.08	645.13
69	784.83	750.98	712.72	681.88	644.76	610.80
70	751.92	712.57	681.58	646.12	610.45	578.30
71	712.75	680.79	645.24	611.61	577.91	547.80
72	681.26	644.91	611.27	579.40	547.43	513.50
73	645.03	610.64	578.74	548.89	513.25	486.97
74	610.85	578.30	548.43	514.74	486.74	455.68
75	578.57	548.13	514.38	488.35	455.51	428.23
76	548.68	514.51	488.51	457.72	428.11	397.70
77	514.31	487.93	457.11	430.12	397.62	374.66
78	487.92	456.77	429.75	411.41	374.60	348.88
79	457.82	430.58	400.47	377.94	348.85	324.95

AGE	A	B	C	D	E	F
80	428.23	397.79	375.01	349.47	324.92	298.01
81	400.21	377.46	352.11	328.63	298.01	286.57
82	376.27	350.69	327.08	300.46	286.57	271.47
83	350.54	326.80	300.18	289.12	271.47	259.15
84	326.67	299.90	288.84	274.06	259.15	249.81
85	299.74	288.56	273.74	261.78	249.81	249.60

This rule is intended to implement Iowa Code sections 85.45 and 85.47.

876—6.4(85,86) Forms for commutation. Form No. 9 (14-0013) shall be used for a full commutation. Form No. 9A (14-0017) shall be used for a partial commutation. See rule 876—3.1(17A) for description of these forms.

This rule is intended to implement Iowa Code sections 85.45 and 85.47.

876—6.5(85) Statement of awareness. When a petition for settlement under Iowa Code Supplement section 85.35(3) or commutation is submitted, it shall contain or be accompanied by a verified statement from the injured employee indicating awareness that, upon approval by the workers' compensation commissioner of the settlement or commutation, a final bar to future claims or benefits under the Iowa Workers' Compensation Law for such injury shall exist except as specifically reserved in any agreement.

This rule is intended to implement Iowa Code Supplement section 85.35 and sections 85.45 and 85.47.

876—6.6(86) Twenty-page limitation. Unless otherwise ordered by the workers' compensation commissioner or deputy workers' compensation commissioner, an application for approval of a settlement or an original notice and petition for approval of a commutation or partial commutation shall not be accepted for filing if accompanied by documentation in excess of 20 pages. An order approving a settlement or an original notice and petition for commutation or partial commutation accompanied by documentary evidence in excess of 20 pages is nevertheless valid, and is neither void nor voidable.

This rule is intended to implement Iowa Code sections 85.35, 85.47, 86.13 and 86.27.

876—6.7(85,86) Claimant statement. When the claimant is not represented by counsel, a claimant's statement on Form 14-0163, which the claimant has personally completed, certified and signed, must be submitted with all settlement and commutation forms and documents.

This rule is intended to implement Iowa Code Supplement section 85.35 and section 86.8.

876—6.8(85,86) Failure to timely file settlement. If a party notifies the workers' compensation commissioner that a matter scheduled for a hearing has been settled and the matter is removed from the hearing schedule, the proposed settlement shall be filed with the workers' compensation commissioner within 60 days of the notification. A party may, within 60 days of the notification, request an extension of time to file the settlement documents. If the settlement documents are not timely filed, the matter will be reassigned for hearing in Des Moines at a date determined by the workers' compensation commissioner and the parties cannot request that the matter be rescheduled. Any matter rescheduled because settlement documents were not timely filed shall not again be removed from the hearing schedule because a party notifies the workers' compensation commissioner of a settlement.

This rule is intended to implement Iowa Code Supplement section 85.35 and sections 85.47, 85.48, 86.8, 86.13 and 86.27.

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CHAPTER 7
PETITION FOR RULE MAKING
[Prior to 9/24/86 see Industrial Commissioner[500]]
[Prior to 1/29/97 see Industrial Services Division[343]]
[Prior to 7/29/98 see Industrial Services Division[873]Ch 7]

The division of workers' compensation adopts the petition for rule making segments of the Uniform Administrative Rules which are printed in the first volume of the Iowa Administrative Code, with the following amendments.

876—7.1(17A) Petition for rule making.

In lieu of the words "designate office" insert "the Division of Workers' Compensation, Department of Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319."

In lieu of the words "AGENCY NAME", the heading on the petition form should read:

BEFORE THE DIVISION OF WORKERS' COMPENSATION

876—7.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the Division of Workers' Compensation, Department of Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319.

These rules implement Iowa Code chapters 85, 85A, 85B, 86, and 87, and specifically Iowa Code sections 85.27, 85.45, 85.48, 86.36, 17A.3(2) and 17A.12.

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CHAPTER 8
SUBSTANTIVE AND INTERPRETIVE RULES

[Prior to 9/24/86 see Industrial Commissioner[500]]

[Prior to 1/29/97 see Industrial Services Division[343]]

[Prior to 7/29/98 see Industrial Services Division[873]Ch 8]

876—8.1(85) Transportation expense. Transportation expense as provided in Iowa Code sections 85.27 and 85.39 shall include but not be limited to the following:

1. The cost of public transportation if tendered by the employer or insurance carrier.
2. All mileage incident to the use of a private auto. The per-mile rate for use of a private auto from August 1, 2005, through June 30, 2006, shall be 40.5 cents. For annual periods beginning July 1, 2006, and thereafter, the per-mile rate shall be the rate allowed by the Internal Revenue Service for the business standard mileage rate in effect on July 1 of each year.
3. Meals and lodging if reasonably incident to the examination.
4. Taxi fares or other forms of local transportation if incident to the use of public transportation.
5. Ambulance service or other special means of transportation if deemed necessary by competent medical evidence or by agreement of the parties.

Transportation expense in the form of reimbursement for mileage which is incurred in the course of treatment or an examination, except under Iowa Code section 85.39, shall be payable at such time as 50 miles or more have accumulated or upon completion of medical care, whichever occurs first. Reimbursement for mileage incurred under Iowa Code section 85.39 shall be paid within a reasonable time after the examination.

The workers' compensation commissioner or a deputy commissioner may order transportation expense to be paid in advance of an examination or treatment. The parties may agree to the advance payment of transportation expense.

This rule is intended to implement Iowa Code sections 85.27 and 85.39.

876—8.2(85) Overtime. The word "overtime" as used in Iowa Code section 85.61 means amounts due in excess of the straight time rate for overtime hours worked. Such excess amounts shall not be considered in determining gross weekly wages within Iowa Code section 85.36. Overtime hours at the straight time rate are included in determining gross weekly earnings.

This rule is intended to implement Iowa Code sections 85.36 and 85.61.

876—8.3 Rescinded, effective July 1, 1982.

876—8.4(85) Salary in lieu of compensation. The excess payment made by an employer in lieu of compensation which exceeds the applicable weekly compensation rate shall not be construed as advance payment with respect to either future temporary disability, healing period, permanent partial disability, permanent total disability or death.

This rule is intended to implement Iowa Code sections 85.31, 85.34, 85.36, 85.37 and 85.61.

876—8.5(85) Appliances. Appliances are defined as hearing aids, corrective lenses, orthodontic devices, dentures, orthopedic braces, or any other artificial device used to provide function or for therapeutic purposes.

Appliances which are for the correction of a condition resulting from an injury or appliances which are damaged or made unusable as a result of an injury or avoidance of an injury are compensable under Iowa Code section 85.27.

876—8.6(85,85A) Calendar days—decimal equivalent. Weekly compensation benefits payable under Iowa Code chapters 85 and 85A are based upon a seven-day calendar week. Each day of weekly compensation benefits due may be paid by multiplying the employee's weekly compensation benefit rate by the decimal equivalents of the number of days as follows:

1 day	=	.143	×	weekly rate
2 days	=	.286	×	weekly rate
3 days	=	.429	×	weekly rate
4 days	=	.571	×	weekly rate
5 days	=	.714	×	weekly rate
6 days	=	.857	×	weekly rate

This rule is intended to implement Iowa Code sections 85.31, 85.33 and 85.34.

876—8.7(86) Short paper. All filings before the workers' compensation commissioner shall be on white paper measuring 8½ inches by 11 inches.

This rule is intended to implement Iowa Code section 86.18.

876—8.8(85,17A) Payroll tax tables. Tables for determining payroll taxes to be used for the period July 1, 2008, through June 30, 2009, are the tables in effect on July 1, 2008, for computation of:

1. Federal income tax withholding according to the percentage method of withholding for weekly payroll period. (Internal Revenue Service, Circular E, Employer's Tax Guide, Publication 15 [2008].)
2. Iowa Withholding Tax Guide. (Iowa Department of Revenue Iowa Withholding Tax Rate Tables [Effective April 1, 2006].)
3. Social Security and Medicare withholding (FICA) at the rate of 7.65 percent. (Internal Revenue Service, Circular E, Employer's Tax Guide, Publication 15 [2008].)

This rule is intended to implement Iowa Code section 85.61(6).

876—8.9(85,86) Exchange of records. Whether or not a contested case has been commenced, upon the written request of an employee or the representative of an employee who has alleged an injury arising out of and in the course of employment, an employer or insurance carrier shall provide the claimant a copy of all records and reports in its possession generated by a medical provider.

Whether or not a contested case has been commenced, upon the written request of the employer or insurance carrier against which an employee has alleged an injury arising out of and in the course of employment, the employee shall provide the employer or insurance carrier with a patient's waiver. See rules 876—3.1(17A) and 876—4.6(85,86,17A) for the waiver form used in contested cases. Claimant shall cooperate with the employer and insurance carrier to provide patients' waivers in other forms and to update patients' waivers where requested by a medical practitioner or institution.

A medical provider or its agent shall furnish an employer or insurance carrier copies of the initial as well as final clinical assessment without cost when the assessments are requested as supporting documentation to determine liability or for payment of a medical provider's bill for medical services. When requested, a medical provider or its agent shall furnish a legible duplicate of additional records or reports. Except as otherwise provided in this rule, the amount to be paid for furnishing duplicates of records or reports shall be the actual expense to prepare duplicates not to exceed: \$20 for 1 to 20 pages; \$20 plus \$1 per page for 21 to 30 pages; \$30 plus \$.50 per page for 31 to 100 pages; \$65 plus \$.25 per page for 101 to 200 pages; \$90 plus \$.10 per page for more than 200 pages, and the actual expense of postage. No other expenses shall be allowed.

EXAMPLE 1. For 7 pages of records the amount to be paid for furnishing duplicates shall not exceed \$20.

EXAMPLE 2. For 28 pages of records the amount to be paid for furnishing duplicates shall not exceed \$28 (\$20 plus (8 times \$1)).

EXAMPLE 3. For 41 pages of records the amount to be paid for furnishing duplicates shall not exceed \$35.50 (\$30 plus (11 times \$.50)).

EXAMPLE 4. For 127 pages of records the amount to be paid for furnishing duplicates shall not exceed \$71.75 (\$65 plus (27 times \$.25)).

EXAMPLE 5. For 210 pages of records the amount to be paid for furnishing duplicates shall not exceed \$91 (\$90 plus (10 times \$.10)).

This rule is intended to implement Iowa Code sections 85.27, 85.31, 85.33 to 85.37, 85.39, 85.61, 86.8, 86.10, 86.18 and 86.39.

876—8.10(85B) Apportionment of age-related loss for occupational hearing loss claims.

8.10(1) Effective date. This rule is effective for claims for occupational hearing loss filed on or after July 1, 1998.

8.10(2) Purpose. The purposes of this rule are to adopt tables and the method for calculating age-related hearing loss and to adopt a worksheet for apportionment of age-related hearing loss for occupational hearing loss claims.

8.10(3) Table. In 1972 the National Institute for Occupational Safety and Health (NIOSH) published the Criteria for a Recommended Standard: Occupational Exposure to Noise (NIOSH Publication No.73-11001). Table B-1, page I-16, provides the Age Corrections Values to be Used for Age Correction of Initial Baseline Audiograms for Males and Table B-2, page I-17, provides the Age Corrections Values to be Used for Age Correction of Initial Baseline Audiograms for Females. These NIOSH tables are used to calculate the correction value for age for males and females for 500, 1000, 2000 and 3000 hertz.

For example, the age correction for a male 21 years of age is 10 decibels at 500 hertz, 5 decibels at 1000 hertz, 3 decibels at 2000 hertz and 4 decibels at 3000 hertz. The correction for age is 5.50 decibels (the sum of 10+5+3+4 divided by 4).

The following table is to be used to determine an employee's age-related change in hearing level during the period of employment. To determine the age-related change in hearing level in decibels during the period of employment, subtract the value shown in the table for the employee's age at the beginning of employment from the value shown in the table for the employee's age on the date of injury.

NOTE: This table should not be used to compute standard threshold shift as required by rules of the Occupational Safety and Health Administration or Iowa occupational safety and health administration.

<u>Age in Years</u>	<u>Correction in dB</u>	
	<u>Males</u>	<u>Females</u>
20 or younger	5.50	7.25
21	5.50	7.75
22	5.50	7.75
23	5.50	8.00
24	5.75	8.00
25	6.00	8.25
26	6.25	8.50
27	6.50	8.75
28	6.75	8.75
29	6.75	8.75
30	6.75	9.00
31	7.25	9.25
32	7.50	9.50
33	7.50	9.75
34	7.75	9.75
35	8.00	10.00
36	8.25	10.25
37	8.75	10.25
38	8.75	10.50

<u>Age in Years</u>	<u>Correction in dB</u>	
	<u>Males</u>	<u>Females</u>
39	9.00	11.00
40	9.00	11.00
41	9.25	11.25
42	10.00	11.50
43	10.25	11.75
44	10.25	12.00
45	10.50	12.25
46	10.75	12.50
47	11.00	12.50
48	11.50	13.00
49	12.00	13.25
50	12.25	13.50
51	12.25	13.75
52	12.75	13.75
53	13.25	14.25
54	13.50	14.50
55	14.00	15.00
56	14.25	15.00
57	14.50	15.25
58	15.25	15.75
59	15.50	16.00
60 or older	16.00	16.25

8.10(4) Apportionment. The apportionment of age-related hearing loss shall be made by reducing the total binaural percentage hearing loss as calculated pursuant to Iowa Code section 85B.9(3) by the same percentage as the decibels of age-related change in hearing level occurring during the period of employment bears to the total decibel hearing level in each ear.

Age-related hearing loss is apportioned using the results of the audiogram determined to be the proper audiogram for measurement of the employee's hearing loss on the date of injury by using the following steps:

1. Separately for each ear, compute the average of the employee's decibel hearing levels at 500, 1000, 2000, and 3000 hertz for that ear.
2. Separately for each ear, compute the percentage loss for each ear.
3. Compute the employee's age-related change in hearing level in decibels during the period of employment using the table in subrule 8.10(3).
4. Separately for each ear, divide the result of step 3 by the result of step 1 to compute the age-correction factor for that ear.
5. Separately for each ear, multiply the total percentage hearing loss in that ear calculated pursuant to Iowa Code section 85B.9 by the age-correction factor for that ear.
6. Separately for each ear, subtract the result obtained in step 5 from the total percentage hearing loss in that ear to obtain the age-corrected hearing loss for that ear.
7. Multiply the age-corrected hearing loss in the better ear as calculated in step 6 by 5 and add the percentage hearing loss in the worse ear.
8. Divide the result obtained in step 7 by 6 to obtain the age-corrected binaural percentage hearing loss.

8.10(5) Worksheet. The following worksheet is used to calculate the percentage of age-corrected binaural hearing loss.

APPORTIONMENT OF PERCENT HEARING LOSS FOR AGE

<u>Left Ear</u> <u>Hearing Level</u>	<u>Frequency</u> <u>in Hertz</u>	<u>Right Ear</u> <u>Hearing Level</u>
1. _____	500	_____
2. _____	1000	_____
3. _____	2000	_____
4. _____	3000	_____
5. _____	total of lines 1 through 4	_____
divide by 4	(divide the "total" by 4)	divide by 4
6. _____	equals average equals	_____
minus 25	subtract "low fence"	minus 25
7. _____	equals "Excess"	_____
multiply by 1.5	multiply % factor	multiply by 1.5
8. _____	equals % loss each ear	_____
(% loss left ear)		(% loss right ear)
9. Age on date of injury	_____	
10. Age at beginning of employment	_____	
11. _____	_____ correction for age on date of injury in dB from table minus	
12. _____	_____ correction for age at beginning of employment in dB from table equals	
13. _____	_____ age-related change in hearing level during employment in dB	
<u>LEFT EAR</u>		<u>RIGHT EAR</u>
Divide age-related change in hearing level from line 13 by average hearing level from line 6		
To obtain		
14. _____	age correction factor	_____
multiply % loss from line 8 by age-correction factor from line 14		
To obtain		
15. _____	deduction for age-correction	_____
subtract line 15 from line 8		
To obtain		
16. _____	age-corrected percent hearing loss	_____
<u>BINAURAL PERCENTAGE LOSS</u>		
17. _____	% loss better ear (smaller amount) from line 16, multiplied by 5 plus	

18. _____ % loss worse ear (larger amount)
from line 16
19. _____ equals
divided
by 6
equals
20. _____ % age-corrected binaural hearing loss

This rule is intended to implement Iowa Code sections 85B.9A and 86.8.

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⁰ Two or more ARCs

¹ Effective date of 343—8.9(85,86), second unnumbered paragraph, delayed 70 days by the Administrative Rules Review Committee at its meeting held February 13, 1995; delay lifted by this Committee May 9, 1995.

CHAPTER 9
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

[Prior to 1/29/97 see Industrial Services Division[343]]
[Prior to 7/29/98 see Industrial Services Division[873]Ch 9]

The workers' compensation division of the workforce development department hereby adopts, with the following exceptions and amendments, rules of the Governor's Task Force on Uniform Rules of Agency procedure relating to public records and fair information practices which are printed in the first volume of the Iowa Administrative Code.

876—9.1(17A,22,85-87) Definitions. As used in this chapter:

"Agency." In lieu of the words "(official or body issuing these rules)", insert "the division of workers' compensation of the department of workforce development".

"Open record" means a record other than a confidential record, including but not limited to the record of declaratory rulings, declaratory orders, contested case proceedings, decisions, orders, rulings, settlements, and opinions of the agency.

"Person" means an individual, corporation, government or governmental subdivision or agency, business, trust, estate, partnership or association, or any other legal entity.

"Personally identifiable information." In lieu of the word "individual", insert the word "person".

"Record system" means any group of records under the control of the agency from which a record may be retrieved by a personal identifier such as the name of a person, number, symbol, or other unique retriever assigned to a person and all records that are not retrievable by a personal identifier.

"Subject" means that person identified in a record.

876—9.3(17A,22,85-87) Requests for access to records.

9.3(1) Location of record. In lieu of the words "(insert agency head)", insert "commissioner". Also, in lieu of the words "(insert agency name and address)", insert "Division of Workers' Compensation, 1000 East Grand Avenue, Des Moines, Iowa 50319".

9.3(2) Office hours. In lieu of the words "(insert customary office hours and, if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)", insert "which are 8 a.m. to 4:30 p.m. daily, excluding Saturdays, Sundays, and legal holidays".

9.3(7) Fees.

c. Search and supervisory fee. An hourly fee may be charged for actual agency expenses in searching for and supervising the examination and copying of the requested records if the time required for each of these services exceeds one-quarter hour. The fee shall be based upon the pay scale of the employee involved and other actual costs incurred. The custodian shall prominently post in the agency offices the hourly fees to be charged.

876—9.6(17A,22,85-87) Procedure by which additions, dissents, or objections may be entered into certain records. Insert immediately following ". . . official record of any agency proceeding." the following sentence: "Any additions, dissents, or objections entered into the record shall not be considered evidence in a contested case proceeding." In lieu of the words "(designate office)", insert "the Division of Workers' Compensation, 1000 East Grand Avenue, Des Moines, Iowa 50319".

876—9.8(17A,22,85-87) Notice to suppliers of information.

Insert a new paragraph as follows:

"Information provided under this rule may constitute an open record. The information supplied will be used to administer Iowa Code chapters 85 to 87 and this agency's rules. The information may be provided to parties to contested case proceedings and their representatives, employers, employees, insurance carriers, federal, state, and local agencies, and other persons having a legitimate interest in the information. All of the information requested is required to be supplied unless the request specifies otherwise. Failure to provide the information requested may result in the sanctions provided in Iowa Code chapters 85 to 87 and this agency's rules. See 876—Chapter 3 for forms used by this agency."

876—9.9(17A,22,85-87) Disclosure without the consent of the subject.

9.9(1) Open records are routinely disclosed without the consent of the subject.

9.9(2) If the agency is prohibited from disclosing part of a document from inspection, that part will not be disclosed and the remainder will be made available for inspection.

9.9(3) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

a. For a routine use as defined in rule 9.10(17A,22,85-87) or in any notice for a particular record system.

b. To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record; provided that the record is transferred in a form that does not identify the subject.

c. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of the government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.

d. To a person pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last-known address of the subject.

e. To the legislative services agency under Iowa Code section 2A.3.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

876—9.10(17A,22,85-87) Routine use.

9.10(1) Defined. "Routine use" means the disclosure of a record without the consent of the subject or subjects, for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

9.10(2) To the extent allowed by law, the following uses are considered routine uses of all agency records:

a. Disclosure to the officers, employees, and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may, upon request of any officer or employee, or on the custodian's own initiative, determine what constitutes legitimate need to use confidential records.

b. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

c. Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the agency.

d. Transfers of information within the agency, to other state agencies, or to local and federal units of government as appropriate to administer the program for which the information is collected.

e. Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

f. Disclosure to the public upon request. The custodian of the record may upon request, or on the custodian's own initiative, determine what constitutes legitimate need to use a record.

g. Any disclosure specifically authorized by the statute under which the record was collected or maintained.

876—9.11(17A,22,85-87) Release to subject.

9.11(1) The subject of a confidential record may file a written request to review confidential records about that subject as provided in rule 9.6(17A,22,85-87). However, the agency need not release the following records to the subject:

a. The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.

b. Records need not be disclosed to the subject when they are the work product of the workers' compensation commissioner, deputy commissioner, an agency attorney, or employee of the agency, or what would otherwise be privileged.

c. Peace officers' investigative reports may be withheld from the subject, except as required by Iowa Code section 22.7(5).

d. As otherwise authorized by law.

9.11(2) Where a record has multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

876—9.12(17A,22,85-87) Availability of records.

9.12(1) General. Agency records are open for public inspection and copying unless otherwise provided by rule or law.

9.12(2) The record of declaratory rulings, declaratory orders, contested case proceedings, decisions, orders, rulings, settlements, and opinions are open for public inspection and copying.

9.12(3) Records obtained from the division of vocational rehabilitation are open records.

9.12(4) Confidential records. The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. Sealed bids received prior to the time set for public opening of bids pursuant to Iowa Code section 72.3.

b. Tax records made available to the agency pursuant to Iowa Code sections 422.20, 422.72.

c. Records which are exempt from disclosure under Iowa Code section 22.7.

d. Minutes and tape recordings of closed meetings of a government body pursuant to Iowa Code section 21.5(4).

e. Those portions of agency staff manuals, instructions, or other statements issued which set forth criteria or guidelines to be used by agency staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution or settlement of cases, when disclosure of these statements would:

(1) Enable law violators to avoid detection;

(2) Facilitate disregard of requirements imposed by law; or

(3) Give a clearly improper advantage to persons who are in an adverse position to the agency.

f. Records which constitute the work product of the workers' compensation commissioner, deputy commissioner, an agency attorney, or employee of the agency, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10, and 622.11, Iowa R. Civ. P. 122(c), Fed. R. Civ. P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

g. Personnel records maintained by the agency of past and present employees which may contain confidential information under Iowa Code section 22.7(11).

h. Any other records made confidential by law.

9.12(5) Authority to release confidential records. The agency may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 9.4(17A,22,85-87). If the agency initially determines that it will release such records, the agency may, where appropriate, notify interested parties and withhold the records from inspection as provided in subrule 9.4(3).

876—9.13(17A,22,85-87) Personally identifiable information.

9.13(1) This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule 9.1(17A,22,85-87). For each record system, this rule describes the legal authority for the collection of that information, the means of storage of that information and indicates whether a data processing system matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system. Unless otherwise stated, the authority for this agency to maintain the record is provided by Iowa Code chapters 17A, 22, and 85 to 87. The record systems maintained by the agency are:

a. Records submitted to and gathered by the division of workers' compensation pursuant to Iowa Code chapters 17A, 22, and 85 to 87 and this agency's rules regarding claims for workers' compensation benefits. These records are stored in an automated data processing system, hard copy, microfilm, or microfiche. These records may contain medical records, briefs, depositions, transcripts of evidence, pictures, diagrams, exhibits, charts, employer records, insurance carrier records, vocational rehabilitation records, attorney records, court records, correspondence, claim form data, wage records, docket sheets, memoranda, attorney or staff notes, research material, witness information, documents, case management records, investigation materials, and any other records obtained pursuant to Iowa Code chapters 17A, 22, and 85 to 87 and this agency's rules. These records may be stored in an automated data processing system, hard copy, microfilm, or microfiche. These records may contain, in whole or in part, records determined to be confidential as defined in subrule 9.12(4).

b. Records which constitute the work product of an employee of the agency pursuant to Iowa Code chapters 17A, 22, and 85 to 87 and this agency's rules. These records may be stored in an automated data processing system, hard copy, microfilm, or microfiche. Some of these records may contain, in whole or in part, records determined to be confidential as defined in subrule 9.12(4).

c. Personnel files. The agency maintains files containing information about employees, families and dependents, and applicants for positions with the agency. These files include payroll records, biographical information, medical information relating to disability, performance reviews and evaluations, disciplinary information, information required for tax withholding, information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship. Some of this information is confidential under Iowa Code section 22.7(11).

d. Other groups of records. This subrule describes groups of records maintained by the agency other than record systems as defined in rule 9.1(17A,22,85-87). These records are routinely available to the public. However, the agency's files of these records may contain confidential information as discussed in rule 9.12(17A,22,85-87). The records listed may contain information about persons.

(1) Rule-making records. Public documents generated during the promulgation of agency rules, including notices and public comments, are available for public inspection. This information is collected pursuant to Iowa Code section 17A.4. This information may be stored in an automated data processing system and may have the capability of retrieval by a personal identifier.

(2) Agency records. Agendas, minutes, and materials presented to the division of workers' compensation are available from the custodian, except those records concerning closed sessions which are exempt from disclosure under Iowa Code section 21.5(4) or which are otherwise confidential by law. Agency records may contain information about persons who participate in meetings. This information is collected pursuant to Iowa Code sections 21.3 and 85A.2(4). These records may be stored in an automated data processing system and may have the capability of retrieval by a personal identifier.

(3) Publications. News releases, annual reports, project reports, agency newsletters, etc., are available at the administrative office of the agency. Brochures describing various agency programs are available at the administrative office of the agency. Agency news releases, project reports, and newsletters may contain information about persons, including agency staff or members of agency committees. Most publications of general interest are available in the state law library. These records may be stored in an automated data processing system and may have the capability of retrieval by a personal identifier.

(4) Statistical reports. Reports of agency data are available from the agency. Statistical reports may contain personally identifiable information. These records may be stored in an automated data processing system and may have the capability of retrieval by a personal identifier.

(5) Decisions and opinions. All records of contested case proceedings, decisions, orders, rulings, settlements, and opinions are open to the public. These records contain information about a person collected under the authority of Iowa Code chapters 17A, 22, and 85 to 87 and this agency's rules. These records may be stored in an automated data processing system and may have the capability of retrieval by a personal identifier.

(6) Declaratory rulings and declaratory orders. Records may contain information about persons making requests for declaratory rulings, declaratory orders or comments from other persons concerning the rulings or orders. This information is collected pursuant to Iowa Code section 17A.9. These records may be stored in an automated data processing system and may have the capability of retrieval by a personal identifier.

(7) Published materials. The agency uses many legal and technical publications in its work. The public may inspect these publications upon request. Some of these materials may be protected by copyright law.

(8) Policy manuals. The agency employees' manuals are available in the administrative office of the agency. Subscriptions to all or part of the employees' manuals are available at the cost of production and handling. Requests for subscription information should be addressed to the Division of Workers' Compensation, 1000 East Grand Avenue, Des Moines, Iowa 50319. Policy manuals may contain confidential information under Iowa Code section 17A.2(7) "f" or other applicable provision of law.

(9) All other records that are not exempted from disclosure by law.

e. Other records used by the agency which may not otherwise be accounted for by these rules include correspondence files, surveys, information and data files, requests for review of open records, budget documents, agency property, yearly reports, office policy for employees, time sheets, and records used for processing purposes internally (such as data processing and word processing requests, supply shipments, vouchers, requisitions, charge accounts, order, etc.). Some of these records may contain information about persons.

9.13(2) Data processing systems used by the agency may permit the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

876—9.14(17A,22,85-87) Applicability. This chapter does not:

1. Require the agency to index or retrieve records which contain information about persons by that person's name or other personal identifier.
2. Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.
3. Govern the maintenance or disclosure of, notification of or access to, records in the possession of the agency which are governed by the rules of another agency.
4. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.
5. Make available records compiled by the agency in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject, person or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable rules of the agency.

These rules are intended to implement Iowa Code chapters 17A, 22, 85, 85A, 85B, 86, and 87.

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CHAPTER 10
INFORMAL DISPUTE RESOLUTION PROCEDURES

[Prior to 1/29/97 see Industrial Services Division[343]]
[Prior to 7/29/98 see Industrial Services Division[873]Ch 10]

876—10.1(17A,85,86) Informal dispute resolution procedures. The workers' compensation commissioner or the workers' compensation commissioner's designee (hereinafter collectively referred to as the workers' compensation commissioner) shall be available to resolve disputes relating to the Iowa workers' compensation law (Iowa Code chapters 85, 85A, 85B, 86, and 87) prior to the initiation of a contested case proceeding. Persons are encouraged to utilize the informal procedure provided herein so that a settlement may be reached between the parties without the necessity of a contested case proceeding. Informal procedures may be initiated as requested by any party either before or after a first report of injury has been filed. After a first report of injury is filed with the workers' compensation commissioner, a letter is provided to the injured employee. That letter includes an explanation of the function of the office of the workers' compensation commissioner, an explanation of informal dispute resolution procedures and information contained on the first report of injury. Additionally, even where a first report of injury is not on file, any party who elects to engage in informal dispute resolution may contact the workers' compensation commissioner by telephone or mail for information regarding the claim. Documentation regarding the claim may be submitted to or requested by the workers' compensation commissioner. The workers' compensation commissioner may respond to the parties either by telephone or, when appropriate, in writing regarding the information sought by the parties.

The informal procedures described in these rules are designed to be flexible enough to resolve any issue that any party believes is amenable to informal dispute resolution or that with the consent of the workers' compensation commissioner should be made the subject of informal dispute resolution procedures.

10.1(1) Nondisputed matters. If the parties agree that the claimant is correctly compensated and all benefits due and owing have been or will be paid, the parties need not file any other pleading or document with the workers' compensation commissioner except that claims activity reports must be filed in accordance with rule 876—3.1(17A).

10.1(2) Disputed matters. In the event the parties dispute whether the claimant is entitled to compensation or whether the claimant has received all benefits to which the claimant was entitled, then the parties to the dispute may elect to engage in the informal dispute resolution procedures described herein.

10.1(3) Notification of election, statute of limitations. Within the time a claimant may file an original proceeding with the workers' compensation commissioner, either party to a disputed claim may notify the workers' compensation commissioner of the desire to engage in an informal proceeding to resolve the dispute. If the dispute cannot be resolved informally, claimant will have the right to file an original notice and petition to commence a contested case proceeding as provided by 876—Chapter 4. An election to engage in informal dispute resolution procedures will not toll the statute of limitations for filing an original notice and petition.

10.1(4) Good faith effort to resolve disputes. Before the parties will be allowed to elect any alternative dispute resolution procedures including those identified in rules 876—4.40(73GA,ch1261) and 876—4.46(17A,85,86), they must make a good faith effort to resolve their dispute. The parties may file a professional statement signed by all parties and their representatives or an affidavit by an unrepresented party filed with the workers' compensation commissioner attesting to the good faith attempts to settle the dispute prior to utilizing the procedures described in these rules. The professional statement will be deemed sufficient to meet the requirements of this rule. Notwithstanding the foregoing, a claimant who files a contested case proceeding in order to toll the statute of limitations included in Iowa Code chapters 85, 85A, 85B, and 86 may elect alternative dispute resolution procedures including the informal procedures described in this chapter even though claimant or claimant's representative did not engage in settlement negotiations prior to the time the contested case proceeding was filed.

10.1(5) Informal dispute resolution procedures include the dispute resolution procedures described in rule 876—4.40(73GA,ch1261). The workers' compensation commissioner has the power to impose sanctions in informal dispute resolution procedures.

10.1(6) Rescinded IAB 6/22/94, effective 7/1/94.

10.1(7) An employee of the division of workers' compensation who has been involved in informal dispute resolution pursuant to subrules 10.1(5) and 10.1(6) shall not be a witness in any contested case proceeding under 876—Chapter 4.

10.1(8) Nothing in this rule is intended to prevent settlement prior to using the dispute resolution procedures.

This rule is intended to implement Iowa Code section 86.8, and 1990 Iowa Acts, chapter 1261, section 3.

876—10.2(17A,85,86) Advisory opinion. Rescinded IAB 1/29/97, effective 3/5/97.

876—10.3(17A,85,86) Health service dispute resolution.

10.3(1) The purpose of this rule and rule 876—4.46(17A,85,86) is to establish the procedures for resolving a dispute under Iowa Code section 85.27 between a provider and a responsible party over the treatment rendered by a provider to an injured worker. Utilization of these procedures by a responsible party is not an admission of liability for any other proceeding. This rule is effective October 7, 1992.

10.3(2) Definitions. The following definitions apply to this rule and rule 876—4.46(17A,85,86).

"Dispute" means a disagreement between a provider and responsible party over the necessity of service or reasonableness of charges or both; a disagreement between a provider and a responsible party over the necessity for or the reasonableness of charges for crutches, artificial members and appliances; and includes only those situations where liability or extent of liability is not an issue.

"Workers' compensation commissioner" means the workers' compensation commissioner or the workers' compensation commissioner's designee.

"Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

"Provider" means any person furnishing surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, hospital services and supplies, crutches, artificial members and appliances.

"Responsible party" means the person who is liable for payment of medical services provided pursuant to the Iowa workers' compensation laws and includes an employer, an employer who has been relieved from insurance pursuant to Iowa Code section 87.11, and an insurance carrier which provides an employer workers' compensation insurance.

10.3(3) Informal resolution of disputes.

a. The charges not in controversy shall be paid to the provider prior to utilization of the procedures outlined in this rule.

b. A responsible party who refuses to pay the amount in controversy of a dispute shall give the provider written notice of the dispute within 60 days of receiving a bill with proper supporting documentation. The written notice shall specify:

- (1) The name of the patient-employee;
- (2) The name of the employer on the date of injury;
- (3) The date of the treatment in dispute;
- (4) The amount charged for the treatment, the amount of the charge the responsible party agrees to pay, and the amount in dispute;
- (5) The reason for belief that the bill is excessive or unnecessary and documentation relied upon to formulate the belief;
- (6) The address to use in directing correspondence to the responsible party regarding the dispute;
- (7) The provider's right to utilize the procedures specified in this rule and rule 876—4.46(17A,85,86);
- (8) The provisions of 10.3(3) "*c*," 10.3(3) "*d*," and 876—subrule 4.46(2);

(9) The provider or the responsible party is prohibited by Iowa Code section 85.27 from seeking payment from the injured worker when there is a dispute regarding reasonableness of a fee.

c. If the provider agrees to accept the amount of the charge the responsible party has paid, the provider shall notify the responsible party.

d. If the provider does not agree to accept the amount of the charge the responsible party agrees to pay, the provider shall notify the responsible party in writing. The provider and the responsible party shall submit the dispute to a mutually agreed upon person for review. The person reviewing the dispute under this rule will not be the workers' compensation commissioner. If the provider and the responsible party cannot agree upon the person to make the review, they shall, within 90 days of time the provider notified the responsible party of the disagreement, each recommend to the workers' compensation commissioner one person to do the review. The workers' compensation commissioner may choose the person or persons recommended to make the review. A person other than the persons recommended may be chosen at the discretion of the workers' compensation commissioner. The selected person or persons shall review information submitted by the provider and the responsible party and make a determination.

e. The person making the review shall make a determination of the amount that is reasonable and necessary. The determination shall be made as soon as practicable and shall be dated. It shall be in writing and specify the facts relied upon. The person making the review may choose any amount to set the reasonableness of a charge. If the person chosen to make the review does not make a determination within a reasonable time, that person may be discharged without being paid.

f. Costs. The costs of the person making the review shall be paid as mutually agreed by the provider and the responsible party. In the event of no agreement the costs shall be paid by whomever chose an amount further from the determination of the person reviewing the matter. If the amount is equally close to both parties, the costs shall be shared equally. However, if the workers' compensation commissioner selects the person or persons to do the review, the costs shall be shared equally.

g. Nothing in this rule is intended to prevent providers and responsible parties from developing other procedures to informally resolve their disputes.

10.3(4) See rule 876—4.46(17A,85,86) for contested case procedures.

This rule is intended to implement Iowa Code sections 17A.10, 17A.12, 85.27 and 86.8.

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CHAPTER 11
ELECTRONIC DATA INTERCHANGE (EDI)

876—11.1(85,86) Purpose. The purpose of this chapter is to establish the procedure for fulfilling reporting requirements of the division of workers' compensation.

876—11.2(85,86) Definitions. The following definitions apply to 876—Chapter 3 and this chapter.

"EDI" means electronic transmission or reception, or both, of data through a telecommunications process utilizing a value-added network or the Internet as set forth in the EDI partnering agreement.

"EDI partnering agreement" means the written agreement between an entity and the division of workers' compensation specifying the terms and manner of reporting by EDI.

"Filed" means receipt and acceptance of a report by the division of workers' compensation. A report is considered to be "filed" on the date it is accepted (TA) by the division of workers' compensation. A report that is submitted but rejected (TR) is not considered "filed." A report that is accepted with errors (TE) must be corrected within five days after the acknowledgement is sent.

"Implementation plan" means the written document prepared by a reporter specifying a timetable for reporting by EDI.

"Report" means a first report of injury (FROI) or a subsequent report of injury (SROI), or both.

"Reporter" means the person who is responsible for reporting to the division of workers' compensation pursuant to the Iowa workers' compensation laws and includes an employer, an employer who has been relieved from insurance pursuant to Iowa Code section 87.11, and an insurance carrier which provides an employer workers' compensation insurance.

"Reporting" means submission of claims data and data fields of information of a report.

876—11.3(85,86) Form of reporting. The format of EDI reporting must be the current version of the International Association of Industrial Accident Boards and Commissions Release 2 FROI/SROI.

876—11.4(85,86) Manner of reporting. The manner of EDI reporting is electronic.

876—11.5(85,86) Voluntary reporting deadline. All reporters must either sign an EDI partnering agreement or submit an implementation plan by December 1, 1999. The division of workers' compensation must approve implementation plans.

The implementation plans must be approved before January 1, 2000.

876—11.6(85,86) Mandatory reporting deadline. All reporters must sign a partnering agreement and begin reporting by EDI no later than July 1, 2001. Reporting by any means other than EDI after July 1, 2001, will not be acceptable. Reporters are responsible for reporting by EDI. A reporter may contract with another entity for reporting but the reporter is ultimately responsible for reporting. Any entity reporting on behalf of a reporter must also sign an EDI partnering agreement.

876—11.7(85,86) Required reports. A reporter shall file reports as required by Iowa Code sections 86.11, 86.12, and 86.13, 876—subrules 3.1(1) and 3.1(2), this chapter and the partnering agreement. Reports required to be filed include, but are not limited to, the following:

First report of injury (FROI). See 876—subrule 3.1(1);

Subsequent report of injury (SROI). See 876—subrule 3.1(2);

Annual report on every claim that is open on June 30 each year. The annual report shall show all benefits paid since the claim was initiated through June 30 of the current year. A final report shall be filed in lieu of the annual report if the claim is closed and the final report is filed before the date when the annual report is scheduled to be filed; and

Final report filed at the time the claim is closed. The final report indicates that no further benefit payments are contemplated.

These rules are intended to implement Iowa Code sections 85.26, 86.8, 86.11, 86.12 and 86.13.

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CHAPTER 12
FORMAL REVIEW AND WAIVER OF RULES

876—12.1(17A) Requests to review. Any interested person, association, agency, or political subdivision may submit a written request to the workers' compensation commissioner requesting the agency to conduct a formal review of a specified rule. Upon approval of that request by the workers' compensation commissioner, the agency shall conduct a formal review of a specified rule to determine whether a new rule should be adopted instead or the rule should be amended or repealed. The agency may refuse to conduct a review if it has conducted such a review of the specified rule within five years prior to the filing of the written request.

876—12.2(17A) Review of rules. In conducting the formal review, the agency shall prepare within a reasonable time a written report summarizing its findings, its supporting reasons, and any proposed course of action. The report must include a concise statement of the agency's findings regarding the rule's effectiveness in achieving its objectives, including a summary of any available supporting data. The report shall also concisely describe significant written criticisms of the rule received during the previous five years, including a summary of any petitions for waiver of the rule received by the agency or granted by the agency. The report shall describe alternative solutions to resolve the criticisms of the rule, the reasons any were rejected, and any changes made in the rule in response to the criticisms as well as the reasons for the changes. A copy of the agency's report shall be sent to the administrative rules review committee and the administrative rules coordinator. The report must also be available for public inspection.

876—12.3(17A) Form of criticism. The Workers' Compensation Commissioner, 1000 E. Grand, Des Moines, Iowa 50319-0209, is designated as the office where interested persons may submit written criticism regarding an administrative rule of the Workers' Compensation Division[876]. A criticism of a specific rule must be more than a mere lack of understanding of a rule or a dislike regarding the rule. To constitute a criticism of a rule, the criticism must be in writing, indicate it is a criticism of a specific rule, be signed by the complainant, not be part of any other filing with the workers' compensation commissioner or department of workforce development, and have a valid legal basis for support. All criticisms received on any rule will be kept in a separate record for a period of five years by the workers' compensation commissioner and be a public record open for public inspection. All criticisms must substantially conform to the following form:

BEFORE THE WORKERS' COMPENSATION COMMISSIONER	
CRITICISM BY (NAME OF PERSON SUBMITTING CRITICISM).	CRITICISM OF (SPECIFY RULE THAT IS CRITICIZED).

Reasons for criticism:
Name, address, telephone number and signature of person submitting criticism.

876—12.4(17A) Requests for waiver of rules. Requests for waiver of a rule in the Workers' Compensation Division[876] of the Iowa Administrative Code shall be made to the Workers' Compensation Commissioner, 1000 E. Grand, Des Moines, Iowa 50319-0209. All requests for waiver of a rule must be in writing and are a public record open for inspection. The person requesting the waiver must submit all facts relied upon in requesting the waiver. The person requesting waiver of the rule must provide clear and convincing evidence that compliance with the rule will create an undue hardship on the person requesting the waiver. A concise memorandum brief and argument, if any is filed, shall be attached to the request for waiver at the time the request is filed. The workers' compensation commissioner shall grant or deny the waiver within 60 days of the date the request is filed with the agency. The workers' compensation commissioner shall deny the request if the request is for waiver of a statute. If the request for waiver relates to a time requirement of a rule, the request must

be received before the time specified in the rule has expired. The workers' compensation commissioner may deny the request if the request does not comply with the provisions of this rule. All requests for waiver must substantially conform to the following form:

BEFORE THE WORKERS' COMPENSATION COMMISSIONER	
(NAME OF PERSON REQUESTING WAIVER).	} REQUEST FOR WAIVER OF (SPECIFY RULE FOR WHICH WAIVER IS REQUESTED).

Reasons for requesting waiver:

Name, address, telephone number and signature of person submitting waiver request.

These rules are intended to implement Iowa Code sections 17A.4(1) "b" and 17A.7.

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