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VOLUME 41, ISSUE 9

ISSUE DATE: MAY 4, 2009

RULE PROPOSALS

**LABOR AND WORKFORCE DEVELOPMENT
DIVISION OF WORKERS' COMPENSATION**

41 N.J.R. 1935(a)

Proposed Amendments: *N.J.A.C. 12:235-3.2, 7.1 and 7.4*

Proposed Repeal: *N.J.A.C. 12:235-3.14*

Proposed New Rules: *N.J.A.C. 12:235-3.3, 3.4 and 3.16*

[Click here to view Interested Persons Statement](#)

Workers' Compensation Division Rules

Motions for Emergent Medical Care; Insurance Carrier or Self-Insured Employer Contact Person Procedures; Enforcement; Uninsured Employer's Fund (UEF)

Authorized By: David J. Socolow, Commissioner, Department of Labor and Workforce Development.

Authority: *N.J.S.A. 34:1-20, 34:1A-3(e), 34:1A-12(b), 34:1A-12(c), 34:15-15.4, 34:15-28.4 and 34:15-64.*

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2009-136.

A **public hearing** on the proposal will be held on the following date at the following location:

Tuesday, June 2, 2009
10:00 A.M. to 12:00 Noon
NJ Department of Labor and Workforce Development
John Fitch Plaza
2nd Floor Conference Room
Trenton, New Jersey

Please call the Office of Legal and Regulatory Services at (609) 292-2789 if you wish to be included on the list of speakers.

Submit written comments by July 3, 2009 to:

David Fish, Executive Director
Legal and Regulatory Services

NJ Department of Labor and Workforce Development
P.O. Box 110--13th Floor
Trenton, New Jersey 08625-0110
Fax to: (609) 292-8246

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The agency proposal follows:

Summary

The Department is proposing an amendment to *N.J.A.C. 12:235-3.2* and new rules at *N.J.A.C. 12:235-3.3* and *3.4* in order to implement P.L. 2008, c. 96, codified at *N.J.S.A. 34:15-15.3* (Motion by worker for emergent medical treatment) and *34:15-15.4* (Designation of contact person by carrier, self-insured employer).

New *N.J.A.C. 12:235-3.3* would contain the standard to be met and procedures to be followed by a petitioner who wishes to pursue a motion for emergent medical care. Proposed new *N.J.A.C. 12:235-3.3* also sets forth procedures to be followed by a respondent in defending, and by the Division of Workers' Compensation in hearing, such a motion. Specifically, the proposed new rule indicates that with or after the filing of a claim petition, a petitioner may file a motion for emergent medical care directly with the district office of the Division of Workers' Compensation to which the petition is or will be assigned and that the notice of motion for emergent medical care so filed must contain or be accompanied by a statement explaining the request for medical treatment; medical documentation, including a statement by a physician indicating that the petitioner is in need of emergent medical care, that a delay in treatment will result in irreparable harm or damage to the petitioner and explaining the specific nature of the irreparable harm or damage, which would result from a delay in obtaining the medical treatment sought; all [page=1936] medical records relating to the requested medical care, which are in the possession of the petitioner or the petitioner's attorney; copies of the claim petition and answer (with an alternative requirement, in the event that an answer has not been filed, that petitioner indicate the contact information, if known, for the employer and insurance carrier), and; proof of service in accordance with proposed new *N.J.A.C. 12:235-3.3(c)*, (d) and (e).

In addition, proposed new *N.J.A.C. 12:235-3.3* would contain requirements for service of the notice of motion for emergent medical care, procedures for submission of an answer to the notice of motion for emergent medical care, requirements relative to the medical examination of petitioner and procedures for conducting of an initial conference and a hearing on the merits of petitioner's motion for emergent medical care.

New *N.J.A.C. 12:235-3.4* would address the requirement within *N.J.S.A. 34:15-15.4* that each carrier and self-insured employer must designate a contact person who is responsible for responding to issues concerning medical and temporary disability benefits where no claim petition has been filed or where a claim petition has not been answered. The new rule would require the designation of such contact persons, would specify the information regarding each contact person, which must be submitted to the Division, would require insurance carriers and self-insured employers to notify the Division of changes in contact person or contact person information, would indicate that a contact person roster using the information provided to the Division by insurance carriers and self-insured employers will be made available to the public on the Division's website and would set forth the statutory fine to which those who fail to comply with the requirements of *N.J.S.A. 34:15-15.4* or the new rule would be subject. The proposed new rule also includes an appeal procedure for those who wish to contest the issuance of a fine by the Division for failure to comply.

The Department is proposing the deletion of existing *N.J.A.C. 12:235-3.2(j)*, which currently requires the designation of a contact person by carriers and self-insured employers. Proposed new *N.J.A.C. 12:234-3.4*, discussed in detail above, comprehensively addresses the contact person requirement and obviates the need for existing *N.J.A.C. 12:235-3.2(j)*.

The Department is proposing the repeal of existing *N.J.A.C. 12:235-3.14* (Enforcement) and its replacement by new *N.J.A.C. 12:235-3.16* (Enforcement). The proposed new rule reflects recently enacted reforms to the New Jersey Workers' Compensation law relative to the powers of Judges of Compensation to enforce court orders, as well as to enforce statutory and regulatory requirements. The proposed new rule empowers a party to move before a Judge of Compensation against another party to enforce a court order or for the enforcement of the requirements of the Workers' Compensation law or the provisions of *N.J.A.C. 12:235*. The proposed new rule empowers a Judge of Compensation on his or her own motion to enforce a court order or to enforce the requirements of the Workers' Compensation law or the provi-

sions of *N.J.A.C. 12:235*. The proposed new rule sets forth procedures for such motions, sets forth the fines and penalties that a Judge of Compensation may order for noncompliance by a party with a court order or the requirements of the Workers' Compensation law or the provisions of *N.J.A.C. 12:235* and addresses the power of a Judge of Compensation, pursuant to *N.J.S.A. 34:15-28.2*, to conduct a hearing on the issue of contempt and, following such a hearing, to file a motion with the Superior Court of New Jersey for contempt action.

The Department is proposing amendments to *N.J.A.C. 12:235-7.1*, which would allow a petitioner to move before a Judge of Compensation to relax or dispense with requirements under *N.J.A.C. 12:235-7*, Uninsured Employer's Fund, and would allow the Judge of Compensation to grant such a motion in the event that he or she finds that the particular requirement or requirements at issue under the particular facts of the case are unduly burdensome and that granting the motion would not adversely affect the Uninsured Employer's Fund (UEF). Currently, *N.J.A.C. 12:235-7.1(d)* permits the UEF to relax or dispense with requirements under the subchapter where appropriate and with the consent of the Judge of Compensation hearing the case. The proposed amendment would, as indicated above, permit a petitioner to seek the same rule relaxation upon a hearing of the matter before a Judge of Compensation.

The Department is also proposing to amend *N.J.A.C. 12:235-7.1*, so as to provide a procedure, similar to that which already exists in non-UEF cases, for ensuring that workers obtain medical treatment while a case is pending. Specifically, new *N.J.A.C. 12:235-7.1(f)* would indicate that where a petitioner seeks current medical treatment and/or temporary disability benefits and the only issue is the cancellation or non-renewal of an insurance policy, the Judge of Compensation may order the insurance carrier to provide treatment and/or benefits without prejudice and subject to reimbursement by the employer and the UEF if it is subsequently determined that the policy was not in effect.

Finally, the Department is proposing an amendment to *N.J.A.C. 12:235-7.4*, which would establish a procedure for a petitioner to receive payment from the UEF for medical bills and charges, whereby the petitioner would submit the request for payment to the UEF, with specified supporting documentation and any disputes regarding payment by the UEF for medical bills and charges arising out of such a request would be determined by the Judge of Compensation after a hearing upon oral or written notice by the UEF or another party. Existing *N.J.A.C. 12:235-7.4(a)* simply states that the UEF "shall have the opportunity to review all medical bills and charges to determine if the costs were reasonable and necessary." Again, the proposed amendment would provide an actual procedure for the handling of such matters.

As the Department has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirements pursuant to *N.J.A.C. 1:30-3.3(a)5*.

Social Impact

The proposed amendment to *N.J.A.C. 12:235-3.2* and the proposed new rule at *N.J.A.C. 12:235-3.3* implement legislation that ensures an expeditious review by a Judge of Compensation of medical treatment issues where a physician has determined that failure to provide treatment would result in irreparable harm or damage to the worker after a request for treatment was denied or delayed by an employer or the employer's insurance carrier. It is advantageous to the worker, the employer and the affected insurance carrier to resolve such issues as soon as possible in order that expeditious treatment, if needed, is provided for a likely better result and quicker recovery period. This could reduce the cost of medical care and temporary disability payments and return the worker to employment sooner, if he or she is able to work after the treatment.

The proposed new rule at *N.J.A.C. 12:235-3.4* is consistent with recently enacted legislation (*N.J.S.A. 34:15-15.4*). Both the law and this proposed new rule will benefit injured workers and their employers by ensuring that there is an insurance carrier or employer individual available to handle inquiries concerning medical and temporary disability benefits. This will also avoid default situations. The contact person can facilitate the payment of appropriate benefits and avoid costly litigation and fines or penalties for not providing required benefits.

The proposed replacement of *N.J.A.C. 12:235-3.14* with new *N.J.A.C. 12:235-3.16* would have a positive social impact in that it would foster public confidence in the Workers' Compensation program. In cases where the payment of benefits has been unreasonable delayed, the worker could receive interest and additional payments or assessments to compensate for the delay. Furthermore, with the authority to impose interest, assessments, fines, penalties and conduct contempt hearings, Judges of Compensation would be able to maintain calendar control and ensure that the workers' compensation program is properly administered. Due process rights of all parties would also be protected with the notice and hearing requirement for sanction proceedings.

The proposed amendments to *N.J.A.C. 12:235-7.1* and *7.4* would have a positive social impact in that they would provide a clear process for resolving issues involving the UEF. Where the particular case does not require a full filing to process a UEF matter, the proposed amendment to *N.J.A.C. 12:235-7.1* would allow a judge to relax or dispense with specific requirements when requested by the petitioner. In such situations, the Judge of Compensation would also be required to ensure that the UEF is not prejudiced in carrying out its review obligations and that the record is sufficient to support UEF benefit payments. Ensuring that an injured worker receives medical treatment when the contested issue is insurance coverage would benefit all parties to such proceedings. Often timely medical treatment will reduce overall costs and lost time from work. The [page=1937] insurance carrier would not be prejudiced by the proposed amendment, since a later finding of no coverage would require a reimbursement by the employer and the UEF. The proposed amendment to *N.J.A.C. 12:235-7.4* would include a more complete explanation of what is required to support medical bill payments by the UEF and would provide a mechanism for quickly resolving any disputes in this area. Overall, the proposed amendments to Subchapter 7, pertaining to the UEF, are expected to expedite the UEF process and provide all parties with clear guidance in developing a case record and resolving disputes.

Economic Impact

With regard to the proposed amendment to *N.J.A.C. 12:235-3.2* and the proposed new rules at *N.J.A.C. 12:235-3.3* and *3.4*, resolving medical disputes over emergent care as quickly as possible provides an economic advantage to all parties. If the worker is in need of care, responsive treatment may lessen the seriousness and cost of treatment fostering quicker recovery and precluding irreparable damage to the worker. Where the employer or the insurance carrier is found responsible for medical care, it is to the employer or insurance carrier's benefit to control and authorize the care rather than have other insurance plans, Medicare or private plans provide treatment and then seek reimbursement. Where the Judge of Compensation determines that the employer or insurance carrier is not responsible for treatment or that the care is not emergent, the parties are then able to determine if some other program should provide the care and/or if some other course of medical care is beneficial.

With regard to the proposed repeal of *N.J.A.C. 12:235-3.14* and the proposed new rule at *N.J.A.C. 12:235-3.16*, the new rule would have a positive economic impact in that it would ensure that injured workers and other parties have an efficient method to enforce orders of the Workers' Compensation court, as well as the Workers' Compensation law and rules. The possibility of receiving the sanctions set forth in the proposed new rule (which sanctions cannot be utilized by insurance carriers to affect employer insurance rates) would serve as a disincentive to the untimely payment of benefits, as well as to failure to comply with orders of the Workers' Compensation court, the Workers' Compensation law and *N.J.A.C. 12:235* (the Workers' Compensation rules).

With regard to the proposed amendments to *N.J.A.C. 12:235-7*, efficiently and expeditiously resolving cases involving an uninsured employer and/or issues concerning insurance coverage is beneficial to all parties. It is cost effective to have a petitioner in need of treatment utilize a carrier's network when the only issue in dispute is whether an insurance policy was in effect at the time of the accident or exposure. Eliminating unduly burdensome information requirements will also save petitioners and their counsel time and expense.

Federal Standards Statement

The proposed amendments, new rules and repeal do not contain any standards or requirements, which exceed standards or requirements imposed by Federal law. The Workers' Compensation program is a State system with no Federal oversight. As a result, an explanation or analysis of the proposed rule pursuant to Executive Order No. 27 (1994) is not required.

Jobs Impact Statement

The proposed amendments, new rules and repeal would have no impact on jobs in New Jersey. The Department does not anticipate an increase or decrease in jobs as a result of the proposed amendments, new rules and repeal.

Agriculture Industry Impact

The proposed amendments, new rules and repeal would have no impact on the agriculture industry.

Regulatory Flexibility Analysis

The proposed amendments, new rules and repeal would impact petitioners (individuals), petitioners' and respondents' attorneys and their law firms, Workers' Compensation insurance carriers and self-insured employers. Of those, only solo practitioners and law firms representing petitioners and respondents could possibly be considered small businesses, as that term is defined in the Regulatory Flexibility Act, *N.J.S.A. 52:14B-16* et seq. The proposed amendments and new rules impose no reporting or recordkeeping requirements on those solo practitioners and law firms relative to their representation of petitioners and respondents in Workers' Compensation cases. The proposed new rule at *N.J.A.C. 12:235-3.3*, which pertains to motions for emergent medical care, imposes compliance requirements on solo practitioners and law firms, some of which may be small businesses, in that it contains procedures and time frames for the submission of notices of motion, answers and supporting papers. Similarly, the proposed new rule at *N.J.A.C. 12:235-3.16* contains compliance requirements, such as the payment of fines and penalties for failure to comply with court orders, Workers' Compensation law and rules, which would affect solo practitioners and law firms, some of which may be small businesses. The compliance requirements contained in the proposed amendments and new rules, however, are the result of statutory mandates, none of which distinguish between small and large employers. The Department has no discretion to deviate from statutory mandate.

Smart Growth Impact

The proposed amendments, new rules and repeal would not have an impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan.

Housing Affordability Impact

The proposed amendments, new rules and repeal would not evoke a change in the average costs associated with housing. The basis for this finding is that the proposed amendments, new rules and repeal pertain to the State's Workers' Compensation system and have nothing whatsoever to do with housing.

Smart Growth Development Impact

The proposed amendments, new rules and repeal would not evoke a change in the housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The basis for this finding is that the proposed amendments, new rules and repeal pertain to the State's Workers' Compensation system and have nothing whatsoever to do with housing production, either within Planning Areas 1 or 2, within designated centers or anywhere in the State of New Jersey.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 3. FORMAL CLAIMS

12:235-3.2 [Motions] **General motions** for temporary disability and/or medical benefits

(a)-(i) (No change.)

[(j) Every carrier and self-insured employer shall designate a contact person who is responsible for responding to issues concerning medical and temporary disability benefits where no claim petition has been filed or where a claim petition has not been answered. The full name, telephone number, address, e-mail address, and fax number of the contact person shall be submitted to the Division. Whenever any of this information about the contact person needs to be updated, such updated information shall be submitted to the Division. After an answer is filed with the Division, the attorney of record for the respondent shall act as the contact person in the case.]

12:235-3.3 Motions for emergent medical care pursuant to *N.J.S.A. 34:15-15.3*

(a) With or after the filing of a claim petition, a petitioner may file a motion for emergent medical care directly with the district office to which the petition is or will be assigned (See *N.J.A.C. 12:235-3.1* for claim petition filing and assignment).

(b) The notice of motion for emergent medical care shall be on a form prescribed by the Division and shall contain or be accompanied by the following:

1. A statement by the petitioner or the petitioner's attorney of the specific request(s) for medical treatment made by the petitioner or the petitioner's attorney to the employer and/or the employer's insurance carrier, including the name of the person(s) to whom the request(s) was/were made;

2. Medical documentation, including a statement by a physician indicating that the petitioner is in need of emergent medical care, [page=1938] that the delay in treatment will result in irreparable harm or damage to the petitioner and the specific nature of the irreparable harm or damage;

3. All medical records relating to the requested medical care, which are in the possession of the petitioner or the petitioner's attorney;

4. Copies of the claim petition and answer.

i. If no answer to the claim petition has been filed, the notice of motion shall include the following information if known by the petitioner: the telephone number and the fax number of the employer, the name of the employer's workers' compensation insurance carrier and the insurance carrier or self-insured employer contact person's telephone number and fax number, as required to be maintained under *N.J.A.C. 12:235-3.4*; and

5. Proof of service under (c), (d) and (e) below.

(c) Where an answer to the claim petition has been filed by the respondent, the notice of motion and supporting papers shall be served on respondent's attorney by fax and by a one-day delivery service.

(d) Where no answer to the claim petition has been filed by the respondent, the notice of motion and supporting papers shall be served on the employer and, if known by the petitioner, upon the employer's insurance carrier.

1. Service on the employer under this subsection shall be either by personal service or by fax and a one-day delivery service.

2. Service on the insurance carrier under this subsection shall be by fax and a one-day delivery service to the contact person listed pursuant to *N.J.A.C. 12:235-3.4*.

(e) Where the employer is uninsured or where the employer's insurer is not known by the petitioner, the notice of motion and supporting papers shall, in addition to the requirements under (c) or (d) above, be served on the Uninsured Employer's Fund by fax and by a one-day delivery service.

(f) The date of the personal service, the date of the fax service or the date of receipt of the one-day delivery service, whichever is latest, shall be considered the date of service under (c), (d) and (e) above.

(g) No later than five calendar days after receiving service of the petitioner's notice of motion for emergent medical care, the respondent shall file with the district office an answer to the motion.

(h) Within 15 calendar days after the petitioner has served the notice of motion for emergent medical care upon the appropriate party or parties under (c), (d) and (e) above, the employer or the employer's insurance carrier may have a medical examination of petitioner conducted.

(i) The petitioner is required to attend and cooperate with the medical examination process under (h) above.

(j) Motions for emergent medical care shall take precedence over all other court listings.

(k) The judge should use telephone conferences and afternoon hearings, as appropriate, to expedite the disposition of motions for emergent medical care and to avoid as much as possible the disruption of other court proceedings.

(l) Within five calendar days of the filing of an answer by respondent or, if no answer has been filed, within five calendar days from the date an answer should have been filed, an initial conference on the motion for emergent medical care shall take place.

(m) The district office shall provide notice of the initial conference to the following parties under the following circumstances:

1. Where an answer to the notice of motion for emergent medical care has been filed, the district office shall provide notice of the initial conference by telephone and fax to the petitioner's attorney or petitioner pro se and to the answering party using the telephone numbers and fax numbers indicated in the notice of motion for emergent medical care and the answer, respectively;

2. Where an answer to the notice of motion for emergent medical care has not been filed and where the employer is insured, the district office shall provide notice of the initial conference by telephone and fax to the employer and to the insurance carrier contact person listed in the notice of motion for emergent medical care; or

3. Where an answer to the notice of motion for emergent medical care has not been filed and where the employer is not insured or the insurer is not known, the district office shall provide notice of the initial conference by telephone and fax to the employer and to the Uninsured Employer's Fund.

(n) If the motion for emergent medical care has not been resolved at the initial conference and the employer or the employer's insurance carrier has not requested a medical examination of the petitioner under (h) above, the judge shall hold a hearing on the merits of the motion for emergent medical care as soon as is practicable, but no later than five calendar days from the date of the initial conference.

(o) If the motion for emergent medical care has not been resolved at the initial conference and the employer or employer's insurance carrier has requested a medical examination of the petitioner under (h) above, the judge shall hold a hearing on the merits of the motion for emergent medical care as soon as is practicable after the medical examination of the petitioner, but no later than five calendar days from the date of the medical examination of the petitioner.

(p) With regard to the hearing on the merits of the motion for emergent medical care, the judge may require a continuous trial or may use other procedures to ensure that the motion is expeditiously heard.

(q) The judge hearing the motion for emergent medical care shall render a decision and issue an order on the motion within one business day of the conclusion of the trial testimony.

(r) The judge may supplement the decision and order rendered under (o) above at a later date.

(s) If a motion for emergent medical care does not meet the requirements under this section, but does meet the requirements for a general motion for temporary and/or medical benefits under *N.J.A.C. 12:235-3.3*, the motion shall be listed and proceed as a general motion for temporary and/or medical benefits.

12:235-3.4 Insurance carrier or self-insured employer contact person procedures pursuant to *N.J.S.A. 34:15-15.4*

(a) Every insurance carrier providing workers' compensation insurance and every workers' compensation self-insured employer shall designate a contact person who is responsible for responding to issues concerning medical and temporary disability benefits where no claim petition has been filed or where a claim petition has not been answered.

(b) The contact person referred to in (a) above shall also receive notice of motions for emergent medical care under *N.J.A.C. 12:235-3.3*.

(c) **The full name, telephone number, mailing address, e-mail address and fax number of the contact person referred to in (a) above shall be submitted to the Division utilizing the Division's contact person form in the manner instructed on the form.**

(d) **The Division's contact person form shall be made available on the Division's website and at the Division's district offices.**

(e) **Any changes of contact person or in information about the contact person shall be immediately submitted to the Division using the Division's contact person form.**

(f) **After an answer to a claim petition has been filed, the attorney of record for the respondent shall be the point of contact for issues concerning temporary disability and/or medical benefits.**

(g) **A contact person roster using the information provided under (c) above will be available on the Division's website.**

(h) **Failure to comply with the requirements of *N.J.S.A. 34:15-15.4* or this section shall result in a fine of \$ 2,500 for each day of noncompliance, which fine shall be payable to the Second Injury Fund.**

1. The Division shall send notice of noncompliance and of the fine amount by certified mail, return receipt requested, to the business address of the insurance carrier or self-insured employer.

2. The insurance carrier or self-insured employer shall have 30 calendar days to pay the fine or to contest the fine.

[page=1939] **3. Where the insurance carrier or self-insured employer contests the fine, the Division shall hold a conference in an attempt to resolve the dispute.**

Recodify existing *N.J.A.C. 12:235-3.3* through *3.13* as **3.5 through 3.15** (No change in text.)

[12:235-3.14 Enforcement

(a) For unreasonable failure to comply with any written order of a Judge of Compensation or with any requirement of statute or regulation, a Judge of Compensation may:

1. Dismiss or grant the motion or application for enforcement of order;
2. Close proofs, dismiss a claim or suppress a defense;
3. Exclude evidence;
4. Order costs or reasonable expenses, including interest or monies due and/or attorney's fees, to be paid to the Second Injury Fund of the State of New Jersey or an aggrieved party, attorney, or other representative of a party;
5. Refer matters for other administrative, civil or criminal proceedings; or
6. Take other appropriate case-related action.

(b) A party or the court on its own motion may move for enforcement of an order. After receiving notice of an application for enforcement, a party shall file a written response to the application within 10 days of such notice. The response shall include the reasons for any noncompliance and manner and time periods to ensure compliance with the order at issue. Before taking any action under (a) above, the Judge of Compensation shall hold a hearing on the appropriateness of the action and the reasonableness of any compensatory levy or sanction.

(c) Unless a stay is obtained from the appropriate appellate court or the Judge of Compensation, the failure to obey an order of the Judge of Compensation shall constitute grounds for compensatory sanctions against the attorney, the parties, or both. Filing of an appeal does not constitute an automatic stay of the judgment or order being appealed.

(d) For purposes of this section, "compensatory levy and sanction" shall mean an amount awarded to compensate for actual losses, including, but not limited to, interest on monies due a party as well as attorney's fees and administrative costs to the Division.]

12:235-3.16 Enforcement

(a) A party may, by written motion pursuant to *N.J.A.C. 12:235-3.5(a)* and (b), move against an employer, insurance carrier, petitioner, case attorney or any other party to a claim petition for enforcement of any court order or for the enforcement of the requirements of the workers' compensation statute or rules.

(b) The motion under (a) above shall identify the order, statute or regulation sought to be enforced.

(c) The party against whom the motion has been brought shall file a written response to the motion within 14 calendar days of the notice of motion.

(d) The response under (c) above shall include the reasons for any noncompliance and the manner and time period to ensure compliance.

(e) Any time after the 14-day period to respond under (c) above has elapsed and on notice to the parties, the judge shall hold a hearing on the motion.

(f) A judge on his or her own motion may at any time, upon notice to the affected parties, move to enforce a court order or to enforce the requirements of the workers' compensation statute or rules.

(g) Prior to ruling on a motion under (f) above, the judge shall provide the parties an opportunity to respond to the motion and to be heard on the record.

(h) Upon a finding by a judge of noncompliance with a court order or the workers' compensation statute or rules, the judge, in addition to any other remedy provided by law, may take any or all of the following actions:

1. Impose costs and simple interest on any monies due.

i. The judge may impose an additional assessment not to exceed 25 percent on any moneys due if the judge finds the payment delay to be unreasonable;

2. Levy fines or other penalties on parties or case attorneys in an amount not to exceed \$ 5,000 for unreasonable delay or continued noncompliance.

i. A fine shall be imposed by the judge as a form of pecuniary punishment.

ii. A penalty shall be imposed by the judge to reimburse the Division's administrative costs.

iii. The proceeds under this paragraph shall be paid into the Second Injury Fund;

3. Close proofs, dismiss a claim or suppress a defense as to any party;

4. Exclude evidence or witnesses;

5. Take other appropriate case-related action to ensure compliance; and/or

6. Allow a reasonable counsel fee to a prevailing party, where supported by an affidavit of services.

(i) Upon a finding by a judge of noncompliance by a party with a court order or the workers' compensation law or rules, the judge, in addition to any other remedy provided by law, may hold a separate hearing on the issue of contempt.

(j) Following a hearing under (i) above and upon a finding by the judge of contempt, the successful party in the contempt hearing or the judge may file a motion with the Superior Court for contempt action.

(k) Any fine, penalty, assessment or cost imposed by a judge under this section shall be paid by the entity or party found to be in noncompliance and shall not be included in the expense base of an insurance carrier for the purpose of determining rates or as a reimbursement or case expense.

Recodify existing *N.J.A.C. 12:235-3.15* and *3.16* as **3.17** and **3.18** (No change in text.)

SUBCHAPTER 7. UNINSURED EMPLOYER'S FUND

12:235-7.1 Purpose; scope

(a)-(d) (No change.)

(e) A petitioner may move to relax or dispense with requirements under this subchapter.

1. After a hearing on the motion to relax or dispense with requirements under this subchapter, the judge may grant the motion upon a finding that the subject requirements under the particular facts of the case are unduly burdensome and that grant of the motion would not adversely affect the UEF.

(f) Where petitioner seeks current medical treatment and/or temporary disability benefits and the only issue is the cancellation or non-renewal of an insurance policy, the judge may order the insurance carrier to provide treatment and/or benefits without prejudice and subject to reimbursement by the employer or, if not paid by the employer, by the UEF, if it is subsequently determined that the policy was not in effect.

[(e)] **(g)** (No change in text.)

12:235-7.4 Medical bills; physician's examination

[(a) The UEF shall have the opportunity to review all medical bills and charges to determine if the costs incurred were reasonable and necessary.]

(a) Any medical bills or charges for which petitioner seeks payment from the UEF must be timely submitted by the petitioner to the UEF and be supported by the following:

1. Related treating records, itemized bills and a physician's report, which reflects that the bills and charges were reasonable, necessary and causally related to the work accident or occupational exposure alleged in the claim petition; and

2. Other necessary medical documentation or information required by the UEF.

(b) Any dispute under this section concerning the treating records, bills, physician's report or UEF request for other medical documentation or information shall be determined by the judge after a hearing upon oral or written motion by the UEF or another party.

Recodify existing (b)-(e) as **(c)-(f)** (No change in text.)