

RESOLUTION OF THE  
NAVAJO NATION COUNCIL

22<sup>nd</sup> NAVAJO NATION COUNCIL -- Third Year, 2013

AN ACT

RELATING TO BUDGET AND FINANCE AND NAABIK'ÍYÁTI'; AMENDING  
CHAPTER 11 OF TITLE 15 OF THE NAVAJO NATION CODE, WORKERS'  
COMPENSATION

BE IT ENACTED:

Section 1. Amendments to Title Fifteen

The Navajo Nation hereby amends Title 15, Labor, Navajo  
Nation Code, as follows:

\* \* \* \*

NAVAJO NATION CODE ANNOTATED  
TITLE 15. LABOR  
CHAPTER 11. WORKERS' COMPENSATION

§ 1035. Waiting Period

Indemnity benefits shall be paid under the provisions of  
this Act only for an injury which results in the claimant's  
disability for more than three (3) working days. If the  
period of the claimant's disability lasts for more than  
fourteen (14) days from the date of his or her injury,  
indemnity benefits shall be paid from the date of  
disability.

\* \* \* \*

§ 1052. Benefits for permanent disability and death.

\* \* \* \*

D. Calculation of benefits for Non-Scheduled Permanent  
Impairment

1. For nonscheduled permanent impairments, a calculation  
of percentage of permanent partial disability is made.

2. If an injury has left a claimant with a nonscheduled permanent bodily impairment, indemnity benefits for a specified number of weeks shall be paid, without regard to presence or absence of wage loss in the future, and such benefits may be paid as a lump sum or periodically, at the election of the claimant.

3. Permanent partial disability benefits for an injury to a non-scheduled body part are calculated by multiplying the gross average weekly wage times the number of weeks provided for in the Benefits for-Permanent Total Disability times the percentage of whole person impairment.

4. For all non-scheduled injuries the health care provider shall provide a whole person impairment for the claimant pursuant to the most current version of American Medical Association *Guides to the Evaluation of Physical Impairment*. The health care provider shall use the protocol under the current version of American Medical Association *Guides to the Evaluation of Physical Impairment* for calculating the whole person impairment.

\* \* \* \*

#### **Section 2. Effective Date**

The Act is effective upon its approval pursuant to 2 N.N.C. §221.

#### **Section 3. Codification**

The provisions of this ordinance which amend or adopt new sections of the Navajo Nation Code shall be codified by the Office of Legislative Counsel. The Office of Legislative Counsel shall incorporate such amended provisions in the next codification of the Navajo Nation Code.

#### **Section 4. Saving Clause**

Should any provisions of this ordinance be determined invalid by the Navajo Nation Supreme Court, or the District Courts of the Navajo Nation, without appeal to the Navajo Nation Supreme Court, those portions of this ordinance which are not determined invalid shall remain the law of the Navajo Nation.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona) at which a quorum was present and that the same was passed by a vote of 17 in favor and 1 opposed, this 29<sup>th</sup> day of January, 2013.



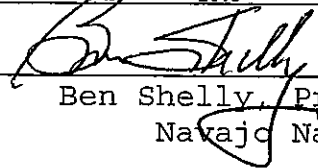
Jonathan Nez, Speaker Pro Tem  
Navajo Nation Council

02/05/13  
Date

Motion: Honorable Jonathan Hale  
Second: Honorable Joshua Lavar Butler

ACTION BY THE NAVAJO NATION PRESIDENT:

1. I hereby sign into law the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (10), on this \_\_\_\_\_ day of FEB 14 2013 2013.



Ben Shelly, President  
Navajo Nation

2. I hereby veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (11), this \_\_\_\_\_ day of \_\_\_\_\_ 2013 for the reason(s) expressed in the attached letter to the Speaker.

\_\_\_\_\_  
Ben Shelly, President  
Navajo Nation

**RESOLUTION OF  
THE NAVAJO NATION INSURANCE COMMISSION**

**RECOMMENDING TO THE BUDGET AND FINANCE COMMITTEE OF THE NAVAJO NATION COUNCIL THE APPROVAL  
AND ADOPTION OF THE AMENDMENTS TO THE NAVAJO NATION WORKERS' COMPENSATION ACT**

**WHEREAS:**

1. Pursuant to 2 N.N.C. §§ 931 and 932, the Navajo Nation Insurance Commission is established and authorized to ensure adequate insurance coverage and protection for the Navajo Nation and its entities, and property; and,
2. Pursuant to 2 N.N.C. § 933, (A), the Navajo Nation Insurance Commission is authorized, subject to the approval of the Budget and Finance Committee of the Navajo Nation Council, to review and determine, select and coordinate all insurance coverage and programs pertaining to the Navajo Nation, its entities and employees, including but not limited to workers' compensation insurance; and,
3. On February 13, 2012, the Navajo Nation Council by Resolution CJA-03-12, approved an amendment to the Navajo Nation Workers' Compensation Act provided for in 15 N.N.C. §§ 1001, et seq. (attached as Exhibit "A"); and,
4. The *Section 1035, The Waiting Period* which was inadvertently left out of the aforesaid Workers' Compensation Act (attached as Exhibit "B") when it was approved by the Navajo Nation Council and the section is required to be reinserted; and,
5. A fragment of *Section 1052, D. Calculation of benefits for non-scheduled permanent impairment, (3)* was unintentionally struck when the aforesaid Workers' Compensation Act (attached as Exhibit "B") was approved by the Navajo Nation Council and the fragment is required to be reinserted with minimal revision; and,
6. The Navajo Nation Insurance Commission, upon review and discussions, deems it in the best interests of the Navajo Nation, its enterprises, chapters (political subdivisions of the Navajo Nation) and employees, to approve the proposed amendment to the Workers' Compensation Act.

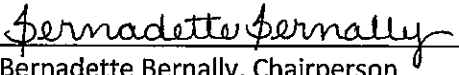
**NOW THEREFORE BE IT RESOLVED THAT:**

1. The Navajo Nation Insurance Commission hereby approves and recommends to the Budget and Finance Committee of the Navajo Nation Council, the approval to reinsert *Section 1035 The Waiting Period* as set out in the attached (Exhibit "B") Workers' Compensation Act, 15 N.N.C., §§ 1001, et seq. that was approved by the Navajo Nation Council on February 13, 2012; and,
2. The Navajo Nation Insurance Commission hereby approves and recommends to the Budget and Finance Committee of the Navajo Nation Council, the approval to reinsert a fragment of *Section 1052, D. Calculation of benefits for Non-Scheduled Permanent Impairment, (3)* with minimal revision as set out in the attached (Exhibit "B") Workers' Compensation Act, 15 N.N.C., §§ 1001, et seq. that was approved by the Navajo Nation Council on February 13, 2012; and,

3. The Navajo Nation Insurance Commission hereby further directs the Navajo Nation Workers' Compensation Program to ensure that all lawful authorized tribal governmental programs, enterprises, chapters (political subdivisions of the Navajo Nation) and employees continue with their participation in the amended Navajo Nation Workers' Compensation Act.

#### CERTIFICATION

We hereby certify that the foregoing Resolution was duly considered by the Navajo Nation Insurance Commission at a duly called meeting in Window Rock, AZ, at which a quorum was present and that same was passed by a vote of 3 in favor, [insert] opposed, and 0 abstained this 13th day of July, 2012.

  
Bernadette Bernally, Chairperson  
Navajo Nation Insurance Commission

Motioned: Raymond Smith, Member  
Seconded: Harlan Charley, Member

RESOLUTION OF THE  
NAVAJO NATION COUNCIL

22<sup>ND</sup> NAVAJO NATION COUNCIL - Second Year 2012

AN ACTION

RELATING TO BUDGET AND FINANCE AND NAABIKÍ'YÁTI'; ENACTING THE  
NAVAJO NATION WORKERS' COMPENSATION ACT OF 2011

BE IT ENACTED:

**Section 1. Enactment of the Navajo Nation Workers' Compensation Act of 2011**

The Navajo Nation hereby enacts the Navajo Nation Workers' Compensation Act of 2011.

**Section 2. Amendments to Title Fifteen**

The Navajo Nation hereby amends Title 15, Labor, Navajo Nation Code, as follows:

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NAVAJO NATION CODE ANNOTATED  
TITLE 15. LABOR  
CHAPTER 11. WORKERS' COMPENSATION

**§ 1001. Establishment of Workers' Compensation Act**

A. There shall be a program for workers' compensation for all employees of the Navajo Nation, including all enterprise and chapter employees, Council Delegates, chapter officials, and others as set out in 15 N.N.C. § 1002(A) (~~13~~) (12). This program shall be known as the Navajo Nation Workers' Compensation Program.

B. This Act, as amended, shall apply to all workers' compensation claims arising from an accident which occurred after the effective date of this version of ~~this~~ the Act and all occupational disease disablement claims arising from a last injurious exposure which occurred after the effective date of this version of ~~this~~ the Act.

§ 1002. ~~Definitions; exclusion of coverage; coverage and premium determinations~~

A. Definitions. In this Act, unless the context otherwise requires:

1. "Accident" means an unforeseen event occurring without the will or design of the person whose mere act causes it; a sudden, unexpected, unusual, or undesigned occurrence; or the effect of an unknown cause or, the cause, being known an unprecedented consequence of it, provided, however, that no incident shall be considered an accident that does not involve a sudden and discernable physical trauma or event.

2. "Act of God" means an act occasioned exclusively by forces of nature without the interference of human agency.

3. "Administrative cost" means operational expenses associated with claims process through the Navajo Nation Workers' Compensation Program.

~~3. "Adoption" shall include cases where persons are treated as adopted as well as those of legal adoption.~~

5 4 "Artificial member" means a fabricated substitute replacing a diseased or missing part of the body for a body part, to include eye(s) and/or other teeth removed because of trauma or disease.

65. "Average weekly wage" means the earnings of the claimant in the employment in which he or she was working at the time of the injury during the period ninety-one (91) days immediately preceding the date of the injury, divided by thirteen (13) weeks, unless the claimant was working for less than ninety-one (91) days prior to the injury. In that event, the wages earned prior to the injury in the employment in which he or she was working at the time of injury, divided by the number of days in the employment he or she was working at the time of the injury, and multiplied by the average number of scheduled work days per week during the period, shall be the average weekly wage.

76. "Award" means the findings or decision of the Workers' Compensation Program of the amount of compensation or vocational rehabilitation services due a claimant.

87. "Child" includes dependent natural children, step-children, adopted children and acknowledged children born out of wedlock, but does not include married children unless they are dependents.

98. "Claimant" means the injured covered ~~worker~~ person or dependents of same in the event of death of the covered ~~worker~~ person.

109. "Compensation" means indemnity benefits, payments ~~for~~ medical expense to health care providers, mileage and other expenses associated with ~~medical~~ treatment by health care providers, and death benefits.

110. "Controlled substance" means any drug so designated or defined by Navajo Nation and other applicable laws where availability or possession of such substance is restricted or prohibited.

121. ~~"Course and scope of employment" shall mean the time, place and circumstances under which the accident occurred. An injury must arise out of and be in the course and scope of employment in order that a claim be compensable.~~ "Course and scope of employment" means that, considering the time, place and circumstances, a covered person is advancing the business purposes of the employer when the accident occurs. An injury must arise out of and be in the course and scope of employment in order that a claim be compensable.

1312. "Covered person," "covered employee," and "covered worker" mean:

a. Every person in the service of the Navajo Nation, elected, appointed or hired, ~~and carried on the payroll of the Navajo Nation,~~ including all enterprise and chapter



employees; Council Delegates, and chapter officials, who receive wages or other payments for services; stipends, or per diem.

b. Members of duly constituted committees, boards and commissions recognized by the Navajo Nation may be deemed to be covered persons and entitled to the benefits provided by the Act, provided:

(1) Such committee, board or commission member is injured or killed in the course and scope of ~~committee's, board or commission's~~ his or her duties and is acting at the direction of the committee, board or commission; and

(2) Liability for Ppremium payment has been ~~paid for~~ incurred by the committee, board or commission member; and

(3) The committee, board or commission has submitted documentation to the Workers' Compensation Program defining the nature and type of committee, board or commission work and the members entitled to such benefits.

c. General Vvolunteer workers for the Navajo Nation, a tribal enterprise or a chapter may be deemed to be covered persons and entitled to the benefits provided by this Act, provided:

(1) Such volunteer is injured or killed in the course and scope of employment and is working under the direction and control of an employer; and provided that he or she is not an emergency response volunteer as provided in subsection (d) of this section.

(2) Liability for Ppremium payment has been ~~paid for~~ incurred for the volunteer; and

(3) The supervising employer has submitted documentation to the Workers' Compensation Program defining the nature and type of volunteer work and workers to be entitled to such benefits.

d. Emergency response volunteer workers for the Navajo Nation, a tribal enterprise or a chapter may be deemed to be covered persons and entitled to the benefits provided by this Act, provided:

(1) Such volunteer is injured or killed in the course and scope of employment and is working under the direction and control of an employer; and provided that he or she is not a general volunteer as provided in subsection (c) of this section.

(2) The Navajo Nation, its enterprise or chapter has declared an emergency in response to circumstances or conditions that require the use of volunteers as emergency responders;

(3) The volunteer is working in response to and during the period covered by the declared emergency; and

(4) Liability for premium payment is paid by the end of the fiscal year quarter following the end of the declared emergency.

d e. Consultants, independent contractors and all other persons not directly employed by the Navajo Nation, its enterprises or chapters are excluded from the coverage of the Workers' Compensation Act.

e.f. The determination of whether or not an individual is a "covered worker person" and determination of the premium to be assessed shall be made by the Workers' Compensation Program. Premium assessment shall be governed by rules adopted by the Workers' Compensation Program with the approval of the Navajo Nation Insurance Commission.

~~14 "Death" is any fatality caused by an injury that occurred in the course and scope of employment.~~

~~1513.~~ "Dependents" are the following persons, and they only shall be deemed dependents under the provisions of this Act shall mean:

- a. The widow/widower, if living with the deceased at the time of his or her death, or legally entitled to be supported by him or her as a dependent;
- b. A child of a deceased covered person under ~~21~~ twenty-six (26) years of age, unmarried and dependent upon the deceased; or a child incapable of self-support and dependent upon the deceased;
- c. A parent or grandparent, if actually dependent upon the deceased;
- d. A grandchild, brother or sister, only if under ~~21~~ twenty-six (26) years of age, unmarried and dependent upon the deceased, or incapable of self-support and dependent upon the deceased;
- e. A person is considered to be a dependent upon a showing of proof that a relation of dependency existed at the time of death.

~~16~~ "Disability" means the temporary or permanent inability to work.

~~1714.~~ "Employer" means an employer of one or more covered workers persons.

~~1815.~~ "Health care provider" means a person licensed to practice medicine by any state within the United States, or foreign country if the injury occurs outside of the United States, including a pharmacy dispensing prescribed medication, a hospital or other accredited medical facility, licensed or certified chiropractors and other recognized, properly licensed or certified medically related practitioners recognized by the Navajo Nation, including traditional healing practitioners, approved pursuant to the Workers' Compensation Program's rules.

~~19~~ 16. "Impairment" means an anatomical or functional abnormality existing after the date of maximum medical improvement as determined by a medically or scientifically demonstrable finding and based upon condition that is ratable pursuant to the most recent edition of the American Medical Association's guide to the evaluation of permanent impairment or comparable publications of the American Medical Association.

~~20~~ 17. "Indemnity benefits" means payments awarded pursuant to ~~15 N.N.C. § 1033 or 15 N.N.C. § 1048~~ provided as a partial replacement for wages or as a statutory settlement of permanent disability.

~~21~~ 18. "Injury" or "injuries" means disability temporary or permanent anatomical or functional change resulting from an accident or occupational disease.

~~22~~ 19. "Maximum medical improvement" means the date after which further recovery from or lasting improvement to an injury can no longer be reasonably anticipated based upon reasonable medical probability as determined by a health care provider selected by the Workers' Compensation Program.

~~23~~ 20. "Minor employee" shall mean a minor working at an age and at an occupation legally permitted. Such minor shall be deemed at the age of majority for the purpose of this Act.

~~21.~~ "Natural causes" means naturally occurring disease, degenerative or aging process.

~~24~~ "Occupation" means any vocation for to which the claimant is or becomes reasonably fitted to by education, training, or experience.

25 22 "Occupational disease" means a bodily disease which results directly from the employment or the conditions under which work was performed, which is shown to a reasonable degree of medical certainty to be ~~as~~ a natural incident of the work and ~~as~~ a result of the exposure occasioned by the nature of the employment, and which can be fairly traced to the hazard to which the worker would not have been equally exposed to outside of the employment. The disease need not have been foreseen or expected but after its contraction must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a natural consequence.

26 23. "Parent or grandparent" means the natural or adoptive father or mother or the natural or adoptive grandfather or grandmother of the ~~deceased employee~~ covered person.

27 ~~"Permanent partial disability" means a condition whereby a claimant, by reason of injury arising out of and in the course and scope of employment, suffers a permanent impairment.~~

28 ~~"Permanent total disability" means complete incapacity to engage in an occupation as a result of an occupational injury. Independent of any other provision, the entire and irrecoverable loss of sight of both eyes or the loss by actual severance through and above the wrist or ankle joint of both hands or feet, shall be considered permanent total disability even if the employee shall engage in an occupation.~~

29 24. "Preexisting condition" means a physical anatomical or functional abnormality, whether physical or mental, that existed prior to the occupational accident or last injurious exposure.

30 ~~"Settlement" means the execution of a release of all claims and an agreement concerning compensation.~~

25. "Temporary partial disability" means the indemnity benefit provided to a claimant who is released to work prior to maximum medical improvement and who returns to work at less than the pre-injury compensation.

31. 26. "Temporary total disability" means ~~inability of the claimant, by reason of an injury arising out of and in the course and scope of his or her employment,~~ the indemnity benefit provided to a claimant who is unable to perform his or her duties, by reason of an accidental injury or occupational exposure, prior to the date of his or her maximum medical improvement.

27. "Vocational rehabilitation" means re-training for gainful employment in another specific occupation, including on the job training, but shall not include general academic re-education.

32. 28. "Week" means seven calendar days.

B. The Workers' Compensation Program may promulgate additional definitions by rule pursuant to 15 N.N.C. § ~~1009~~ 1011.

#### § 1003. Acknowledgement of Act

A. All covered workers shall be conclusively presumed to have elected workers' compensation in accordance with the terms, conditions and provisions of this Act, including acknowledgement that the Navajo Nation is a sovereign Nation for the purposes of workers' compensation, governed by the laws set forth by the Navajo Nation Council and no other workers' compensation law is applicable to injuries or death sustained by the covered workers.

B. The employer, including personnel offices of the Navajo Nation, the processing units for the employment and training programs, or the management of the enterprises and chapters shall be responsible for explaining the provisions of the Act to their workers and shall post in a conspicuous location a notice as follows:

#### NOTICE TO WORKERS

All covered workers are hereby notified that the Navajo Nation is a sovereign Nation for the purposes of workers' compensation, governed by the laws as set forth by the Navajo Nation Council and that no other workers compensation law is applicable to

*injuries or death sustained by a covered worker. If you do not fully understand the terms, conditions and provisions of the Navajo Nation Workers' Compensation Act, contact your supervisor or the Workers' Compensation Program office for further details.*

§ 1004. Safety plans for protection of employees and prevention of injuries

A. An employer may qualify for incentives, including recognition of the employer, adjustment of premium rates, and other incentives that may be applicable, upon the implementation of an approved workplace safety plan.

B. The Workers' Compensation Program, in cooperation with insurance safety personnel, shall assess the implementation of an employer's safety plan upon request by the employer. If the employer's safety plan has not been satisfactorily implemented, the insurance safety personnel shall specify in writing the steps necessary to remedy the deficiency.

C. The employer's safety plan must provide for the following minimum requirements:

1. A periodic site-specific safety inspection with written findings of any potential hazards or exposures. Emergency action and contingency plans shall be reviewed during an approved site-specific safety inspection.

2. Safety initiatives involving the direct input of the employees with written findings concerning any potential hazards or exposures disclosed and/or suggestions for safety improvements. Continuing employee-management safety consultations are encouraged for satisfaction of this requirement.

3. If a potential hazard or exposure is disclosed pursuant to sub-sections (A) and (B) above of this Section, a written assessment of the costs and benefits of corrective action shall be documented and reported to insurance safety personnel.

4. A safety awareness program, site-specific for all employees, to be conducted as part of an orientation to new employees. Additional safety training shall be provided to all employees at least annually. Insurance safety personnel shall provide the periodic training upon request.

5. A safety incentive program for the recognition and reward of employees who disclose potential hazards or exposures and the adoption of a formal policy protecting employees against retaliation for disclosure of safety risks.

6. Storage of all records created pursuant to this Section, with accessibility for inspections of the records by insurance safety personnel.

D. The most current version of the employer's safety plan shall be provided to the insurance safety program and maintained as if it were a protected document by that office.

E. The Insurance Safety personnel and the Workers' Compensation Program shall cooperate with employer-based safety programs in the identification of accident trends, recommendation of sound safety practices and enhancement of safety awareness.

**§ 1005. Return to work**

A. Reports of physical conditions and limitations and orders to remain off work

1. It is the intention of the Navajo Nation that every claimant return to work as soon as possible; taking into account his or her medical condition and the necessary qualifications of available work. Health care providers shall only determine the medical condition of the claimant. It shall be the duty of every employer of an injured worker to make a good faith effort to provide employment opportunities to the claimant consistent with his or her medical condition and the necessary qualifications for work as stated in the job description.



2. Every health care provider who evaluates or treats a covered employee shall complete, within three (3) days of the date of first evaluation or treatment, a report of employee condition and limitations, on a form adopted for that purpose by the Workers' Compensation Program, and shall provide copies of the report to the employee and the Workers' Compensation Program as soon as possible. When an employee is treated and released from the emergency department of a hospital, the health care provider most responsible for follow-up care, if applicable, or the emergency department attending physician, shall provide the report of employee condition and limitations to the employee upon release, and the employee shall be responsible for providing the report to the employer and the Workers' Compensation Program as soon as possible.

3. Every health care provider shall prepare supplemental reports of employee condition and limitations and provide copies of the report to the employee and the Workers' Compensation Program when the employee reaches maximum medical improvement, or when requested by the employee or the Workers' Compensation Program.

4. No health care provider shall order or authorize a covered employee to remain off of work unless the health care provider states in writing that the health and safety of the covered employee, or other persons at the place of work, would be endangered by the employee returning to work in any capacity. The provisions of this Section shall not apply to traditional healing practitioners who are recognized by the Program pursuant to the Program's Rules and Regulations.

5. The Workers' Compensation Program shall provide to the employer copies of the relevant portions of the report of employee condition and limitations, or any supplements, for the sole purpose of encouraging the employee to return to work.

6. No employer shall utilize any form for reporting employee conditions or limitations other than the form approved by the Workers' Compensation Program.

B. Temporary partial disability benefits

If a claimant, prior to reaching maximum medical improvement, returns to work at less than his or her pre-injury wage, the compensation to be paid shall be sixty-six and two-thirds (66-2/3%) percent of the difference between the wages received by the claimant prior to the injury and the wages earned by him or her thereafter. No claimant may be paid temporary partial disability payments and any other indemnity payment at the same time. The provisions of this Section shall only apply to injuries or occupational disease disabilities that occur after the date of enactment of this Act.

C. Premium adjustments for adoption and implementation of return to work plans

1. Each employer of covered employees may qualify for a reduction in workers' compensation insurance premiums of not less than five (5%) percent by the adoption of a return to work plan approved by the Workers' Compensation Program. If the Workers' Compensation Program's actuary determines that a larger reduction is appropriate and responsible, based upon actuarial data, the Workers' Compensation Program may offer a higher discount for compliance.

2. The Workers' Compensation Program shall develop and distribute to all employers written requirements for approved return to work plans within the first year of Workers' Compensation coverage after the adoption of this sub-Section. The Workers' Compensation Program may adopt revisions of the requirements for return to work plan approval to become effective in succeeding years of workers' compensation coverage.

3. Qualification for premium reduction in any year of workers' compensation coverage requires the employer to give at least ninety (90) days notice of the formal adoption of an approved return to work plan to the Workers' Compensation Program and all covered employees.

4. All employers with approved return to work plans shall submit for inspections, reviews, and audits by the Workers' Compensation Program. The Workers' Compensation Program will not unreasonably withhold plan approvals and will work with employers to facilitate the adoption and implementation of an approved return to work plan.

~~§ 1004~~ 1006. **Workers' Compensation Fund-Purpose; administration**

A. There shall be a fund maintained for the sole purpose of payment for workers' compensation and administrative costs as provided herein. The fund shall not be used for any other purpose.

B. The fund shall be part of the Workers' Compensation Program Account maintained on the financial records of the Navajo Nation Division of Finance ~~Financial Services Department~~, Window Rock, Arizona.

C. Funding shall be obtained by premium assessments to all participating employers. ~~of a percentage of that amount recovered for employee benefits, in conjunction with the Financial Services Department, and/or by assessment of charges to the Navajo Nation, its enterprises and chapters based on a specified rate adjusted annually at the beginning of each Navajo Nation fiscal year based on the loss experience of the previous fiscal year.~~ Collection of premium shall be made by the ~~Financial Services Department~~ Division of Finance in conjunction with premium assessments approved by the Navajo Nation Insurance Commission pursuant to 2 N.N.C. §§ 931 et seq., as amended.

D. ~~Failure of an employer to pay the assessed amount within 60 days from the date of billing~~ premium assessments shall subject that employer to monthly interest payments as determined by the Financial Services Department Workers' Compensation Program utilizing rates approved by the Insurance Commission. Notice of premium assessment delinquency, and an opportunity to remedy the delinquency, shall be given before such interest payments are invoked.

~~§ 1005~~ 1007. Rates Premium rates

A. The premium rates charged shall be determined by the Insurance Commission and adjusted in accordance with the loss experience of each employer on an annual basis. Adjusted rates shall become effective at the beginning of the succeeding fiscal year following the announced adjustments.

B. The Insurance Commission, in setting rates, shall provide for reserves adequate to meet anticipated and unexpected losses, and other necessary reserves and surplus. The amount of surplus and reserves shall not be less than the sum of current incurred loss reserves, an actuarially reasonable reserve for incurred but not yet reported claims and an actuarially reasonable reserve for claims anticipated during the next eighteen (18) months. ~~and shall not be used for any other purpose.~~ Any unnecessary reserves and surplus shall be returned to each participating employer on a pro rata basis.

C. Premium assessment adjustments for loss experience shall be based on at least four (4) years of actual loss experience. The Insurance Commission may, in its discretion, apply a tentative assessment to new employers subject to modification in accordance with their loss experience.

D. The Workers' Compensation Program may examine payroll records and such other documentation as may be needed to verify coverage and premiums for each covered employee. Any records examined or utilized in such verifications shall be treated as confidential to the same extent as they had in the possession of the original record keeper, and only personnel specifically authorized by the Workers' Compensation Program supervisor may have access to such records.

~~D.~~ E. Any employer who misrepresents ~~to the Insurance Commission~~ the amount of payroll upon which the premium to be paid to the Workers' Compensation Program fund is based shall be liable ~~to~~ for a penalty of ten (10) times the amount of the difference in premium paid and the amount the employer should have paid. The penalty shall be assessed by the Insurance Commission and

payment shall be made within thirty (30) days thereafter to the ~~Financial Services Department~~ Division of Finance and placed into the Workers' Compensation Program Fund.

**§ 1006 1008. Custodian; duties**

A. ~~The Financial Services Department~~ Division of Finance shall be custodian of the Workers' Compensation Fund; and shall record and reconcile authorized disbursements processed and paid by the Workers' Compensation ~~Program Account~~ Program Fund.

B. Internal control procedures will be established and utilized by the ~~Financial Services Department~~ Division of Finance.

C. The Fund shall be subject to an annual fiscal audit conducted in accordance with Generally Accepted Accounting Principles.

**§ 1007 1009. Payment of benefits**

The Workers' Compensation Program shall administer this Act in accordance with the terms and conditions as described herein, and shall process properly approved payments of compensation as provided for in this Act.

**§ 1008 1010. Workers' Compensation Program - Powers and duties**

A. The Workers' Compensation Program shall be empowered to request medical reports, records and notes, police reports, autopsy reports and special investigations, engage the services of adjusters and consultants, and perform other activities as may be needed to process any claim for compensation or to further the intent of this Act. Payments for expenses associated with these activities shall be made at the direction of the Workers' Compensation Program.

B. The Workers' Compensation Program shall maintain ~~complete~~ and accurate administrative records and claim files ~~shall be~~ maintained on all activities relating to the Workers' Compensation Program. All closed files shall be preserved for ~~six~~ seven (7) years.

C. The Workers' Compensation Program shall maintain files and records as follows:

1. Any records provided to the Workers' Compensation Program from any Navajo Nation program or office shall be maintained as confidential to the same extent that it was confidential under the law or rules applicable to the originating program or office.

2. Any records in the possession of the Workers' Compensation Program shall be maintained as confidential and disclosed only to the extent provided in the applicable provisions of the Navajo Nation Privacy and Access to Information Act, as amended, or applicable federal law.

**§ 1009 1011. Promulgation of rules Administration**

A. The Workers' Compensation Program, subject to approval by the Insurance Commission and ~~Government Services~~ and Budget and Finance Committees of the Navajo Nation Council, or any successor organizational unit fulfilling substantially the same function, shall promulgate rules necessary to implement the provisions of this Act. A copy of the rules will be filed and made available for public inspection at the Workers' Compensation Program and will be mailed to any person making a written request.

B. The ~~Program Director~~ Workers' Compensation Program shall hold such ~~hearings~~ work sessions and orientations as may be necessary to gather and disseminate information relating to the purposes of the Navajo Nation Workers' Compensation Act. ~~compel attendance at such hearings and shall refer violations of this Act or the Program's rules to the Navajo Nation Department of Justice for enforcement action.~~

C. It is unlawful to violate the provisions of the Workers' Compensation Act or any of the rules adopted to implement it. Violations shall be punishable by fines, or injunctive relief or any other remedy provided for in the rules or other remedies authorized by the laws of the Navajo Nation. The Workers' Compensation Program shall refer alleged violations of this Act or the Program's rules to the Navajo Nation Department of Justice.

**§ ~~1010~~ 1012. Administrative conference/hearing process**

A covered person, aggrieved by any final written decision of the Workers' Compensation Program, may request an administrative conference and hearing as applicable, regarding his or her claim ~~subject pursuant to the provisions of this Section.~~ The covered person's right to be heard is contingent upon compliance with all requirements, including filing deadlines of the Workers' Compensation Program's Administrative Conference/Hearing Process.

**A. Administrative Conference**

1. A covered person disputing a decision rendered by the Program must, within thirty (30) calendar days after the issuance of the Program's written decision, request, in writing, that an administrative conference be scheduled among the covered person, the supervisor of the Workers' Compensation Program Director and the supervisor of the Insurance Services Department Director. The request for a conference shall be sent to the Workers' Compensation Program ~~Director~~ Supervisor.

2. The covered person's signed request for an administrative conference must include:

- a. The name and mailing address of the covered person;
- b. A brief summary of the relevant facts;

c. A brief statement of the disputed issues;  
and

d. A brief statement of the relief sought.

3. Within ten (10) working days of receiving a request for an administrative conference, the Workers' Compensation Program and the covered person will attempt, in good faith, to schedule a mutually satisfactory time and place for the conference.

4. The conference is designed to give the covered person and the Workers' Compensation Program an opportunity to identify the disputed issues and attempt to reach a mutually satisfactory agreement. In light of the intent and purpose of the conference, no legal representation, of the covered person, the Workers' Compensation Program, or the Insurance Services Department will be allowed at the conference. In the event the covered person contests the accuracy or appropriateness of the impairment rating utilized to generate an offer or settlement, the covered person may obtain an alternate impairment rating from a physician at his or her own expense, and have the alternate impairment rating considered as part of the administrative conference.

5. If the covered person and the Workers' Compensation Program reach a mutually satisfactory agreement, the Workers' Compensation Program will present a written document outlining the terms of the agreement to the covered person for signature. Any agreement reached by the parties shall constitute an administrative resolution of the covered person's claim.

6. If the covered person and the Workers' Compensation Program fail to reach a mutually satisfactory agreement, the Workers' Compensation Program will present a written document summarizing the administrative conference to the covered person. Upon receipt of the document, the covered person may file a request for a hearing with the Navajo Nation Office of Hearing and Appeals. No other means of review of the Workers' Compensation Program's decision shall be permitted.



7. Failure of the covered person to file a written request for a hearing with the Navajo Nation Office of Hearings and Appeals, within thirty (30) calendar days of receipt of the summary of the administrative conference, shall result in forfeiture of his or her right to a hearing before the Navajo Nation Office of Hearings and Appeals.

B. Hearing Request

1. Before any hearing may be scheduled by the Navajo Nation Office of Hearings and Appeals, the covered person must satisfy the following conditions:

a. The covered person and the Workers' Compensation Program must have failed to reach a mutually satisfactory agreement at the conference; and

b. The covered person must have filed a written request for hearing with the Office of Hearings and Appeals within thirty (30) calendar days as provided for in 15 N.N.C. §1012 (A) (6).

2. The written request for hearing must include:

a. The name and mailing address of the covered person;

b. A brief summary of the relevant facts;

c. A brief statement of the disputed issues; and

d. A brief statement of the relief sought.

3. The Navajo Nation Office of Hearings and Appeals, within ten (10) working days of receiving the request for a hearing, shall schedule a time and place for the hearing and shall inform the covered person, or his or her legal representative and the Workers' Compensation Program, of the time and place of the hearing. The notice of hearing shall be sent by first class mail.

4. The covered person may be represented by any individual licensed to practice law in the Courts of the Navajo Nation.

5. A full and complete record, by way of a recording device or a stenographer, shall be kept of all proceedings held before the Navajo Nation Office of Hearings and Appeals.

6. The Hearing Officer shall render a written decision within thirty (30) calendar days after the close of the hearing and shall send a written copy of the decision to the covered person and the Workers' Compensation Program, by first class mail.

Any decision rendered by the Navajo Nation Office of Hearings and Appeals, shall be subject to review only by the Supreme Court of the Navajo Nation as set forth in 15 N.N.C. § 1011 1013.

**§ 1011 1013. Final appeal to the Navajo Nation Supreme Court**

The decision of ~~the hearing officer~~ the Navajo Nation Office of Hearings and Appeals shall be final, with a right of appeal only to the Supreme Court of the Navajo Nation.

A. Upon receipt of a written decision from the Navajo Nation Office of Hearings and Appeals, either the Workers' Compensation Program or the covered person may appeal the decision to the Supreme Court of the Navajo Nation.

B. The party challenging the ~~hearing officer's~~ decision of the Navajo Nation Office of Hearings and Appeals shall file a written notice of appeal, in the form prescribed by the Navajo Rules of Civil Appellate Procedure, within thirty (30) calendar days after the Navajo Nation Office of Hearings and Appeals issues its written decision to the parties.

C. The Navajo Rules of Civil Appellate Procedure shall govern the appeal process.

D. Any appeal filed with the Supreme Court of the Navajo Nation shall be decided on the appellate record, and the Supreme Court shall limit its review to questions of law.

**§ ~~1012~~ 1014. Annual report**

A. Prior to the end of each Navajo Nation fiscal year, the Workers' Compensation Program shall make a report to the Insurance Commission and ~~Government Services~~ and Budget and Finance Committees of the Navajo Nation Council, or any successor organizational unit fulfilling substantially the same function, for the preceding fiscal year. The report shall include:

1. A statement of the number of claims filed and awards made;

2. A general statement of the causes of reported accidents or occupational disease;

3. A detailed statement of disbursements from the Workers' Compensation Program Fund Account; and

4. Other matters which the Workers' Compensation Program deems proper to call to the attention of the Insurance Commission, including recommendations.

B. The Workers' Compensation Program shall provide each employer a quarterly "Experience Report" providing information as to workers injured, amounts paid for compensation, and an annual explanation of the ~~rate setting formula~~ premium.

**§ ~~1013~~ 1015. Compensation as exclusive remedy**

The right to receive workers' compensation pursuant to the provisions of this Act for injuries or death sustained by a claimant shall be the exclusive remedy against ~~employers~~ the Navajo Nation, its enterprises or political subdivisions. An employee receiving compensation under any program or law of any other jurisdiction shall have no additional remedy under the Navajo Nation Workers' Compensation Program or against the Navajo Nation generally.

**§ ~~1014~~ 1016. False statement or false representation**

~~If, in order to obtain any compensation under the provisions of this Act, any a claimant who knowingly makes a false statement or false representation, such claimant shall forfeit all rights to such compensation upon proof that the offense was committed, and may be referred to the appropriate prosecutorial or law enforcement agency.~~

No claimant may make a false statement or representation in order to obtain any compensation under the provisions of this Act. Notwithstanding any other provisions of the Act, the Workers' Compensation Program may suspend benefits during the investigation of a good faith allegation of false statement or false representation. Upon proof that a claimant made a false statement or a false representation, he or she shall forfeit all rights to such benefit and the Workers' Compensation Program may refer the matter to the appropriate prosecutorial or law enforcement agency.

**§ ~~1015~~ 1017. Medical information**

A. Information obtained by the attending physician, surgeon, hospital or other medical facility or personnel while in attendance of the injured worker shall not be a privileged communication if such information is determined by the Workers' Compensation Program to be necessary for a proper understanding and evaluation of the claim.

B. The Workers' Compensation Program shall have the right to request a full and complete report from the physician, surgeon, hospital, ~~or~~ other medical facility or personnel, or other health care providers at times and in the form and details as deemed necessary and shall have a right to present specific questions required to evaluate the claim in person or in writing.

C. The covered worker acknowledges the right of the Workers' Compensation Program to obtain such information, ~~by the covered worker's election of the Workers' Compensation Act and the covered worker or his or her representative shall execute all releases and/or consents to disclosure of medical records and/or information that are required to authorize release of medical records or information to the Workers' Compensation Program under any applicable privacy law.~~

D. The Workers' Compensation Program shall maintain all information obtained pursuant to this Section as confidential information, ~~except as~~ but such information can be disclosed to the claimant or other health care provider authorized by the Workers' Compensation Program.

~~§ 1016~~ 1018. Report of accident

A. ~~When an accident occurs, the injured worker shall immediately, or as soon as possible thereafter, report the accident and the injury resulting therefrom to his or her immediate supervisor, who in turn shall report it to the employer.~~

B. All accidents resulting in injury or death must be reported upon an approved Workers' Compensation ~~Injury Report~~ Report of Injury form to the Workers' Compensation Program within five (5) working days of notice of the occurrence. ~~to the employer.~~ In no event will an employer retaliate against an employee for reporting an accident, or giving notice of such an occurrence.

~~C. The Navajo Nation Safety/Loss Control Program shall cooperate with employer based safety programs in the identification of accident trends, recommendation of sound safety practices, and enhancement of safety education.~~

~~§ 1017.~~ Disclosure of preexisting condition

A. ~~All covered workers shall disclose to the employer any preexisting condition at the time of hire and before commencing employment.~~

~~B. Any claim for aggravation of a preexisting condition which was not disclosed may be denied by the Workers' Compensation Program under this Act if that person had knowledge of the preexisting condition and intentionally failed to disclose the preexisting condition.~~

**§ 1018 1019. Right to compensation and medical treatment benefits**

A. Every claimant coming within the provisions of this Act who is killed or injured while in the course and scope of his or her employment, wherever the injury or death occurred, unless the injury or death was purposely self-inflicted or otherwise limited or excluded by the terms and conditions of this Act, shall be entitled to receive, and shall be paid compensation as provided in this Act.

B. The Workers' Compensation Program shall pay for treatment by a health care provider reasonably required at the time of the injury and during the period of disability attributable thereto, provided that such treatment is medically necessary and reasonable: ~~and is not covered by any other valid and collectible insurance or other benefit program to which the claimant is otherwise entitled.~~

C. The liability of the Workers' Compensation Program for payment for health care services shall be limited to those injuries, conditions, or diseases that are directly caused by the accidental injury or occupational disease exposure, or those that follow, to a reasonable degree of medical probability, as a natural result or consequence of the accidental injury or occupational disease exposure.

D. The Workers' Compensation Program shall only be liable for expenses associated with health care services provided to a claimant that are pre-authorized by the Workers' Compensation Program or are recommended by a medical practice guideline that is in effect pursuant to 15 N.N.C. § 1020. The provisions of this sub-Section shall not apply to traditional healing services.

E. In no event shall the Workers' Compensation Program be liable for expenses or reimbursement for medical, surgical, hospital or related services to which the injured worker may be entitled to receive from or through the United States Public Health Service or any federally funded or sponsored Indian Health Service program, including referrals; nor in any event shall the Workers' Compensation Program be considered or understood to be an "alternative source" for payment of the expense of such services.

§ 1018 1020. Medical cost containment for effective health care

A. The Workers' Compensation Program shall adopt by rule, pursuant to § 1011 of this Act, a nationally recognized medical practice guideline, based upon available scientific evidence to the extent possible at the time of adoption, to guide the Workers' Compensation Program as to the determination of those treatments and services that are medically necessary and reasonable. Treatments falling within the recommendations contained within the adopted guidelines shall be presumed medically necessary and reasonable.

1. The Workers' Compensation Program shall inform all health care providers of the applicable medical practice guidelines, the provisions of this Section, and the provisions contained in paragraph C of this Section, prior to the provision of services by the health care provider.

2. The Workers' Compensation Program may conduct, or contract for, reviews of medical billings, reviews of utilization of services and other audits or reviews necessary to ensure compliance with the provisions of this Section.

3. If a medical treatment, service or procedure is recommended by the medical practice guidelines that were adopted, the treatment, service, or procedure will be considered medically necessary and reasonable. If the medical treatment, service or procedure is not recommended by the medical practice guidelines that were adopted, the treatment, service or procedure will be considered not to be medically necessary and reasonable, and the Workers' Compensation Program may refuse to authorize or pay for the treatment, service or procedure. If the proposed healthcare provider can show to the satisfaction of the Workers' Compensation Program that a treatment, service or procedure that is not recommended by the medical practice guidelines is more likely than not to benefit the specific claimant, the Workers' Compensation Program may authorize the treatment, service or procedure.

4. Prior to the adoption of the evidence-base medical practice guidelines provided for in this Section, the Workers' Compensation Program may contract for utilization and bill review to alert the Workers' Compensation Program of medical services and charges that appear not to be in the best interests of the claimant or the Workers' Compensation Program

B. Every health care provider providing services pursuant to this Act shall be allowed to evaluate the condition of the covered person, provide medically necessary and reasonable emergency care and be reimbursed for such medically necessary and reasonable services and associated expenses. Provision of non-emergency care shall not take place until the health care provider submits a treatment plan for the claimant, and the Workers' Compensation Program approves the treatment plan or develops an approved treatment plan with the health care provider. Any proposed treatment, service, or procedure and related expenses that do not fall within the adopted medical practice guidelines shall require pre-authorization from the Workers' Compensation Program. No employer is authorized to provide treatment plan approvals or pre-authorizations of services pursuant to this section.



C. The Workers' Compensation Program may adopt by rule, pursuant to 15 N.N.C. § 1011, fee schedules governing the fees paid for any medically related goods and treatment, service, or procedure provided pursuant to this Act, including the production of reports, and testimony in depositions or hearings. If the Workers' Compensation Program does not adopt a medical fee schedule applicable to the treatment, service or procedure, the medical fee schedule in the state where the treatment, service or procedure was provided shall apply and control the maximum reimbursement. No claimant shall be charged any supplemental or additional fee for any other authorized treatment, service or procedure, and no balance billing shall be permitted.

D. The Workers' Compensation Program shall not be liable for any expenses associated with treatment, service, or procedure provided to a claimant that is not recommended by the medical practice guidelines in effect and is not pre-authorized by the Workers' Compensation Program. Notwithstanding any contractual provision to the contrary, no claimant shall be liable for any expenses that are not paid by the Workers' Compensation Program unless they are informed that the Workers' Compensation Program will not pay for the treatment, service or procedure and the covered person explicitly agrees to be personally liable.

E. Non-rental provision of medical supplies or durable medical equipment shall be reimbursed to the health care provider who provided the equipment or supplies at no more than the cost plus fifteen (15%) percent.

F. The provisions of this Section shall not apply to traditional practitioners who are recognized by the Workers' Compensation Program pursuant to its established rules and regulations and any fee caps or fee schedule provided for therein.

G. The provisions of this section shall become effective on October 1, 2012.

§ 1021. Treatment by psychiatrists, psychologists or other state-licensed mental or behavioral health professionals

A. No compensation shall be paid for mental or behavioral injury, harm or condition, or for the treatment of such injury, harm or condition, except pursuant to the provisions of this Section or the provisions of 15 N.N.C. § 1052(B) pertaining to brain injury.

B. No compensation shall be paid for any mental or behavioral injury, harm or condition that did not arise from a single discernible traumatic incident. Compensation shall not be paid for events that are part of the normal or reasonably anticipated experience of the work, including, but not limited to, assignment or re-assignment of duties, disciplinary and personnel actions, interpersonal relationships with co-workers or supervisory personnel and cumulative stress. Emergency responders and public safety personnel responding to incidents of significant physical violence or serious physical injury shall be deemed to be outside the normal or reasonably anticipated experience of the work.

C. No services for a state-licensed mental health professional will be paid unless pre-approved by the Workers' Compensation Program. Pre-approval requires:

1. A diagnosis of the mental or behavioral injury, harm or condition that is consistent with the provisions of the most current edition of a generally recognized guide to the diagnosis and classification of mental and behavioral health concerns, that is published by a national organization of mental health professionals. No diagnosis shall be considered that is not supported by standardized objective testing consistent with current accepted testing practices and procedures that are specific to the reported or suspected mental or behavioral injury, harm or condition.

2. A treatment plan specific to the claimant, adequate to inform the Workers' Compensation Program of the nature of the planned treatment, its duration and expected outcomes.

**§ ~~1019~~ 1022. ~~Time limit for filing of claims~~ Statute of Limitations**

A. No claims for injury or death shall be allowed unless filed with the Workers' Compensation Program within one year from the date of occurrence.

B. Claims for occupational disease shall be made within one year from date of diagnosis by a physician accepted by the Workers' Compensation Program; but in no event, longer than ~~three~~ five (5) years from the date ~~a covered worker terminates his or her employment~~ of last injurious exposure related to the occupational disease.

**§ ~~1020~~ 1023. Burden of proof**

The burden of proof, except as set forth in 15 N.N.C. § ~~1021~~ 1024, shall rest upon the covered claimant to prove that:

A. ~~That~~ ~~the~~ injury complained of or death was a result of an accident or occupational disease; and

B. ~~That~~ ~~it~~ arose in the course and scope of his or her employment.

**§ ~~1021~~ 1024. Presumptions**

When a covered worker is found dead by accident under circumstances indicating that the accident took place within time and place limits of employment and no clear and convincing evidence is present to exclude coverage as provided herein, it shall be presumed that his or her death arose out occurred in the course and scope of employment and compensation shall be paid pursuant to this Act.

**§ 1022 1025. Acting under employer's directions**

Any covered person who is injured or killed while following the directions of his or her employer shall be considered to have been in the course and scope of his or her employment in furtherance of the employer's interest and shall be entitled to compensation.

**§ 1023 1026. Going to and returning from work**

A. An accident occurring to a covered worker while on the way to or from work is not within the course and scope of his or her employment ~~if~~ unless such traveling is in connection with his or her work from the time his or her travel starts or ends either at his or her place of work or his or her home. An accident will not be considered to be in the course and scope of employment if the worker deviates from a reasonably direct route of travel, not in the interest of the employer, or during other activities within the travel, not necessitated by the employment activity and not in the interest of the employer. Travel shall be considered to be in connection with his or her work if the travel is undertaken to advance the business purposes of the employer or is specifically ordered by the covered worker's supervisor.

B. A covered worker shall be considered to be on the employer's premises, and at work, when he or she enters the employer's property at the covered worker's duty station, or when he or she has parked in a customary parking area for employees, if any.

**§ 1024 1027. Aggravation of preexisting condition**

A. If a covered worker is suffering from a preexisting condition at the time an accident occurs and the preexisting condition is aggravated thereby, the worker is eligible for compensation. ~~subject to the provisions of 15 N.N.C. § 1017.~~

B. ~~For the purpose of settlement for permanent partial or permanent total disability,~~ The amount of the award for that disability as set forth in 15 N.N.C. § ~~1048~~ 1052 may be reduced or denied in its entirety by the Workers' Compensation Program in consideration of the following:

1. ~~A prior settlement from any source for the same preexisting condition;~~
2. ~~The difference between the degree of disability of the covered worker~~ claimant before the accident or occupational disease and the worker's claimant's present degree of disability.

§ ~~1025~~ 1028. Occupational disease

A. An occupational disease, as defined in 15 N.N.C. § 1002(A) ~~(25)~~ (22), shall be eligible for compensation only if:

1. ~~There is a direct causal connection between the conditions under which the work is performed and the occupational disease, and which~~

2. The occupational disease can be seen to have followed as a natural incident consequence of the work and as a result of the exposure occasioned by the nature or circumstances of the employment and which can be fairly traced to the employment as the proximate cause.

B. Disability caused by repetitive motion or exposure shall be treated as an occupational disease and shall be deemed to have occurred on the date when a health care provider first determines that a work injury or occupational disease has occurred.

**§ ~~1026~~ 1029. Unsanitary or injurious practices ~~or refusal of a claimant to submit to treatment~~**

~~A. No compensation shall be payable for the death of a covered worker if his or her death is caused by an unreasonable refusal to submit to any reasonable surgical treatment for medical aid.~~

B. The Workers' Compensation Program may ~~reduce or~~ suspend the compensation of a claimant who knowingly persists in unsanitary or injurious practices tending to imperil or retard his or her recovery, ~~or who refuses to submit to medical or surgical treatment reasonably necessary to promote his or her recovery and no compensation shall be payable during or for such period.~~

**§ ~~1027~~ 1030. Substance abuse related injury or death**

No compensation of any kind shall be paid for any injury or death substantially related, as defined in 15 N.N.C. § ~~1028~~ 1031, to the intentional use or abuse, by the covered worker, of alcohol, controlled substances or chemicals.

**§ ~~1028~~ 1031. Determination of substance abuse**

The use or abuse of alcohol, controlled substances or chemicals shall be deemed substantially related to an injury or death if:

A. Objective testing of the breath, blood or urine of the covered worker demonstrates the use or abuse of alcohol, controlled substances or chemicals and any competent evidence establishes that it is more probable than not that the use or abuse of alcohol, controlled substances or chemicals contributed to the occurrence of the accident that caused the injury or death to the covered worker; or

B. Subjective observations of the covered worker by co-workers, supervisors, medical or emergency personnel or other witnesses, the statements, behavior or actions of the covered worker or other direct or circumstantial evidence establishes by clear and convincing evidence that the covered worker's use or abuse of alcohol, controlled substances or chemicals contributed to the occurrence of the accident that caused the injury or death to the covered worker; or

C. Such use or abuse of alcohol, controlled substances or chemicals, by the covered worker resulted in a criminal conviction by any lawful jurisdiction.

**§ 1029 1032. Injury or death by act of God or natural causes**

A. Injury or death deemed an "Act of God" which arises within the course and scope of employment shall be considered compensable.

B. Except for circumstances covered by 15 N.N.C. § 1024, injury or death which results from natural causes, i.e., heart attack, stroke, or other natural body function failures, not incidental to the circumstances or conditions of employment, is not compensable. is compensable only if:

1. The body function failure was occasioned by a sudden and discernable event;

2. The sudden and discernable event occurred in the course and scope of work; and

3. There is credible medical evidence that the sudden and discernable event caused the body function failure.

C. Accidental injuries resulting from an un-compensable body function failure may be compensable if there is credible medical evidence that the body function failure caused the accidental injury.

D. For purposes of this Section, "sudden and discernable event" means a shocking, or physically or emotionally demanding occurrence that causes an identifiable action or reaction by a covered worker.

**§ 1030 1033. Periodic medical examination of claimant; effect of refusal or obstruction of examination or treatment**

A. A claimant entitled to compensation shall submit himself or herself for medical examination or treatment selected and paid for by the Workers' Compensation Program from time to time at ~~a place reasonably convenient for the worker,~~ if and when requested by the Workers' Compensation Program.

B. The request for the medical examination or treatment shall fix a time and place having regard to the convenience of the claimant, his or her physical condition and ability to attend. ~~The claimant may have a physician present at the examination if procured and paid for by the claimant.~~

C. If the claimant refuses to submit to the medical examination or treatment or obstructs the examination or treatment, his or her right to compensation shall be suspended until the claimant submits to the examination or treatment has been made, and no compensation shall be payable during or for such period.

D. Any physician health care provider who conducts or is present at the medical examination or treatment may be requested by the Workers' Compensation Program to testify provide evidence as to the result thereof; and the reasonable cost of this appearance activity shall be at the expense of the Workers' Compensation Program.

**§ 1031 1034. Liability of third person to claimant; subrogation powers**

A. ~~If~~ Subject to 15 N.N.C. § 1015, a claimant entitled ~~to~~ receiving compensation under this Act ~~is injured or killed by the negligence or wrong doing of another,~~ such claimant may pursue his or her remedy for injury or death caused by the negligence or wrong doing of a person or business entity other than the Navajo Nation, its enterprises, political subdivisions, officials, or employees. ~~against such other person while receiving compensation under this Act.~~



B. The Navajo Nation shall have the right of subrogation for the amount of compensation and administrative costs paid or incurred under this Act.

C. If the claimant entitled to compensation under this Act does not pursue a remedy against such ~~other person or business~~ by instituting an action within the applicable statute of limitations for the cause of action, one year after the cause of action accrues, the claim against such other person or business may be brought by the Navajo Nation. Such a claim shall be controlled by the Navajo Nation and shall be limited to the compensation and administrative costs paid or incurred.

D. If a claimant proceeds against such other person or business, compensation shall be paid as provided in this Act and the Navajo Nation shall have a lien on the amount actually collectable from such other person or business to the extent of such compensation and administrative costs paid or incurred.

E. Compromise of any claim by the claimant at an amount less ~~that~~ than the compensation paid shall be made only with written approval ~~of the~~ by the supervisor of the Workers' Compensation Program.

**§ 1036. Limitation on indemnity benefits**

A claimant may not recover indemnity benefits for the period of time that he or she is compensated by paid leave. No indemnity benefits shall be paid that result in a claimant receiving more than one hundred (100%) percent of his or her regular earnings. Paid leave time taken shall apply against the waiting period for indemnity payments.

**§ ~~1033~~ 1037. Temporary total disability**

A. Temporary total disability shall be paid at sixty-six and two-thirds ~~percent~~ (66-2/3%) percent of the "average weekly wage" to a maximum of ~~four hundred dollars (\$400.00)~~ six hundred fifty (\$650.00) dollars per week.

B. Persons defined in 15 N.N.C. §1002(A)~~(13)~~ (12), without other regular employment covered by this Act, shall be deemed to be compensated at the prevailing Navajo Nation minimum wage, subject to the formula established in 15 N.N.C. §1002(A)~~(6)~~ (5).

C. When considering the average weekly wage, as defined in 15 N.N.C. § 1002(A)~~(6)~~ (5), where, for exceptional reasons, the method would be unfair, either to the claimant or the employer, such other method of computing average weekly wage may be ~~resorted to~~ utilized as will most nearly approximate the amount which the claimant would be earning were it not be for the disability.

D. Notwithstanding any other provisions, the minimum temporary total disability payment for all claimants eligible for temporary total disability benefits shall be sixty-six and two-thirds (66-2/3%) percent of the applicable Navajo Nation minimum wage multiplied by forty (40) hours.

§ ~~1034~~ 1038. Condition ~~permanent, stationary~~ stable and rateable; ~~termination of benefits~~

When a claimant's injury reaches maximum medical improvement as defined in 15 N.N.C. §1002(A)~~(22)~~ (19):

A. The claimant's injury shall be considered ~~permanent, stationary~~ stable and rateable;

~~B. The claimant shall be notified in writing that his or her injury is permanent, stationary and rate able and that all benefits, if being claimed at that time, shall cease 30 days from date of notice; The Workers' Compensation Program shall solicit a medical rating of permanent impairment, if any, with respect to the claimant.~~

~~C. The claimant shall be advised of the amount payable to him or her in accordance with the terms, conditions, provisions and Benefits for Total Loss of Use of this Act; Upon receipt of the~~

impairment rating, or determination that there is no permanent impairment, the Workers' Compensation Program shall issue written notification of:

1. The permanent impairment, if any;
2. The amount payable to the claimant pursuant to 15 N.N.C. § 1052; and
3. A notice that temporary total disability, pursuant to 15 N.N.C. § 1037, or temporary partial disability, pursuant to 15 N.N.C. § 1005 (B), shall terminate thirty-five (35) calendar days after the date the notice is mailed to the claimant.

D. In the event the claimant contests the accuracy or appropriateness of the impairment rating utilized by the Workers' Compensation Program, the claimant may obtain an alternate impairment rating from a physician at his or her own expense and have the alternate impairment rating considered by the Workers' Compensation Program. Any additional costs associated with the alternate impairment rating shall be paid by the claimant.

E. The Workers' Compensation Program shall tender the payment to the claimant and provide written notice at the end of the 30 thirty-five (35) calendar day termination period.

F. Nothing in this section shall affect the continued receipt of medical care and examinations, prescriptions or maintenance of artificial members that have been approved by the Program.

§ 1035 1039. Notice by claimant of absence from locality relocation

Any claimant leaving the locality in which he or she is receiving medical treatment without written approval from the Workers' Compensation Program may forfeit his or her right to compensation during such time.

A claimant shall give notice to the Workers' Compensation Program of any relocation that affects the delivery of compensation. The Workers' Compensation Program shall make reasonable accommodations to ensure that compensation is not compromised and that costs to the Workers' Compensation Program are not unduly increased. Claimant's failure to give notice as required by this Section, or to maintain contact with the Workers' Compensation Program during any period of relocation, may result in the suspension or forfeiture of benefits during such period.

**§ 1036 1040. ~~Death benefits~~ Benefits payable upon death**

If an injury or occupational disease sustained by a covered worker proximately results in his or her death within two (2) years following his or her injury or diagnosis of occupational disease, compensation shall be paid to the persons entitled thereto, as follows:

A. If there are eligible dependents at the time of the covered worker's death, payment shall consist of a lump sum, or at the claimant's election a structured settlement, as set forth in 15 N.N.C. § 1052(A) ~~(5)~~ (C) (5) and (D) (2), and the direct payment of funeral expenses not to exceed ~~five thousand dollars (\$5,000)~~ seven thousand (\$7,000) dollars; or

B. If there are no eligible dependents, compensation shall be limited to direct payment of funeral expenses, not to exceed ~~five thousand dollars (\$5,000)~~ seven thousand (\$7,000) dollars, and the compensation benefits due up to the time of his or her death, payable to the estate of the deceased.

**§ 1037 1041. Line of dependency; payment of benefits**

A. The line of dependency for ~~payment of death benefits~~ benefits payable upon death shall be in the order set out below, provided each qualifies as a dependent ~~under the terms and conditions~~ as defined in 15 N.N.C. § 1002(A) ~~(15)~~ (13):

1. First to the surviving widow or widower, if there are no children. If dependent children exist at time of covered worker's death, payment is to widow or widower, subject to the provisions of 15 N.N.C. § ~~1038~~ 1042;

2. If no surviving widow or widower, to a dependent child, one hundred percent (100%) percent of death-benefit benefits payable upon death; or if more than one (1) dependent child, to be equally distributed among such dependent children;

3. To a parent or parents, if no surviving widow or widower or eligible children, if dependent upon the deceased covered worker, one hundred percent (100%) percent of death-benefit benefits payable upon death if only one (1) parent; to be divided equally between both parents if both are dependent upon the deceased covered worker; or

4. If there are no eligible dependent widow or widower, children or parents, the death-benefit benefits payable upon death shall be equally distributed among all other eligible dependents.

B. If a minor covered worker has no other dependents, his or her parent(s), guardian(s), or adoptive parent(s) are entitled to death-benefits benefits payable upon death as defined in 15 N.N.C. § ~~1036~~ 1040 (A).

**§ ~~1038~~ 1042. Apportionment of compensation**

Compensation to a dependent widow or widower shall be for the use and benefit of the widow or widower and the dependent children; and the Workers' Compensation Program may, at the time of award, apportion the compensation between them in such a way as it deems best for the interest of all dependents.

**§ ~~1039~~ 1043. Artificial members**

In all cases where the injury is such as to permit the use of artificial members, including teeth and eyes, the Workers' Compensation Program shall pay all reasonable expenses connected with the artificial member.

**§ ~~1040~~ 1044. Replacement of artificial members**

The Workers' Compensation Program shall, during the life of a claimant, replace or repair any artificial member or members, including dentures and artificial eyes that were originally provided to the claimant by the Workers' Compensation Program. Replacement or repair shall not be made if the claimant fails to use reasonable care in the maintenance of his or her artificial member(s).

**§ ~~1041~~ 1045. Hernia; operations**

A. A claimant, in order to be entitled to compensation for a hernia, must prove that:

1. ~~That~~ ~~†~~The hernia is of recent origin;
2. ~~That~~ ~~†~~This appearance was accompanied by pain;
3. ~~That~~ ~~†~~This was immediately preceded by some accidental strain suffered in the course and scope of employment; and
4. ~~That~~ ~~†~~It did not exist prior to the date of the alleged injury.

B. If the claimant, after establishing his or her right to compensation for a hernia, as provided above, elects to be operated upon, the operating fee and reasonable hospital expenses shall be paid by the Workers' Compensation Program. If the claimant elects not to be operated upon and the hernia becomes strangulated, the results of the strangulation shall not be ~~subject to compensation~~ compensated.

**§ 1042 1046. Disfigurement benefits**

A. An additional sum not to exceed two thousand five hundred (\$2,500) dollars may be paid to a claimant for serious permanent disfigurement resulting from an injury. ~~The application of the claimant will be reviewed by the Workers' Compensation Program and an award made as the Workers' Compensation Program deems just.~~ An award will be made as the Workers' Compensation Program deems just. Disfigurement benefits shall not be paid in the event of the claimant's death.

B. For the purpose of this Section, "disfigurement" shall mean limping, scarring, abnormality or other sign of injury that is clearly visible, after all reasonable medical steps and corrections accepted by the claimant have been completed. The degree of disfigurement shall be determined by the degree of public visibility, the degree of marring of the body and the degree of other visible effects of the injury.

**§ 1043 1047. Vocational rehabilitation services**

A. In addition to the compensation provided, a claimant who is unable to ~~return resume to~~ return resume to his or her former job because of his or her injury may receive reasonable vocational rehabilitation services, including counseling and training, as the Workers' Compensation Program deems necessary to restore him or her to suitable employment. ~~Such~~ This additional benefit ~~s~~ shall not exceed five thousand ~~dollars~~ (\$5,000) dollars and direct payments to service providers shall be made wherever possible.

B. The Workers' Compensation Program may impose additional requirements for initial and continued receipt of vocational rehabilitation benefits in compliance with the Workers' Compensation Program rules and regulations governing vocational rehabilitation.

C. The Workers' Compensation Program, the employer and the claimant may enter into an agreement for the utilization of vocational rehabilitation for which the claimant is qualified, pursuant to this Section, for the following purposes:

1. Partial payment of wages during a period of on-the-job training necessary to return a claimant to work in a job different from that in which he or she was injured, provided that:

a. The period of on-the-job training may not exceed ninety (90) calendar days; and

b. The employer must act in good faith with regard to the permanent retention of the worker after the on-the-job training period has ended.

2. Purchase of equipment, tools or modifications to the work place to provide a claimant with necessary accommodations for return to work in his or her prior position or a new position.

**§ 1044 1048. Eyewear**

The Workers' Compensation Program shall pay for frames and/or lenses of a like kind and quality which were damaged as a result of an ~~accident which results in~~ a compensable injury to the claimant during the course and scope of his or her employment, but shall not pay for eye examinations unless there is a potential injury to the claimant's eye(s) from the accident.

**§ 1045 1049. Clothing**

A claimant who incurs damages to an article of clothing worn during an accident which results in a compensable injury shall be paid for replacement clothing of a like kind and quality.



§ 1046 1050. Travel for treatment

A. A claimant shall be compensated for travel, meals and lodging to receive authorized treatment ~~at a rate consistent with the travel allowance authorized by the established Navajo Nation travel policies in effect~~ at the prevailing rate for travel reimbursement paid by the Navajo Nation at the time of the travel.

B. Actual mileage shall be paid based on ~~mileage shown on mileage charts and maps recognized by rules adopted by the Program, plus reasonable local mileage, not to exceed 20 miles per trip, upon presentation of a signed statement by the claimant showing date or dates and points traveled.~~ upon written statements of odometer readings submitted by the claimant, or by mileage shown on mileage charts recognized by rules adopted by the Workers' Compensation Program, from the actual place of departure to the location of the medical appointment, and return.

C. Meals and lodging shall be paid or reimbursed for claimant only, unless his or her condition warrants a relative or other person to assist; payment or reimbursement for this additional person shall be at the discretion of the Workers' Compensation Program.

D. Reasonable land or air ambulance charges for claimant shall be recognized and payable under this Act only if approved by the Workers' Compensation Program.

E. All claims for ~~payment or reimbursement must be supported by documentation consistent with the Navajo Nation travel policies.~~ travel reimbursement must be supported by detailed receipts showing specific charges. All requests for travel advances shall be submitted in writing on a form approved by the Workers' Compensation Program and shall be paid only if approved by the Workers' Compensation Program.

§ 1047 1051. Indemnity benefits exempt from creditors and writs

A. Except for amounts due, pursuant to a Navajo Nation court order for child support, indemnity benefits shall be exempt from claims of creditors and from any writs of attachment, garnishment or execution.

B. Indemnity benefits shall be paid only to a claimant or his or her personal representative or such other person(s) as the Workers' Compensation Program may, under the terms of this Act, appoint to receive or collect the same, or an individual designated by a Navajo Nation court for collection of child support.

C. Indemnity benefits shall be diverted for payment of child support only to a maximum of fifty percent (50%) percent of the claimant's weekly indemnity benefit, or twenty-five percent (25%) percent of the claimant's weekly indemnity benefit if the claimant is legally required to support minor dependents other than those for whom child support is sought.

§ 1048 1052. ~~Permanent partial disability; permanent total disability~~ Benefits for permanent disability and death

A. Permanent partial disability exists when a claimant, by reason of occupational disease or injury arising out of and in the course and scope of employment, is unable to some extent, to do work for which he or she is reasonably suited.

B. Permanent total disability exists whenever a claimant, by reason of occupational disease or injury, suffers the complete and irrecoverable loss of sight of both eyes, the complete and irrecoverable loss of hearing in both ears as a result of a single and traumatic incident, irreversible brain injury amounting to a thirty (30%) percent or greater loss of pre-injury brain function, or the loss by actual severance of both

hands or feet. The claimant who qualifies as permanently totally disabled shall still be entitled to permanent total disability benefits even if he or she can engage in an occupation.

A. C. Scheduled Benefits

~~1. A schedule of benefits is hereby established.~~

2. 1. A total loss of use of a member scheduled body part exists whenever, by reason of occupational disease or injury, such member body part no longer possesses any substantially utility as a member of the body fulfills one or more of its functions.

3. 2. Permanent partial disability benefits are measured calculated by multiplying the gross average weekly wage times the number of weeks reflected in the Benefits for Total Loss of Use, where applicable.

4. 3. Benefits for Total Loss of Use:

a. ARM

(1) Dextrous

(a) At or near shoulder ..... ~~180~~ 225 weeks

CJA-03-12

(b) At elbow ..... ~~150~~ 214 weeks

(c) Between elbow and wrist ..... ~~141~~ 208 weeks

(2) Nondextrous

(a) At or near shoulder ..... ~~159~~ 188 weeks

(b) At elbow ..... ~~141~~ 178 weeks

(c) Between elbow and wrist ..... ~~132~~ 173 weeks

## b. HAND

(1) Dextrous	.....	<del>111</del> <u>203</u> weeks
(2) Nondextrous	.....	<del>99</del> <u>169</u> weeks

## c. THUMB

(1) Total	.....	<del>51</del> <u>85</u> weeks
(2) At proximal joint	.....	<del>30</del> <u>81</u> weeks
(3) At distal joint	.....	<del>21</del> <u>41</u> weeks

## d. FIRST FINGER

(1) Including metacarpal	.....	<del>24</del> <u>45</u> weeks
(2) At proximal joint	.....	<del>18</del> <u>41</u> weeks
(3) At second joint	.....	<del>15</del> <u>32</u> weeks
(4) At distal joint	.....	<del>12</del> <u>18</u> weeks

## e. SECOND FINGER

(1) Including metacarpal	.....	<del>21</del> <u>45</u> weeks
(2) At proximal joint	.....	<del>15</del> <u>41</u> weeks
(3) At second joint	.....	<del>12</del> <u>32</u> weeks
(4) At distal joint	.....	<del>9</del> <u>18</u> weeks

## f. THIRD FINGER

(1) Including metacarpal	.....	<del>15</del> <u>26</u> weeks
(2) At proximal joint	.....	<del>12</del> <u>20</u> weeks
(3) At second joint	.....	<del>9</del> <u>16</u> weeks
(4) At distal joint	.....	9 weeks

g.	FOURTH FINGER		
	(1) Including metacarpal .....	15	<u>26</u> weeks
	(2) At proximal joint .....	12	<u>20</u> weeks
	(3) At second joint .....	9	<u>16</u> weeks
	(4) At distal joint .....		9 weeks
h.	ALL FINGERS-pertaining to one hand, except thumb .....	57	<u>122</u> weeks
i.	LEG		
	(1) At or near hip joint .....	<del>180</del>	<u>150</u> weeks
	(2) At or above knee .....	<del>141</del>	<u>135</u> weeks
	(3) Between knee and ankle .....		120 weeks
j.	FOOT		
	(1) At ankle .....	99	<u>105</u> weeks
k.	GREAT TOE		
	(1) Including metatarsal .....	36	<u>20</u> weeks
	(2) At proximal joint .....	15	<u>18</u> weeks
	(3) At second joint .....	9	<u>8</u> weeks
l.	ONE TOE		
	(1) Including metatarsal .....	12	<u>3</u> weeks
	(2) At proximal joint .....	9	<u>3</u> weeks
	(3) At second joint .....	9	<u>1</u> weeks
m.	ALL TOES, same foot .....	36	<u>33</u> weeks
n.	EYE-ONE		
	(1) Total Blindness .....	<del>111</del>	<u>75</u> weeks

o. EYE-BOTH

See permanent total disability

p. EAR-ONE

(1) Total deafness, one ear ..... 36 23 weeks

~~(2) Total deafness, both ears ..... 135 weeks~~

q. EAR-BOTH

(1) Total deafness, both ears, other than single traumatic incident ..... 131 weeks

(2) Total deafness, both ears, single traumatic incident

See permanent total disability

~~q. PERMANENT TOTAL DISABILITY ..... 375 weeks~~

4. Permanent Total Disability ..... 375 weeks

5. ~~LOSS OF LIFE~~ Loss of Life ..... 375 weeks

B. D. Permanent Partial Disability Calculation of benefits of for Non-Scheduled Permanent Impairment

1. For ~~other~~ nonscheduled permanent impairments, a calculation of percentage of permanent partial disability is made.

2. If an injury has left a claimant with a nonscheduled permanent bodily impairment, indemnity benefits for a specified number of weeks ~~is payable~~ shall be paid, without regard to presence or absence of wage loss in the future, and such benefits ~~shall not~~ may be paid as a lump sum or periodically, at the election of the claimant.

3. Permanent partial disability benefits for an injury to a ~~scheduled,~~ a non-scheduled body part member are calculated by multiplying the gross average weekly wage times ~~the number of weeks provided for in the Benefits for Total Loss of Use times~~ the percentage of permanent whole person impairment.

~~4. Permanent partial disability benefits for injury to the body as a whole are calculated by multiplying the gross average weekly wage times the number of weeks provided in the Benefits for Total Loss of Use times the percentage of permanent impairment.~~

4. For all non-scheduled injuries the health care provider shall provide a whole person impairment for the claimant pursuant to the most current version of American Medical Association Guides to the Evaluation of Physical Impairment. The health care provider shall use the protocol under the current version of American Medical Association Guides to the Evaluation of Physical Impairment for calculating the whole person impairment.

~~A. E. Permanent Total Disability. An award of permanent total disability shall be in lieu of all lesser indemnity benefits that may be applicable to the injury that created the condition of permanent total disability. No claimant may receive more than three hundred seventy-five (375) weeks of indemnity benefits for any single accident or occupational disease exposure.~~

\*\*\*\*

### **Section 3. Effective Date**

The Act is effective upon its approval pursuant to 2 N.N.C. §221.

### **Section 4. Codification**


The provisions of this ordinance which amend or adopt new sections of the Navajo Nation Code shall be codified by the Office of Legislative Counsel. The Office of Legislative Counsel shall incorporate such amended provisions in the next codification of the Navajo Nation Code.

**Section 5. Saving Clause**

Should any provisions of this ordinance be determined invalid by the Navajo Nation Supreme Court, or the District Courts of the Navajo Nation, without appeal to the Navajo Nation Supreme Court, those portions of this ordinance which are not determined invalid shall remain the law of the Navajo Nation.

**CERTIFICATION**

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona) at which a quorum was present and that the same was passed by a vote of 19 in favor and 0 opposed, this 25<sup>th</sup> day of January 2012.

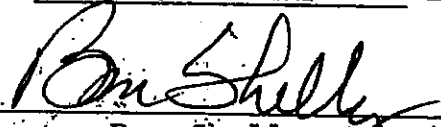
  
Johnny Naize, Speaker,  
Navajo Nation Council

Feb 07, 12  
Date

Motion: Alton Shepherd  
Second: Jonathan Nez

**ACTION BY THE NAVAJO NATION PRESIDENT:**

1. I hereby sign into law the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (10), on this \_\_\_\_\_ day of FEB 13 2012 2012.

  
Ben Shelly, President  
Navajo Nation



2. I hereby veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (11), this \_\_\_\_\_ day of \_\_\_\_\_ 2012 for the reason(s) expressed in the attached letter to the Speaker.

---

Ben Shelly, President  
Navajo Nation

**FIRM NAME**  
**ADDRESS**

Workers' Compensation Program  
Navajo Nation Governement  
Window Rock, AZ 86515

**TELEPHONE NO**

(000) 000-0000

**DIVISION OF ECONOMIC DEVELOPMENT**  
**BUSINESS REGULATORY DEPARTMENT**

**NAVAJO BUSINESS OPPORTUNITY ACT**

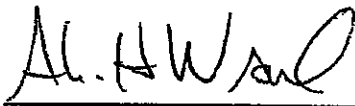
n/a I certify that the above named person or firm is a certified Navajo or other Indian owned firm in accordance with the provisions or current Navajo Tribal Law for enforcement of Navajo Opportunity in Tribal Contracting.

n/a I certify that the above named person or firm is not certified as a Navajo or other Indian Firm in accordance with the provision of current Navajo Tribal Law for enforcement of Navajo Opportunity in Tribal Contracting.

n/a No Certified Navajo or other Indian Firms available for contract performance.

n/a Attached contract has been let out for bid in accordance with all Tribal Contract Law - Navajo Business Opportunity Act (5 N.C.C. § 201 et. seq.), Navajo Nation Procurement Code (12 N.C.C. § 301 et. seq.), and Title Two (2 N.C.C. § 223) (~~Invitation to Bid attached~~)

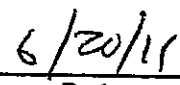
n/a This proposed contract is in compliance with applicable Navajo Business Opportunity Act (5 N.C.C. § 201 et. seq.) and Navajo Nation Procurement Code (12 N.C.C. § 301 et. seq.) requirements. **See Comments Below.**



Signature



Department Manager  
Title



Date

Reviewed by:   
Business Regulatory Department

Date: 6/20/11

COMMENTS (If any) Proposed Resolution of the Navajo insurance Commission to amend the Navajo Nation Workers' compensation Act. The Budget & Finance Committee has authority to review & approve legislative amendments and legislative action. The NBOA will not apply to legislative actions. Sign and Forward.

**RESOLUTION OF  
THE NAVAJO NATION INSURANCE COMMISSION**

**RECOMMENDING TO THE BUDGET AND FINANCE COMMITTEE OF THE NAVAJO  
NATION COUNCIL THE APPROVAL AND ADOPTION OF THE AMENDMENTS TO  
THE NAVAJO NATION WORKERS' COMPENSATION ACT**

**WHEREAS:**

1. Pursuant to 2 N.N.C. §§ 931 and 932, the Navajo Nation Insurance Commission is established and authorized to ensure adequate insurance coverage and protection for the Navajo Nation, its entities, and property; and,
2. Pursuant to 2 NNC § 933(A), the Navajo Nation Insurance Commission is authorized, subject to the approval of the Budget and Finance Committee of the Navajo Nation Council, to review, determine, select, and coordinate all insurance coverage and programs pertaining to the Navajo Nation, its entities and employees, including but not limited to workers' compensation insurance; and,
3. On October 22, 1997, the Navajo Nation Council, by Resolution CO-83-97, approved an amendment to the Navajo Nation Workers' Compensation Act provided for in 15 N.N.C. §§ 1001, et seq.; and,
4. The aforesaid Workers' Compensation Act (attached as Exhibit "A") has again been reviewed, revised, and amended to meet the current law of the Navajo Nation; to better meet the economic needs of both employers and employees participating in the Navajo Nation Workers' Compensation Program; and to provide for the development and implementation of additional rules and regulations for the administration of the Workers' Compensation Program; and,
5. On June 13 – 15, 2011, the Workers' Compensation Program provided a Work Session for the Navajo Nation Insurance Commission members and Navajo Nation Council Delegates; and,
6. The Navajo Nation Insurance Commission, upon review and discussions, deems it in the best interests of the Navajo Nation, its enterprises, chapters (political subdivisions of the Navajo Nation) and employees, to approve the proposed amendments to the Workers' Compensation Act.

**NOW THEREFORE BE IT RESOLVED THAT:**

1. The Navajo Nation Insurance Commission hereby approves and recommends to the Budget and Finance Committee of the Navajo Nation Council, the approval and adoption of the proposed amendments to the Workers' Compensation Act, 15 N.N.C. §§ 1001, et seq. as set out in Exhibit "A"; and,
2. The Navajo Nation Insurance Commission hereby approves and recommends to the Budget and Finance Committee of the Navajo Nation Council, the approval and adoption of proposed amendments to the Workers' Compensation Act, 15 N.N.C. §§ 1001, et seq. as set out in Exhibit "A" to go into effect on October 1, 2011 with the exception of § 1020 which will go into effect on October 1, 2012 ; and,
3. The Navajo Nation Insurance Commission hereby further directs the Navajo Nation Workers' Compensation Program to ensure that all lawfully authorized tribal governmental programs, enterprises, chapters (political subdivisions of the Navajo Nation) and employees continue with their participation in the amended Navajo Nation Workers' Compensation Act.

**CERTIFICATION**

We hereby certify that the foregoing Resolution was duly considered by the Navajo Nation Insurance Commission at a duly called meeting in Window Rock, AZ at which time a quorum was present and that the same was passed by a vote of 3 In favor, 0 opposed, and 0 abstained, this 27<sup>th</sup> day of June 2011.

Fernadette Fernaldy  
Chairperson  
Navajo Nation Insurance Commission

Motioned by: Linda Youvella  
Seconded by: Ray Smith

**LAW AND ORDER COMMITTEE  
22<sup>nd</sup> NAVAJO NATION COUNCIL**

**FIRST YEAR 2011**

**COMMITTEE REPORT**

Mr. Speaker,

The **LAW AND ORDER COMMITTEE** to whom has been assigned:

**NAVAJO LEGISLATION NO. 0408-11**

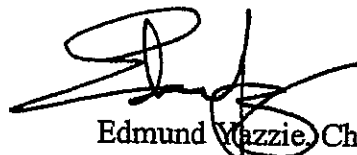
**AN ACT RELATING TO BUDGET AND FINANCE AND NAABIK'YATI  
ENACTING THE NAVAJO NATION WORKERS' COMPENSATION ACT OF 2011.  
(Sponsored by Lorenzo Curley)**

Has had it under consideration and report the same with a recommendation that it **DO PASS**, with one amendment:

Page 51, Line 29, delete "~~upon its approval pursuant to 2 N.N.C. §221~~" and insert as new language "January 1, 2012", to read "The Act is effective January 1, 2012".

and therefore referred to **BUDGET AND FINANCE COMMITTEE**.

Respectfully submitted,



Edmund Vazzie Chairperson  
Law and Order Committee of the  
22<sup>nd</sup> Navajo Nation Council

Date: October 11, 2011

The vote was 3 in favor and 1 opposed  
Motion: Russell Begaye  
Second: Elmer Begay

22<sup>nd</sup> NAVAJO NATION COUNCIL

First Year 2011

Mr. Speaker:

The BUDGET & FINANCE COMMITTEE to whom has been assigned

NAVAJO LEGISLATIVE BILL # 408-11:

An Action Relating to Budget and Finance and Naa'Bikiyati; Enacting the Navajo Nation Workers Compensation Act of 2011 *Sponsored by the Honorable Walter Phelps, Council Delegate*

has had it under consideration and reports the same with the recommendation that It **Do Pass** without amendment.

And therefore, referred to the NAA'BIKIYATI' Committee

Respectfully submitted,



LoRenzo Bates, Chairman

Adopted:   
Legislative Advisor

Not Adopted: \_\_\_\_\_  
Legislative Advisor

Date: 21 October 2011

The vote was 4 in favor 0 opposed

Excused: Lorenzo Curley

Absent:

**NAA'BIK'IYATI COMMITTEE REPORT**  
**22<sup>ND</sup> NAVAJO NATION COUNCIL – First Year 2011**

Mr. Speaker:

The NAA'BIK'IYATI COMMITTEE to whom has been assigned:

**LEGISLATION NO. 0408-11**  
Introduced by Hon. Walter Phelps

**AN ACTION**

Relating to Budget and Finance and Naabik'iyati'; Enacting the Navajo Nation Workers' Compensation Act of 2011

has had it under consideration and reports the same with a **DO PASS** with **TWO AMENDMENTS**:

On page 11, line 23, insert new paragraph 1,: It is the intention of the Navajo Nation that ever claimant return to work as soon as possible, taking into account his or her medical condition and the necessary qualifications of available work. Health care providers shall only determine the medical condition of the claimant. It shall be the duty of every employer of an injured worker to make a good faith effort to provide employment opportunities to the claimant consist with his or her medical condition and the necessary qualifications for work as started in the job description.

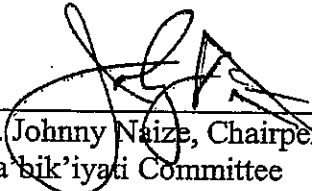
Existing section 1 will become paragraph 2.

On page 13, line 22 to line 29, delete the entire Section "D" Termination of Claimants.

and thence referred to the **Navajo Nation Council**.

**CERTIFICATION**

I hereby certify that the foregoing legislation was duly considered by the Naa'bik'iyati' Committee of the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed with a vote of **12 in favor 6 opposed** this 22nd day of December 2011.



---

Mr. Johnny Naize, Chairperson  
Naa' bik'iyati Committee

MOTION: Nelson Begaye  
SECOND: David Tom



**FIRM NAME**  
**ADDRESS**

Budget and Finance Committee  
Navajo Nation  
Window Rock, AZ

**TELEPHONE NO**

**DIVISION OF ECONOMIC DEVELOPMENT  
BUSINESS REGULATORY DEPARTMENT**

**NAVAJO BUSINESS OPPORTUNITY ACT**

\_\_\_\_\_ I certify that the above named person or firm is a certified Navajo or other Indian owned firm in accordance with the provisions or current Navajo Tribal Law for enforcement of Navajo Opportunity in Tribal Contracting.

n/a I certify that the above named person or firm is not certified as a Navajo or other Indian Firm in accordance with the provision of current Navajo Tribal Law for enforcement of Navajo Opportunity in Tribal Contracting.

n/a No Certified Navajo or other Indian Firms available for contract performance.

n/a Attached contract has been let out for bid in accordance with all Tribal Contract Law - Navajo Business Opportunity Act (5 N.C.C. § 201 et. seq.), Navajo Nation Procurement Code (12 N.C.C. § 301 et. seq.), and Title Two (2 N.C.C. § 223) ~~(Invitation to Bid attached)~~

n/a This proposed contract is in compliance with applicable Navajo Business Opportunity Act (5 N.C.C. § 201 et. seq.) and Navajo Nation Procurement Code (12 N.C.C. § 301 et. seq.) requirements. **See Comments Below.**

*A. H. Williams*

Department Manager I

5/23/12

**Signature**

**Title**

**Date**

Reviewed by: \_\_\_\_\_  
Business Regulatory Department

*EPH*

Date: 5/23/12

**COMMENTS (If any) This is a Proposed Resolution for amendments to the Navajo Nation Workers' Compensation Act. The NBOA will not apply to this Proposed Resolution.**  
**Sign and Forward.**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## § 1001. Establishment of Workers' Compensation Act

A. There shall be a program for workers' compensation for all employees of the Navajo Nation, including all enterprise and chapter employees, Council Delegates, chapter officials, and others as set out in 15 N.N.C. § 1002(A)(12). This program shall be known as the Navajo Nation Workers' Compensation Program.

B. This Act, as amended, shall apply to all workers' compensation claims arising from an accident which occurred after the effective date of this version of the Act and all occupational disease disablement claims arising from a last injurious exposure which occurred after the effective date of this version of the Act.

## § 1002. Definitions

A. Definitions. In this Act, unless the context otherwise requires:

1. "Accident" means an unforeseen event occurring without the will or design of the person whose mere act causes it; a sudden, unexpected, unusual, or undesigned occurrence; or the effect of an unknown cause or, the cause, being known an unprecedented consequence of it, provided, however, that no incident shall be considered an accident that does not involve a sudden and discernable physical trauma or event.
2. "Act of God" means an act occasioned exclusively by forces of nature without the interference of human agency.
3. "Administrative cost" means operational expenses associated with claims process through the Navajo Nation Workers' Compensation Program.
4. "Artificial member" means a fabricated substitute for a body part, to include eye(s) and/or teeth removed because of trauma or disease.
5. "Average weekly wage" means the earnings of the claimant in the employment in which he or she was working at the time of the injury during the period ninety-one (91) days immediately preceding the date of the injury, divided by thirteen (13) weeks, unless the claimant was working for less than ninety-one (91) days prior to the injury. In that event, the wages earned prior to the injury in the employment in which he or she was working at the time of injury, divided by the number of days in the employment he or she was working at the time of the injury, and multiplied by the average number of scheduled work days per week during the period, shall be the average weekly wage.
6. "Award" means the findings or decision of the Workers' Compensation Program of the amount of compensation or vocational rehabilitation services due a claimant.
7. "Child" includes dependent natural children, step-children, adopted children and acknowledged children born out of wedlock, but does not include married children unless they are dependents.
8. "Claimant" means the injured covered person or dependents of same in the event of death of the covered person.
9. "Compensation" means indemnity benefits, payments to health care providers, mileage and other expenses associated with treatment by health care providers, and death benefits.
10. "Controlled substance" means any drug so designated or defined by Navajo Nation and other applicable laws where availability or possession of such substance is restricted or prohibited.
11. "Course and scope of employment" means that, considering the time, place and circumstances, a covered person is advancing the business purposes of the employer when the accident occurs. An injury must arise out of and be in the course and scope of employment in order that a claim be compensable.

12. "Covered person," "covered employee," and "covered worker" mean:
- a. Every person in the service of the Navajo Nation, elected, appointed or hired, including all enterprise and chapter employees, Council Delegates, and chapter officials, who receive wages or other payments for services; stipends, or per diem.
  - b. Members of duly constituted committees, boards and commissions recognized by the Navajo Nation may be deemed to be covered persons and entitled to the benefits provided by the Act, provided:
    - (1) Such committee, board or commission member is injured or killed in the course and scope of his or her duties and is acting at the direction of the committee, board or commission; and
    - (2) Liability for premium payment has been incurred by the committee, board or commission member; and
    - (3) The committee, board or commission has submitted documentation to the Workers' Compensation Program defining the nature and type of committee, board or commission work and the members entitled to such benefits.
  - c. General volunteer workers for the Navajo Nation, a tribal enterprise or a chapter may be deemed to be covered persons and entitled to the benefits provided by this Act, provided:
    - (1) Such volunteer is injured or killed in the course and scope of employment and is working under the direction and control of an employer; provided that he or she is not an emergency response volunteer as provided in subsection (d) of this section.
    - (2) Liability for premium payment has been incurred for the volunteer; and
    - (3) The employer has submitted documentation to the Workers' Compensation Program defining the nature and type of volunteer work and workers to be entitled to such benefits.
  - d. Emergency response volunteer workers for the Navajo Nation, a tribal enterprise or a chapter may be deemed to be covered persons and entitled to the benefits provided by this Act, provided:
    - (1) Such volunteer is injured or killed in the course and scope of employment and is working under the direction and control of an employer; and provided that he or she is not a general volunteer as provided in subsection (c) of this section.
    - (2) The Navajo Nation, its enterprise or chapter has declared an emergency in response to circumstances or conditions that require the use of volunteers as emergency responders;
    - (3) The volunteer is working in response to and during the period covered by the declared emergency; and
    - (4) Liability for premium payment is paid by the end of the fiscal year quarter following the end of the declared emergency.
  - e. Consultants, independent contractors and all other persons not directly employed by the Navajo Nation, its enterprises or chapters are excluded from the coverage of the Workers' Compensation Act.
  - f. The determination of whether or not an individual is a "covered person" and determination of the premium to be assessed shall be made by the Workers' Compensation Program. Premium assessment shall be governed by rules adopted by the Workers' Compensation Program with the approval of the Navajo Nation Insurance Commission.
13. "Dependents" shall mean:
- a. The widow/widower, if living with the deceased at the time of his or her death, or legally entitled to be supported by him or her;

- b. A child of a deceased covered person under twenty-six (26) years of age, unmarried and dependent upon the deceased; or a child incapable of self-support and dependent upon the deceased;
  - c. A parent or grandparent, if actually dependent upon the deceased;
  - d. A grandchild, brother or sister, only if under twenty-six (26) years of age, unmarried and dependent upon the deceased, or incapable of self-support and dependent upon the deceased;
  - e. A person is considered to be a dependent upon a showing of proof that a relation of dependency existed at the time of death.
14. "Employer" means an employer of one or more covered persons.
  15. "Health care provider" means a person licensed to practice medicine by any state within the United States, or foreign country if the injury occurs outside of the United States, including a pharmacy dispensing prescribed medication, a hospital or other accredited medical facility, licensed or certified chiropractors and other recognized, properly licensed or certified medically related practitioners recognized by the Navajo Nation, including traditional healing practitioners, approved pursuant to the Workers' Compensation Program's rules.
  16. "Impairment" means an anatomical or functional condition that is ratable pursuant to the most recent edition of the American Medical Association's guide to the evaluation of permanent impairment or comparable publications of the American Medical Association.
  17. "Indemnity benefits" means payments provided as a partial replacement for wages or as a statutory settlement of permanent disability.
  18. "Injury" or "injuries" means temporary or permanent anatomical or functional change resulting from an accident or occupational disease.
  19. "Maximum medical improvement" means the date after which further recovery from or lasting improvement to an injury can no longer be reasonably anticipated based upon reasonable medical probability as determined by a health care provider selected by the Workers' Compensation Program.
  20. "Minor employee" means a minor working at an age and at an occupation legally permitted. Such minor shall be deemed at the age of majority for the purpose of this Act.
  21. "Natural causes" means naturally occurring disease, degenerative or aging process.
  22. "Occupational disease" means a bodily disease which results directly from the employment or the conditions under which work was performed, which is shown to a reasonable degree of medical certainty to be as a natural incident of the work and a result of the exposure occasioned by the nature of the employment, and which can be fairly traced to the hazard to which the worker would not have been equally exposed to outside of the employment. The disease need not have been foreseen or expected but after its contraction must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a natural consequence.
  23. "Parent or grandparent" means the natural or adoptive father or mother or the natural or adoptive grandfather or grandmother of the covered person.
  24. "Preexisting condition" means a physical anatomical or functional abnormality that existed prior to the occupational accident or last injurious exposure.
  25. "Temporary partial disability" means the indemnity benefit provided to a claimant who is released to work prior to maximum medical improvement and who returns to work at less than the pre-injury compensation.
  26. "Temporary total disability" means the indemnity benefit provided to a claimant who is unable to perform his or her duties, by reason of an accidental injury or occupational exposure, prior to the date of his or her maximum medical improvement.
  27. "Vocational rehabilitation" means re-training for gainful employment in another specific occupation, including on the job training, but shall not include general academic re-education.

28. "Week" means seven calendar days.

B. The Workers' Compensation Program may promulgate additional definitions by rule pursuant to 15 N.N.C. § 1011.

### § 1003. Acknowledgement of Act

A. All covered workers shall be conclusively presumed to have elected workers' compensation in accordance with the terms, conditions and provisions of this Act, including acknowledgement that the Navajo Nation is a sovereign Nation for the purposes of workers' compensation, governed by the laws set forth by the Navajo Nation Council and no other workers' compensation law is applicable to injuries or death sustained by the covered workers.

B. The employer, including personnel offices of the Navajo Nation, the processing units for the employment and training programs, or the management of the enterprises and chapters shall be responsible for explaining the provisions of the Act to their workers and shall post in a conspicuous location a notice as follows:

#### NOTICE TO WORKERS

*All covered workers are hereby notified that the Navajo Nation is a sovereign Nation for the purposes of workers' compensation, governed by the laws as set forth by the Navajo Nation Council and that no other workers' compensation law is applicable to injuries or death sustained by a covered worker. If you do not fully understand the terms, conditions and provisions of the Navajo Nation Workers' Compensation Act, contact your supervisor or the Workers' Compensation Program office for further details.*

### § 1004. Safety plans for protection of employees and prevention of injuries

A. An employer may qualify for incentives, including recognition of the employer, adjustment of premium rates, and other incentives that may be applicable, upon the implementation of an approved workplace safety plan.

B. The Workers' Compensation Program, in cooperation with insurance safety personnel, shall assess the implementation of an employer's safety plan upon request by the employer. If the employer's safety plan has not been satisfactorily implemented, the insurance safety personnel shall specify in writing the steps necessary to remedy the deficiency.

C. The employer's safety plan must provide for the following minimum requirements:

1. A periodic site-specific safety inspection with written findings of any potential hazards or exposures. Emergency action and contingency plans shall be reviewed during an approved site-specific safety inspection.

2. Safety initiatives involving the direct input of the employees with written findings concerning any potential hazards or exposures disclosed and/or suggestions for safety improvements. Continuing employee-management safety consultations are encouraged for satisfaction of this requirement.

3. If a potential hazard or exposure is disclosed pursuant to sub-sections (A) and (B) above of this Section, a written assessment of the costs and benefits of corrective action shall be documented and reported to insurance safety personnel.

4. A safety awareness program, site-specific for all employees, to be conducted as part of an orientation to new employees. Additional safety training shall be provided to all employees at least annually. Insurance safety personnel shall provide the periodic training upon request.
5. A safety incentive program for the recognition and reward of employees who disclose potential hazards or exposures and the adoption of a formal policy protecting employees against retaliation for disclosure of safety risks.
6. Storage of all records created pursuant to this Section, with accessibility for inspections of the records by insurance safety personnel.

D. The most current version of the employer's safety plan shall be provided to the insurance safety program and maintained as if it were a protected document by that office.

E. The Insurance Safety personnel and the Workers' Compensation Program shall cooperate with employer-based safety programs in the identification of accident trends, recommendation of sound safety practices and enhancement of safety awareness.

#### § 1005. Return to work

A. Reports of physical conditions and limitations and orders to remain off work

1. It is the intention of the Navajo Nation that every claimant return to work as soon as possible; taking into account his or her medical condition and the necessary qualifications of available work. Health care providers shall only determine the medical condition of the claimant. It shall be the duty of every employer of an injured worker to make a good faith effort to provide employment opportunities to the claimant consistent with his or her medical condition and the necessary qualifications for work as stated in the job description.
2. Every health care provider who evaluates or treats a covered employee shall complete, within three (3) days of the date of first evaluation or treatment, a report of employee condition and limitations, on a form adopted for that purpose by the Workers' Compensation Program, and shall provide copies of the report to the employee and the Workers' Compensation Program as soon as possible. When an employee is treated and released from the emergency department of a hospital, the health care provider most responsible for follow-up care, if applicable, or the emergency department attending physician, shall provide the report of employee condition and limitations to the employee upon release, and the employee shall be responsible for providing the report to the employer and the Workers' Compensation Program as soon as possible.
3. Every health care provider shall prepare supplemental reports of employee condition and limitations and provide copies of the report to the employee and the Workers' Compensation Program when the employee reaches maximum medical improvement, or when requested by the employee or the Workers' Compensation Program.
4. No health care provider shall order or authorize a covered employee to remain off of work unless the health care provider states in writing that the health and safety of the covered employee, or other persons at the place of work, would be endangered by the employee returning to work in any capacity. The provisions of this Section shall not apply to traditional healing practitioners who are recognized by the Program pursuant to the Program's Rules and Regulations.

5. The Workers' Compensation Program shall provide to the employer copies of the relevant portions of the report of employee condition and limitations, or any supplements, for the sole purpose of encouraging the employee to return to work.

6. No employer shall utilize any form for reporting employee conditions or limitations other than the form approved by the Workers' Compensation Program.

B. Temporary partial disability benefits

If a claimant, prior to reaching maximum medical improvement, returns to work at less than his or her pre-injury wage, the compensation to be paid shall be sixty-six and two-thirds (66-2/3%) percent of the difference between the wages received by the claimant prior to the injury and the wages earned by him or her thereafter. No claimant may be paid temporary partial disability payments and any other indemnity payment at the same time. The provisions of this Section shall only apply to injuries or occupational disease disabilities that occur after the date of enactment of this Act.

C. Premium adjustments for adoption and implementation of return to work plans

1. Each employer of covered employees may qualify for a reduction in workers' compensation insurance premiums of not less than five (5%) percent by the adoption of a return to work plan approved by the Workers' Compensation Program. If the Workers' Compensation Program's actuary determines that a larger reduction is appropriate and responsible, based upon actuarial data, the Workers' Compensation Program may offer a higher discount for compliance.

2. The Workers' Compensation Program shall develop and distribute to all employers written requirements for approved return to work plans within the first year of Workers' Compensation coverage after the adoption of this sub-Section. The Workers' Compensation Program may adopt revisions of the requirements for return to work plan approval to become effective in succeeding years of workers' compensation coverage.

3. Qualification for premium reduction in any year of workers' compensation coverage requires the employer to give at least ninety (90) days notice of the formal adoption of an approved return to work plan to the Workers' Compensation Program and all covered employees.

4. All employers with approved return to work plans shall submit for inspections, reviews, and audits by the Workers' Compensation Program. The Workers' Compensation Program will not unreasonably withhold plan approvals and will work with employers to facilitate the adoption and implementation of an approved return to work plan.

**§ 1006. Workers' Compensation Fund-Purpose; administration**

A. There shall be a fund maintained for the sole purpose of payment for workers' compensation and administrative costs as provided herein. The fund shall not be used for any other purpose.

B. The fund shall be part of the Workers' Compensation Program Account maintained on the financial records of the Navajo Nation Division of Finance, Window Rock, Arizona.

C. Funding shall be obtained by premium assessments to all participating employers. Collection of premium shall be made by the Division of Finance in conjunction with premium assessments

approved by the Navajo Nation Insurance Commission pursuant to 2 N.N.C. §§ 931 *et seq.*, as amended.

D. Failure of an employer to pay premium assessments shall subject that employer to monthly interest payments as determined by the Workers' Compensation Program utilizing rates approved by the Insurance Commission. Notice of premium assessment delinquency, and an opportunity to remedy the delinquency, shall be given before such interest payments are invoked.

#### § 1007. Premium rates

A. The premium rates charged shall be determined by the Insurance Commission and adjusted in accordance with the loss experience of each employer on an annual basis. Adjusted rates shall become effective at the beginning of the succeeding fiscal year following the announced adjustments.

B. The Insurance Commission, in setting rates, shall provide for reserves adequate to meet anticipated and unexpected losses, and other necessary reserves and surplus. The amount of surplus and reserves shall not be less than the sum of current incurred loss reserves, an actuarially reasonable reserve for incurred but not yet reported claims and an actuarially reasonable reserve for claims anticipated during the next eighteen (18) months. Any unnecessary reserves and surplus shall be returned to each participating employer on a pro rata basis.

C. Premium assessment adjustments for loss experience shall be based on at least four (4) years of actual loss experience. The Insurance Commission may, in its discretion, apply a tentative assessment to new employers subject to modification in accordance with their loss experience.

D. The Workers' Compensation Program may examine payroll records and such other documentation as may be needed to verify coverage and premiums for each covered employee. Any records examined or utilized in such verifications shall be treated as confidential to the same extent as they had in the possession of the original record keeper, and only personnel specifically authorized by the Workers' Compensation Program supervisor may have access to such records.

E. Any employer who misrepresents the amount of payroll upon which the premium to be paid to the Workers' Compensation Program fund is based shall be liable for a penalty of ten (10) times the amount of the difference in premium paid and the amount the employer should have paid. The penalty shall be assessed by the Insurance Commission and payment shall be made within thirty (30) days thereafter to the Division of Finance and placed into the Workers' Compensation Program Fund.

#### § 1008. Custodian; duties

A. The Division of Finance shall be custodian of the Workers' Compensation Fund; and shall record and reconcile authorized disbursements processed and paid by the Workers' Compensation Program Fund.

B. Internal control procedures will be established and utilized by the Division of Finance.

C. The Fund shall be subject to an annual fiscal audit conducted in accordance with Generally Accepted Accounting Principles.



### **§ 1009. Payment of benefits**

The Workers' Compensation Program shall administer this Act in accordance with the terms and conditions as described herein, and shall process properly approved payments of compensation as provided for in this Act.

### **§ 1010. Workers' Compensation Program – Powers and duties**

A. The Workers' Compensation Program shall be empowered to request medical reports, records and notes, police reports, autopsy reports and special investigations, engage the services of adjusters and consultants, and perform other activities as may be needed to process any claim for compensation or to further the intent of this Act. Payments for expenses associated with these activities shall be made at the direction of the Workers' Compensation Program.

B. The Workers' Compensation Program shall maintain complete and accurate administrative records and claim files on all activities relating to the Workers' Compensation Program. All closed files shall be preserved for seven (7) years.

C. The Workers' Compensation Program shall maintain files and records as follows:

1. Any records provided to the Workers' Compensation Program from any Navajo Nation program or office shall be maintained as confidential to the same extent that it was confidential under the law or rules applicable to the originating program or office.
2. Any records in the possession of the Workers' Compensation Program shall be maintained as confidential and disclosed only to the extent provided in the applicable provisions of the Navajo Nation Privacy and Access to Information Act, as amended, or applicable federal law.

### **§ 1011. Administration**

A. The Workers' Compensation Program, subject to approval by the Insurance Commission and Budget and Finance Committee of the Navajo Nation Council, or any successor organizational unit fulfilling substantially the same function, shall promulgate rules necessary to implement the provisions of this Act. A copy of the rules will be filed and made available for public inspection at the Workers' Compensation Program and will be mailed to any person making a written request.

B. The Workers' Compensation Program shall hold work sessions and orientations as may be necessary to gather and disseminate information relating to the purposes of the Navajo Nation Workers' Compensation Act.

C. It is unlawful to violate the provisions of the Workers' Compensation Act or any of the rules adopted to implement it. Violations shall be punishable by fines, or injunctive relief or any other remedy provided for in the rules or other remedies authorized by the laws of the Navajo Nation. The Workers' Compensation Program shall refer alleged violations of this Act or the Program's rules to the Navajo Nation Department of Justice.

### **§ 1012. Administrative conference/hearing process**

A covered person, aggrieved by any final written decision of the Workers' Compensation Program, may request an administrative conference and hearing as applicable, regarding his or her claim pursuant to this Section. The covered person's right to be heard is contingent upon compliance

with all requirements, including filing deadlines of the Workers' Compensation Program's Administrative Conference/Hearing Process.

#### A. Administrative Conference

1. A covered person disputing a decision rendered by the Program must, within thirty (30) calendar days after the issuance of the Program's written decision, request, in writing, that an administrative conference be scheduled among the covered person, the supervisor of the Workers' Compensation Program and the supervisor of the Insurance Services Department. The request for a conference shall be sent to the Workers' Compensation Program Supervisor.

2. The covered person's signed request for an administrative conference must include:

- a. The name and mailing address of the covered person;
- b. A brief summary of the relevant facts;
- c. A brief statement of the disputed issues; and
- d. A brief statement of the relief sought.

3. Within ten (10) working days of receiving a request for an administrative conference, the Workers' Compensation Program and the covered person will attempt, in good faith, to schedule a mutually satisfactory time and place for the conference.

4. The conference is designed to give the covered person and the Workers' Compensation Program an opportunity to identify the disputed issues and attempt to reach a mutually satisfactory agreement. In light of the intent and purpose of the conference, no legal representation, of the covered person, the Workers' Compensation Program, or the Insurance Services Department will be allowed at the conference. In the event the covered person contests the accuracy or appropriateness of the impairment rating utilized to generate an offer or settlement, the covered person may obtain an alternate impairment rating from a physician at his or her own expense, and have the alternate impairment rating considered as part of the administrative conference.

5. If the covered person and the Workers' Compensation Program reach a mutually satisfactory agreement, the Workers' Compensation Program will present a written document outlining the terms of the agreement to the covered person for signature. Any agreement reached by the parties shall constitute an administrative resolution of the covered person's claim.

6. If the covered person and the Workers' Compensation Program fail to reach a mutually satisfactory agreement, the Workers' Compensation Program will present a written document summarizing the administrative conference to the covered person. Upon receipt of the document, the covered person may file a request for a hearing with the Navajo Nation Office of Hearing and Appeals. No other means of review of the Workers' Compensation Program's decision shall be permitted.

7. Failure of the covered person to file a written request for a hearing with the Navajo Nation Office of Hearings and Appeals, within thirty (30) calendar days of receipt of the summary of the administrative conference, shall result in forfeiture of his or her right to a hearing before the Navajo Nation Office of Hearings and Appeals.

#### D. Hearing Request

1. Before any hearing may be scheduled by the Navajo Nation Office of Hearings and Appeals, the covered person must satisfy the following conditions:
  - a. The covered person and the Workers' Compensation Program must have failed to reach a mutually satisfactory agreement at the conference; and
  - b. The covered person must have filed a written request for hearing with the Office of Hearings and Appeals within thirty (30) calendar days as provided for in 15 N.N.C. §1012 (A)(6).
2. The written request for hearing must include:
  - a. The name and mailing address of the covered person;
  - b. A brief summary of the relevant facts;
  - c. A brief statement of the disputed issues; and
  - d. A brief statement of the relief sought.
3. The Navajo Nation Office of Hearings and Appeals, within ten (10) working days of receiving the request for a hearing, shall schedule a time and place for the hearing and shall inform the covered person, or his or her legal representative and the Workers' Compensation Program, of the time and place of the hearing. The notice of hearing shall be sent by first class mail.
4. The covered person may be represented by any individual licensed to practice law in the Courts of the Navajo Nation.
5. A full and complete record, by way of a recording device or a stenographer, shall be kept of all proceedings held before the Navajo Nation Office of Hearings and Appeals.
6. The hearing officer shall render a written decision within thirty (30) calendar days after the close of the hearing and shall send a written copy of the decision to the covered person and the Workers' Compensation Program, by first class mail.

Any decision rendered by the Navajo Nation Office of Hearings and Appeals, shall be subject to review only by the Supreme Court of the Navajo Nation as set forth in 15 N.N.C. § 1013.

### § 1013. Final appeal to the Navajo Nation Supreme Court

The decision of the Navajo Nation Office of Hearings and Appeals shall be final, with a right of appeal only to the Supreme Court of the Navajo Nation.

A. Upon receipt of a written decision from the Navajo Nation Office of Hearings and Appeals, either the Workers' Compensation Program or the covered person may appeal the decision to the Supreme Court of the Navajo Nation.

B. The party challenging the decision of the Navajo Nation Office of Hearings and Appeals shall file a written notice of appeal, in the form prescribed by the Navajo Rules of Civil Appellate Procedure, within thirty (30) calendar days after the Navajo Nation Office of Hearings and Appeals issues its written decision to the parties.

C. The Navajo Rules of Civil Appellate Procedure shall govern the appeal process.

D. Any appeal filed with the Supreme Court of the Navajo Nation shall be decided on the appellate record, and the Supreme Court shall limit its review to questions of law.

### § 1014. Annual report

A. Prior to the end of each Navajo Nation fiscal year, the Workers' Compensation Program shall make a report to the Insurance Commission and Budget and Finance Committees of the Navajo Nation Council, or any successor organizational unit fulfilling substantially the same function, for the preceding fiscal year. The report shall include:

1. A statement of the number of claims filed and awards made;
2. A general statement of the causes of reported accidents or occupational disease;
3. A detailed statement of disbursements from the Workers' Compensation Program Fund Account; and
4. Other matters which the Workers' Compensation Program deems proper to call to the attention of the Insurance Commission, including recommendations.

B. The Workers' Compensation Program shall provide each employer a quarterly "Experience Report" providing information as to workers injured, amounts paid for compensation, and an annual explanation of the premium.

#### **§ 1015. Compensation as exclusive remedy**

The right to receive workers' compensation pursuant to the provisions of this Act for injuries or death sustained by a claimant shall be the exclusive remedy against the Navajo Nation, its enterprises or political subdivisions. An employee receiving compensation under any program or law of any other jurisdiction shall have no additional remedy under the Navajo Nation Workers' Compensation Program or against the Navajo Nation generally.

#### **§ 1016. False statement or false representation**

No claimant may make a false statement or representation in order to obtain any compensation under the provisions of this Act. Notwithstanding any other provisions of the Act, the Workers' Compensation Program may suspend benefits during the investigation of a good faith allegation of false statement or false representation. Upon proof that a claimant made a false statement or a false representation, he or she shall forfeit all rights to such benefit and the Workers' Compensation Program may refer the matter to the appropriate prosecutorial or law enforcement agency.

#### **§ 1017. Medical information**

A. Information obtained by the attending physician, surgeon, hospital or other medical facility or personnel while in attendance of the injured worker shall not be a privileged communication if such information is determined by the Workers' Compensation Program to be necessary for a proper understanding and evaluation of the claim.

B. The Workers' Compensation Program shall have the right to request a full and complete report from the physician, surgeon, hospital other medical facility or personnel, or other health care providers at times and in the form and details as deemed necessary and shall have a right to present specific questions required to evaluate the claim in person or in writing.

C. The covered worker acknowledges the right of the Workers' Compensation Program to obtain such information and the covered worker or his or her representative shall execute all releases and/or consents to disclosure of medical records and/or information that are required to authorize release of medical records or information to the Workers' Compensation Program under any applicable privacy law.

D. The Workers' Compensation Program shall maintain all information obtained pursuant to this Section as confidential information, but such information can be disclosed to the claimant or other health care provider authorized by the Workers' Compensation Program.

#### **§ 1018. Report of accident**

A. When an accident occurs, the injured worker shall immediately, or as soon as possible thereafter, report the accident and the injury resulting therefrom to his or her immediate supervisor.

B. All accidents resulting in injury or death must be reported upon an approved Workers' Compensation Report of Injury form to the Workers' Compensation Program within five (5) working days of notice of the occurrence. In no event will an employer retaliate against an employee for reporting an accident, or giving notice of such an occurrence.

#### **§ 1019. Right to compensation and medical treatment benefits**

A. Every claimant coming within the provisions of this Act who is killed or injured while in the course and scope of his or her employment, wherever the injury or death occurred, unless the injury or death was purposely self-inflicted or otherwise limited or excluded by the terms and conditions of this Act, shall be entitled to receive, and shall be paid compensation as provided in this Act.

B. The Workers' Compensation Program shall pay for treatment by a health care provider reasonably required at the time of the injury and during the period of disability attributable thereto, provided that such treatment is medically necessary and reasonable.

C. The liability of the Workers' Compensation Program for payment for health care services shall be limited to those injuries, conditions, or diseases that are directly caused by the accidental injury or occupational disease exposure, or those that follow, to a reasonable degree of medical probability, as a natural result or consequence of the accidental injury or occupational disease exposure.

D. The Workers' Compensation Program shall only be liable for expenses associated with health care services provided to a claimant that are pre-authorized by the Workers' Compensation Program or are recommended by a medical practice guideline that is in effect pursuant to 15 N.N.C. § 1020. The provisions of this sub-Section shall not apply to traditional healing services.

E. In no event shall the Workers' Compensation Program be liable for expenses or reimbursement for medical, surgical, hospital or related services to which the injured worker may be entitled to receive from or through the United States Public Health Service or any federally funded or sponsored Indian Health Service program, including referrals; nor in any event shall the Workers' Compensation Program be considered or understood to be an "alternative source" for payment of the expense of such services.

#### **§ 1020. Medical cost containment for effective health care**

A. The Workers' Compensation Program shall adopt by rule, pursuant to § 1011 of this Act, a nationally recognized medical practice guideline, based upon available scientific evidence to the

extent possible at the time of adoption, to guide the Workers' Compensation Program as to the determination of those treatments and services that are medically necessary and reasonable. Treatments falling within the recommendations contained within the adopted guidelines shall be presumed medically necessary and reasonable.

1. The Workers' Compensation Program shall inform all health care providers of the applicable medical practice guidelines, the provisions of this Section, and the provisions contained in paragraph C of this Section, prior to the provision of services by the health care provider.
2. The Workers' Compensation Program may conduct, or contract for, reviews of medical billings, reviews of utilization of services and other audits or reviews necessary to ensure compliance with the provisions of this Section.
3. If a medical treatment, service or procedure is recommended by the medical practice guidelines that were adopted, the treatment, service, or procedure will be considered medically necessary and reasonable. If the medical treatment, service or procedure is not recommended by the medical practice guidelines that were adopted, the treatment, service or procedure will be considered not to be medically necessary and reasonable, and the Workers' Compensation Program may refuse to authorize or pay for the treatment, service or procedure. If the proposed healthcare provider can show to the satisfaction of the Workers' Compensation Program that a treatment, service or procedure that is not recommended by the medical practice guidelines is more likely than not to benefit the specific claimant, the Workers' Compensation Program may authorize the treatment, service or procedure.
4. Prior to the adoption of the evidence-base medical practice guidelines provided for in this Section, the Workers' Compensation Program may contract for utilization and bill review to alert the Workers' Compensation Program of medical services and charges that appear not to be in the best interests of the claimant or the Workers' Compensation Program

B. Every health care provider providing services pursuant to this Act shall be allowed to evaluate the condition of the covered person, provide medically necessary and reasonable emergency care and be reimbursed for such medically necessary and reasonable services and associated expenses. Provision of non-emergency care shall not take place until the health care provider submits a treatment plan for the claimant, and the Workers' Compensation Program approves the treatment plan or develops an approved treatment plan with the health care provider. Any proposed treatment, service, or procedure and related expenses that do not fall within the adopted medical practice guidelines shall require pre-authorization from the Workers' Compensation Program. No employer is authorized to provide treatment plan approvals or pre-authorizations of services pursuant to this section.

C. The Workers' Compensation Program may adopt by rule, pursuant to 15 N.N.C. § 1011, fee schedules governing the fees paid for any medically related goods and treatment, service, or procedure provided pursuant to this Act, including the production of reports, and testimony in depositions or hearings. If the Workers' Compensation Program does not adopt a medical fee schedule applicable to the treatment, service or procedure, the medical fee schedule in the state where the treatment, service or procedure was provided shall apply and control the maximum reimbursement. No claimant shall be charged any supplemental or additional fee for any other authorized treatment, service or procedure, and no balance billing shall be permitted.

D. The Workers' Compensation Program shall not be liable for any expenses associated with treatment, service, or procedure provided to a claimant that is not recommended by the medical practice guidelines in effect and is not pre-authorized by the Workers' Compensation Program. Notwithstanding any contractual provision to the contrary, no claimant shall be liable for any expenses that are not paid by the Workers' Compensation Program unless they are informed that the Workers' Compensation Program will not pay for the treatment, service or procedure and the covered person explicitly agrees to be personally liable.

E. Non-rental provision of medical supplies or durable medical equipment shall be reimbursed to the health care provider who provided the equipment or supplies at no more than the cost plus fifteen (15%) percent.

F. The provisions of this Section shall not apply to traditional practitioners who are recognized by the Workers' Compensation Program pursuant to its established rules and regulations and any fee caps or fee schedule provided for therein.

G. The provisions of this section shall become effective on October 1, 2012.

**§ 1021. Treatment by psychiatrists, psychologists or other state-licensed mental or behavioral health professionals**

A. No compensation shall be paid for mental or behavioral injury, harm or condition, or for the treatment of such injury, harm or condition, except pursuant to the provisions of this Section or the provisions of 15 N.N.C. § 1052(B) pertaining to brain injury.

B. No compensation shall be paid for any mental or behavioral injury, harm or condition that did not arise from a single discernible traumatic incident. Compensation shall not be paid for events that are part of the normal or reasonably anticipated experience of the work, including, but not limited to, assignment or re-assignment of duties, disciplinary and personnel actions, interpersonal relationships with co-workers or supervisory personnel and cumulative stress. Emergency responders and public safety personnel responding to incidents of significant physical violence or serious physical injury shall be deemed to be outside the normal or reasonably anticipated experience of the work.

C. No services for a state-licensed mental health professional will be paid unless pre-approved by the Workers' Compensation Program. Pre-approval requires:

1. A diagnosis of the mental or behavioral injury, harm or condition that is consistent with the provisions of the most current edition of a generally recognized guide to the diagnosis and classification of mental and behavioral health concerns, that is published by a national organization of mental health professionals. No diagnosis shall be considered that is not supported by standardized objective testing consistent with current accepted testing practices and procedures that are specific to the reported or suspected mental or behavioral injury, harm or condition.

2. A treatment plan specific to the claimant, adequate to inform the Workers' Compensation Program of the nature of the planned treatment, its duration and expected outcomes.

**§ 1022. Statute of Limitations**