



Certification Page Regular and Emergency Rules

Revised September 2016

Emergency Rules (After completing all of Sections 1 through 3, proceed to Section 5 below)

Regular Rules

1. General Information

a. Agency/Board Name Department of Workforce Services			
b. Agency/Board Address 1510 East Pershing Blvd.		c. City Cheyenne	d. Zip Code 82002
e. Name of Agency Liaison Marcia J. Price		f. Agency Liaison Telephone Number (307) 777-6746	
g. Agency Liaison Email Address marcia.price@wyo.gov			h. Adoption Date 7/18/17
i. Program Workers' Compensation Division			

2. Legislative Enactment

For purposes of this Section 2, "new" only applies to regular rules promulgated in response to a Wyoming legislative enactment not previously addressed in whole or in part by prior rulemaking and does not include rules adopted in response to a federal mandate.

a. Are these rules new as per the above description and the definition of "new" in Chapter 1 of the Rules on Rules?

No. Yes. Please provide the Enrolled Act Numbers and Years Enacted: **SEA 52 2017**

3. Rule Type and Information

a. Provide the Chapter Number, Title, and Proposed Action for Each Chapter.
(Please use the Additional Rule Information form for more than 10 chapters and attach it to this certification)

Chapter Number:	Chapter Name:	New	Amended	Repealed
1	General Provisions	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

3. State Government Notice of Intended Rulemaking

a. Date on which the Proposed Rule Packet (consisting of the Notice of Intent as per W.S. 16-3-103(a), Statement of Principal Reasons, strike and underscore format and a clean copy of each chapter of rules were: **5/24/17**

- approved as to form by the Registrar of Rules; and
- provided to the Legislative Service Office and Attorney General:

4. Public Notice of Intended Rulemaking

a. Notice was mailed 45 days in advance to all persons who made a timely request for advance notice. No. Yes. N/A

b. A public hearing was held on the proposed rules. No. Yes. Please complete the boxes below.

Date:	Time:	City:	Location:

c. If applicable, describe the emergency which requires promulgation of these rules without providing notice or an opportunity for a public hearing:

5. Final Filing of Rules


a. Date on which the Certification Page with original signatures and final rules were sent to the Attorney General's Office for the Governor's signature:

b. Date on which final rules were approved as to form by the Secretary of State and sent to the Legislative Service Office:

c. The Statement of Reasons is attached to this certification.

6. Agency/Board Certification

The undersigned certifies that the foregoing information is correct.

Signature of Authorized Individual	
Printed Name of Signatory	John Cox
Signatory Title	Director, Department of Workforce Services (DWS)
Date of Signature	7-18-17

7. Governor's Certification

I have reviewed these rules and determined that they:

1. Are within the scope of the statutory authority delegated to the adopting agency;
2. Appear to be within the scope of the legislative purpose of the statutory authority; and, if emergency rules,
3. Are necessary and that I concur in the finding that they are an emergency.

Therefore, I approve the same.

Governor's Signature	
Date of Signature	

Principal Statement of Reason – WC Chapter 1

The Workers' Compensation Division proposes a change to Chapter 1, Section 3(l), (q), (n), and (ao)(v) due to a 2017 Wyoming statute change, § 27-14-109, HEA 52. This change clarifies the definition of county government and county governmental entities and allows county governments to establish one workers' compensation account.

The adoption for Procedures, Fees, Costs and Charges for Inspecting, Copying and Producing Public Records was added to Fees, Section 6. Other changes in Chapter 1 include clarification on definitions, minor formatting and reduction of rules.



Matthew H. Mead
Governor

State of Wyoming Department of Workforce Services

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John Cox
Director
John Ysebaert
Deputy Director

July 18, 2017

Public Comments For WC Chapter 1 – General Provisions

On May 28, 2017, a public notice was published in the Casper newspaper for statewide notice.

The 45 day public comment period for this rule expired on July 17, 2017.

No public comments were received.



We Bridge Human and Economic
Development for Wyoming's Future.



CHAPTER 1 GENERAL PROVISIONS

Section 1. Authority. These rules, regulations and fee schedules are adopted by the Administrator pursuant to the requirements and authority of the Wyoming Workers' Compensation Act (the "Act"). Specific authority and direction is found in W.S. § 27-14-102(a)(i), 102(a)(xii), 201(o), 201(q), 202(e), 205(b), 306(d), 401(e), 402, 404(a), 408(e)(ii), 501(a), 502(a), 506(a) and (b), 601(e), 616(b)(i) and (ii), 616(d), 802(a) and (c) and in the requirements of the Wyoming Administrative Procedure Act, W.S. § 16-3-101 through 115.

Section 2. Effective Date. These rules, regulations and fee schedules become effective on the date filed with the Wyoming Secretary of State, and replace all prior rules and regulations of the Employment Tax Division and Workers' Compensation Division within the Wyoming Department of Workforce Services. However, to the extent these rules affect a worker's substantive right to benefits; the rules in effect at the time of injury apply. Pursuant to W.S. § 27-14-602, eligibility for and amount of benefits are determined pursuant to the law in effect on the date of injury.

Section 3. Definitions.

(a) 49 CFR Part 40. Means Title 49, Part 40 of the Code of Federal Regulations (CFR) as revised October 1, 2004.

(b) AB Rated. Drug products made by different distributors and/or repackagers that are considered therapeutically equivalent based on demonstrated bioequivalence.

(c) Actively Seeking Work. For purposes of benefit eligibility, a claimant is actively seeking work if the claimant provides tangible evidence of the work search to the Division. Completion of the work search form will be considered tangible evidence. The work search must contain a minimum of five contacts per week over the course of a six week period. The six week period must be immediately preceding the date the application is filed with the Division or immediately following the date the application is filed with the Division. The contacts listed on the work search must be made for work the claimant is reasonably qualified to perform and is willing to accept. Actions that would be considered an active search for employment include completing job applications, faxing or mailing resumes (include proof), or visiting the employers in person. Claimant must contact the employer he was working for at the time of injury to inquire if the employer has work available within their medically documented restrictions.

(d) Actual Monthly Earnings.

(i) Income the employee was receiving from all employment at the time of injury and which is lost due to the injury, including:

(A) actual value of board, lodging, rent, or housing and per diem expenses to be included within the actual wage as remuneration, if such board, lodging, rent

or housing and per diem is lost as a result of the injury;

(B) commissions and bonuses;

(C) the average amount of overtime pay received in the six months before the injury or guaranteed by written agreement between the employer and employee entered into before the injury;

(D) gratuities received in the course of employment, from others than the employer, only when such gratuities are received with the knowledge of the employer and reported to the United States Internal Revenue Service by the employee or the employer;

(E) wages earned from employment at more than one occupation or employer other than the employer at the time of injury, if those wages are lost due to a compensable injury; and

(F) unemployment insurance benefits paid to the injured employee during the 12 months preceding the month of injury will be taken into account when computing the actual monthly earnings in cases where there are special circumstances under which the actual monthly earnings cannot be determined.

(ii) The term “actual monthly earnings” does not include:

(A) severance pay;

(B) the cash value of health, medical, life or other insurance benefits or retirement benefits;

(C) social security benefits;

(D) passive investment income such as income from stocks, bonds, trust accounts, or individual retirement accounts;

(E) any adjustments to the employee’s income, as defined in paragraph (i) of this subsection, made subsequent to the date of accident or incident causing the original injury; and,

(F) the amount reimbursed to an employee for any special expense incurred by the employee by the nature of the employment.

(e) Alcohol. Ethyl alcohol or other low molecular weight alcohols, including methyl or isopropyl, from whatever source or by whatever process produced.

(f) Alcohol Test. Means an analysis of breath or saliva or any other analysis, which determines the presence and level or absence of alcohol, as authorized by the United States Department of Transportation in its rules and guidelines concerning alcohol testing and drug testing.

(g) Certified Laboratory. Any United States laboratory certified by the United States Department of Health and Human Services (HHS) under the National Laboratory Certification Program as meeting the minimum standards of Subpart C of the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs.

(h) Chain of Custody. The methodology of tracking specified materials or substances for the purpose of maintaining control and accountability from initial collection to final disposition for all such materials or substances, and providing for accountability at each stage in handling testing, storing specimens, and reporting test results.

(i) Claim. An application for benefits under the Act using the forms provided by the Division.

(j) Clerical Office Occupations. Employees whose duties are confined to keeping the books and records of the business or who are engaged wholly in office work where such books and records are kept, having no other duties of any nature in or about the premises of the business. Employees who qualify for the clerical office occupation classification may include personnel with supervisory duties if the performance of those duties does not require any work away from the office environment. Employees qualifying for the clerical office occupation classification who perform any duty away from the office environment become disqualified for the clerical office occupation classification in the reporting period when the non-clerical work is performed, with a limited exception allowed solely for direct travel to and from a local post office or bank.

(i) Employers must request the clerical coverage classification in writing on a form prescribed by the Division showing the name and a detailed description of job duties and responsibilities for each worker for whom clerical coverage is requested.

(k) Chiropractic Utilization Guidelines. Means the *Chiropractic Utilization Guidelines for the Care and Treatment of Injured Workers* (11/21/13), as policy for the determination of compensability of appropriate and reasonable chiropractic treatment in the provision of care for injured workers. This does not include any later amendments or editions of the incorporated matter. These guidelines are available upon request through the Division and may be obtained on-line at:
http://www.wyomingworkforce.org/_docs/providers/Chiropractic-Guidelines.pdf

(l) Collective Group of County Governments or County Government Entities. County government employer means any employer operating with a primary classification of “county government”. Only one county collective system may exist for workers’ compensation reporting purposes under Wyoming Statute 27-14-109.

(m) Computation of Time.

(i) In computing any period of time prescribed by the Act or these rules, except the seventy-two (72) hour period prescribed in W.S. § 27-14-502 and Wyoming Uniform Rules for Contested Case Practice and Procedure, Chapter 2, Section 12, the day of the act, event, or default from which the designated period of time begins to run shall not be

included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or legal holiday, or, when the act to be done is the filing of a paper, a day on which weather or other conditions have made agency offices inaccessible, in which event the period runs until the end of the following day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than eleven (11) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. When the period of time prescribed or allowed is eleven (11) or more days, intermediate Saturdays, Sundays, and legal holidays shall be included in the computation. As used in this rule, "legal holiday" includes any day officially recognized as a legal holiday in this state by designation of the legislature or appointment as a holiday by the governor.

(ii) Whenever a party has the right or is required to do some act within a prescribed period after service of a notice or other paper upon the party, and the notice or paper is served upon the party by mail or by delivery to the agency for service, three (3) days shall be added to the prescribed period.

(n) Concurrent Review. Concurrent review is performed while the injured worker is still an inpatient and services are being rendered. The review can occur if there is a need to extend a current hospitalization, during an emergency admission, or when a provider/facility notifies the Division of an admission for a non-emergent procedure and a preauthorization was not performed.

(o) Confirmation Test. A second analytical procedure used to identify the presence of a specific drug, alcohol or metabolite in a specimen. The confirmation test shall be different in scientific principle from that of the initial test procedure. The confirmation method shall be capable of providing requisite specificity, sensitivity, and quantitative accuracy.

(p) Corporate Officers and Members of Limited Liability Companies.

(i) Elective coverage for officers of a corporation or members of a limited liability company under W.S. § 27-14-108(k) must be requested in writing on a form provided by the WSCD.

(ii) Corporations which elect to obtain coverage under the act must notify the ETD within 30 days of a change in corporate officers. The election of corporate officers will transfer from the prior individual to the newly elected officer in the same position.

(iii) Corporate officers shall be clearly identified as such on all reports to WSCD

(iv) Coverage will be discontinued at the end of the month in which the position no longer exists or the position becomes vacant. The WSCD must be notified in writing within 30 days of such changes.

(q) County government or county government entities. Means any employer operating with a primary classification of county government.

(r) Drug. Marijuana, Cocaine, Amphetamine, Opiate, Phencyclidine (PCP), a

metabolite of any of the substances, or any other controlled substance subject to testing pursuant to drug testing regulations adopted by the United States Department of Transportation.

(s) **Drug Test.** Means any chemical, biological, or physical instrumental analysis administered by a certified laboratory for the purpose of determining the presence, or absence of a drug or its metabolites pursuant to regulations governing drug or alcohol testing adopted by the United States Department of Transportation.

(t) **Elective Surgery.** Elective Surgery is surgery, which may be required in the process of recovery from an injury or illness but need not be done as an emergency to preserve life, function or health.

(u) **Emergency Health Care Services.** Emergency health care services means health care services for a medical condition manifesting itself by acute symptoms of sufficient severity such that the absence of immediate medical attention could reasonably be expected to place the injured worker's health in serious jeopardy.

(v) **Expert Reviewer.** Expert reviewer means a physician competent to evaluate the specific clinical issues involved in the medical treatment services and where these services are within the scope of the physician's practice.

(w) **Filing.** Except as otherwise provided in the Act or these rules and regulations, a document shall be deemed to have been filed with the Division on the date it is received by the Division in the manner prescribed by the Act or these rules and regulations.

(x) **Fiscal Year.** A 12-month period of time used for State budgetary purposes which commences on July 1 of each year and ends on June 30 in the following year.

(y) **Fixed Base of Operations.** See definition for "Principal Place of Business" in subsection (an) of this section.

(z) **Gainful Employment.** The individual having returned to work at a wage of no less than minimum wage, for at least 20 hours per week for a period of two consecutive months. W.S. §§ 27-14-404(b) and 27-14-408(a)(ii).

(aa) **Hearing Examiner or Officer.** See Wyoming Uniform Rules for Contested Case Practice and Procedure, Chapter 2, Section (e) or refer to:
<http://deq.wyoming.gov/media/attachments/Administration/Proposed%20Rules%20and%20Regulations/2014-1017-OAH-Ch-2-Uniform-Rules.pdf>

(bb) **Inside Sales. (Automotive Vehicle Sales)** A position predominantly engaged in automotive vehicle sales at the premises of the business. Positions with duties involving servicing equipment do not qualify for coverage under the sales classification.

(i) Employers must request the inside sales (automotive vehicle sales) classification in writing on a form provided by the Division. An election under this

subsection shall become effective the first day of the calendar quarter following the calendar quarter in which the election is made.

(cc) Intoxicated. Means pursuant to W.S. § 27-14-102(a)(xi)(B)(I) a positive alcohol test result at or above .08 alcohol concentration level.

(dd) Maximum Medical Improvement (MMI). A medical condition or state that is well stabilized and unlikely to change substantially in the next year, with or without medical treatment. Over time, there may be some change; however, further recovery or deterioration is not anticipated. This term may be used interchangeably with the term “ascertainable loss”, defined in W.S. § 27-14-102(a)(ii).

(ee) Medical and Hospital Care. For purposes of WS 27-14-102(a)(xii), “personal items” are defined as:

- (i) Clothing;
- (ii) Footwear, unless such items are professionally altered to accommodate the compensable injury;
- (iii) Hot tubs, spas or any other devices wherein water is heated and/or circulated;
- (iv) Programs, aids, medications or dietary supplements primarily intended to help the worker stop smoking or lose weight;
- (v) Exercise equipment;
- (vi) Beds, mattresses or mattress toppers; and
- (vii) Recliners or lift chairs.

(ff) Medical Service. Means any medical, surgical, diagnostic, chiropractic, hospital, nursing care, ambulances, drugs, medicine, durable medical equipment, prosthetic appliances, and physical restorative services.

(gg) Medically Necessary. “Medically necessary treatment” means those health services for a compensable injury that are reasonable and necessary for the diagnosis and cure or significant relief of a condition consistent with any applicable treatment parameter.

(hh) Mentally Incompetent. For purposes of W.S. § 27-14-505, an individual is mentally incompetent if, due to a medically diagnosed mental disorder, the individual lacks the ability to comprehend that an injury is compensable and lacks the ability to comprehend that certain statutory guidelines must be complied with in order to receive benefits.

(ii) Normal Activities of Day-to-Day Living (ADL). Routine activities that people tend to do every day without needing assistance. There are six (6) basic ADLs:

eating, bathing, dressing, toileting, transferring (walking) and continence as used in W.S. §27-14-102(a)(xi)(G).

(jj) Other Related Expenses. As used in W.S. § 27-14-403(e)(ii), “other related expenses” means expenses related to a funeral, burial or cremation, including a wake or reception, headstone or marker, transportation, and lodging for the immediate family in those situations where a work-related injury culminated in death.

(i) The surviving family member or guardian, eligible to receive reimbursement for other related expenses must submit a request for reimbursement on a form provided by the Division and follow the procedure outlined in Chapter 7, Section 3(a)(iii) of these Rules.

(A) The term “immediate family” is defined as the spouse, child(ren), step-child(ren), grandchild(ren), parent(s), step-parent(s), parent in-laws, grandparent(s), step grandparent(s), grandparent in-law(s), sibling(s), step-sibling(s), half sibling(s), and sibling in-law(s) of the deceased.

(kk) Outside Sales. A position with duties predominantly engaged in sales or collections away from the premises of the business. The position may include duties performed at the business premises that are necessary to the positions outside sales duties. Positions with duties involving servicing equipment or delivery of the employer’s product do not qualify for coverage under the outside sales classification.

(i) Employers must request the outside sales classification in writing on a form provided by the Division. Duties for each outside sales classification position must be clearly identified.

(ii) An election under this subsection shall become effective the first day of the calendar quarter following the calendar quarter in which the election is made.

(ll) Prescription Medication. A drug or medication lawfully prescribed by a physician for an individual and taken in accordance with the prescription.

(mm) Primary Treating Health Care Provider. The health care provider selected by the employee to administer and direct medical treatment for his compensable injury W.S. § 27-14-401(f).

(nn) Principal Place of Business. For purposes of W.S. § 27-14-301(b) and W.S. § 27-14-107(j), a “principal place of business within the state established for legitimate business-related purposes” must have the following characteristics:

(i) exclusive use of fixed premises with a recognizable physical address;

(A) A business sharing building or trailer space must have a clearly defined location used exclusively for its business.

(ii) at least one employee who regularly performs most of his services for the business in or based out of the fixed premises;

(iii) is accessible by mail or other recognized delivery service; and

(iv) regularly conducts its primary business or necessary ancillary services at the fixed premises.

(oo) Rating System.

(i) Base Rate. As used in these rules and regulations, the term “base rate” means that percentage of total payroll necessary to maintain an actuarially sound workers’ compensation insurance program. Each major industry classification shall have a separate base rate based upon that industry’s primary nature of business regardless of individual occupations within that industry.

(ii) Experience Rating. As used in these rules and regulations, the term “experience rating” means that percentage increase or decrease which is applied to the base rate charged an eligible employer based upon its claims experience.

(iii) Consolidated Accounts. Employers electing a consolidated account as provided in W.S. § 27-14-202(d) shall report each worker within the classification for which the worker performs the largest percentage of services.

(iv) Presumed Pay of Specified Workers. Deemed income for those categories of workers identified in W.S. § 27-14-205(b) shall be calculated by determining the amount of premium income necessary to pay actuarially anticipated losses in each category during the rating period, and considering the anticipated number of covered workers and the appropriate premium rate for each category.

(v) Pursuant to Wyoming Statute § 27-14-102(K), a collective group of county governments is defined as all county government employers consolidating into one workers’ compensation account in order to operate as defined under Wyoming Statute § 27-14-109.

(pp) Reasonable Period of Recuperation. As used in W.S. § 27-14-404(b), a “reasonable period of recuperation” includes the day of surgery and the period of recuperation for the surgery performed.

(qq) Rehabilitation Therapy Utilization Guidelines. Means the May 2015 edition of the of the *Rehabilitation Therapy Utilization Guidelines for the Care and Treatment of Injured Workers*, as policy for the determination of compensability of appropriate and reasonable physical, occupational and speech therapy treatment in the provision of care for injured workers. These guidelines are available upon request through the Division and may be obtained on-line at: <http://www.wyomingworkforce.org/providers/>

(rr) Remuneration. Except as provided in W.S. § 27-14-102 (a)(ix), if board, lodging or any other payment in kind, considered as payment for services performed

by a worker, is in addition to or in lieu of a monetary wage, the Division shall determine or approve the cash value of such payment in kind, and the employer shall use these cash values in computing the employee's wages and contributions due under the law.

Remuneration shall not include reimbursement per diem amount, if the employer maintains an "Accountability Plan" as required in Chapter 2, Section 15 of these rules.

(ss) Specimen. Means tissue, fluid, or a product of the human body capable of revealing the presence of alcohol, drugs or their metabolites.

(tt) Suitable Employment. Employment for which the worker has the necessary physical capacities, knowledge, transferable skills and abilities. W.S. § 27-14-405(h)(iii).

(uu) Under the Influence of a Controlled Substance. Means pursuant to W.S. § 27-14-102(a)(xi)(B)(I) a positive drug test conducted in accordance with the U.S. DOT drug and alcohol testing regulations from an HHS-certified laboratory.

(vv) United States Territories. United States territories include: American Samoa, Bajo Nuevo Bank, Baker Island, Howland Island, Guam, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Islands, Navassa Island, Northern Mariana Islands, Puerto Rico, Serranilla Bank, U.S. Virgin Islands and Wake Island, W.S. § 27-14-301(a)(ii).

(ww) University of Wyoming .

(i) UW Professionals with Lab. Professional faculty, administrators, and support personnel of institutions of learning whose duties include performing in a scientific laboratory environment.

(ii) UW Professional without Lab. Professional faculty, administrators, and support personnel of institutions of learning whose duties do not include performance in a scientific laboratory environment.

(iii) UW Clerical. Support staff of institutions of learning who typically work in an office environment, whose duties do not include performing in a scientific laboratory environment.

(iv) UW Non-Professional. Positions not defined in (i), (ii) or (iii) of this subsection.

(xx) Usual and Customary. The provider's charge to the general public for the same or similar service.

Section 4. Rules of Procedure for Hearings before the Workers' Compensation Division.

(a) Applicability. These rules and procedures shall apply to all contested cases, as defined by the Wyoming Administrative Procedure Act (W.S. 16-3-101 through 115), which are not required to be referred to the Office of Administrative Hearings (OAH) or Workers' Compensation Medical Commission. For example, this section shall govern

contested cases over such matters as rate classification and the Division's annual premium rate filing.

(b) Definitions.

(i) Department. The Department of Workforce Services.

(ii) Director. The Director of the Department of Workforce Services or the Director's deputy, examiner or assistant appointed by the Director in writing.

(iii) Petitioner. The person(s) or organization(s) requesting a hearing as provided in the Wyoming Workers' Compensation Act and the Administrative Procedure Act.

(iv) Hearing. The evidentiary proceeding in any "contested case" as defined in the Wyoming Administrative Procedure Act which is not required to be referred to the Office of Administrative Hearings (OAH) or Workers' Compensation Medical Commission.

(v) Hearing Officer. The Administrator of the Division or such person or persons as the Administrator designates in writing to preside over the contested case and conduct the hearing. No person shall serve as hearing officer who directly participated in making the determination which is the subject of the contested case.

(vi) Commencement of Case. All contested case proceedings shall be commenced by filing a written petition/request for hearing with the Division. The petition shall include:

(A) The name, address and telephone number of each petitioner.

(B) A statement of the facts upon which the petition is based, including, whenever applicable, particular reference to the determination, statutes, rules, regulations and orders that the applicant believes are relevant to the case.

(C) The determination or other relief requested by the petitioner.

(c) Notice. Upon filing of a petition, the Division shall issue a notice as required by the Wyoming Administrative Procedure Act, stating:

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

(ii) The legal authority and jurisdiction under which the hearing is to be held;

(iii) The particular sections of the statutes and rules involved; and,

(iv) A short and plain statement of the matters asserted.

(d) Service of Notice. Notice may be served personally, by mail or by publication, as provided by the Wyoming Administrative Procedure Act. Service by mail shall be deemed complete at the date of mailing. The hearing officer may require additional notice to be given in such manner, as the hearing officer shall direct.

(e) Docket. When a petition/request for hearing is filed, it shall be assigned a docket number in accord with a system established by the Division. The Division shall establish a separate file for each hearing in which shall be systematically placed all related papers, pleadings, documents, transcripts, evidence and exhibits. All documents filed in the case shall note the docket number assigned and the date of filing.

(f) Subpoenas. As authorized by the Administrative Procedure Act and Workers' Compensation Act, subpoenas for appearance and to produce books, papers, documents or exhibits will be issued by the hearing officer upon written request of any party.

(g) Hearing. At the date, time and place of hearing the hearing officer shall hear all matters presented in accord with the Wyoming Administrative Procedure Act. Parties shall appear in person or by telephone and may be represented by counsel, provided that such counsel be duly authorized to practice law in the State of Wyoming or is otherwise associated at the hearing with one or more attorneys authorized to practice law in this State.

(h) Order of Procedure at Hearing. Hearings shall generally be conducted informally, in accordance with the following procedure:

(i) The hearing officer shall announce that the hearing is convened, the title of the matter and case to be heard and shall note for the record all subpoenas issued and all appearances. The hearing officer shall state that the hearing is informal, that strict rules of evidence will not apply, and shall briefly describe the method in which the hearing will be conducted.

(ii) Short opening statements may be permitted at the discretion of the hearing officer.

(iii) Presentation of evidence by petitioner(s). Witnesses may be cross-examined by the Division or other parties. All exhibits shall be marked for identification.

(iv) Presentation of evidence by the Division. Witnesses may be cross-examined by the other parties. All exhibits shall be marked for identification.

(v) Closing statements or arguments may be made at the discretion of the hearing officer.

(vi) After all proceedings have been concluded, the hearing officer shall excuse all witnesses and declare the hearing closed. The record may be supplemented with additional evidence or written briefs at the discretion of the hearing officer and within such time as directed by the hearing officer.

(i) Witnesses to be Sworn. All persons testifying at any hearing shall stand and be administered the following by the hearing officer:

“Do you swear (or affirm) to tell the truth, the whole truth and nothing but the truth in this hearing now before the hearing officer?”

(j) Applicable Rules of Civil Procedure to Apply. The Wyoming Rules of Civil Procedure shall apply and be followed in hearings before the Division to the extent not inconsistent with these rules.

(k) Presence of Attorney General. In all hearings before the Division, the Division may request the Attorney General of the State of Wyoming, or a representative of his staff, to be present to assist and advise the Division.

(l) Record of Proceedings-Reporter. Hearings shall be electronically recorded unless a party provides for a court reporter at its own expense. The hearing officer may direct the party or parties requesting a transcript to assume the cost of the transcript.

(m) Depositions. In all contested cases the taking of depositions and discovery shall be available to the parties as provided in the Wyoming Rules of Civil Procedure and the Administrative Procedure Act.

(n) Decision, Findings of Fact and Conclusions of Law, and Order. The hearing officer shall make a written decision and order containing Findings of Fact, Conclusions of Law and Recommended Decision. Such decision and order shall be filed with the Division within 15 days of the close of the hearing. The Division shall send a copy by prepaid mail to each party or their attorneys of record. The Administrator shall act on the recommendation of the hearing officer within 30 days of receiving the hearing officer's report.

(o) Appeals to District Court. Appeals to the district court from decisions of the hearing officer are governed by the Wyoming Administrative Procedure Act and Rule 12 of the Wyoming Rules of Appellate Procedure.

(p) Transcript in Case of Appeal. In case of an appeal to the district court, the party appealing shall secure and file a transcript of the testimony and all other evidence offered at the hearing, which transcript must be verified by the oath of the person who transcribed the testimony as a true and correct transcript of the testimony and other evidence in the case. The compensation of the person making the transcript and all other costs involved in the appeal shall be borne by the party prosecuting the appeal unless otherwise ordered by the district court at the conclusion of the appeal.

(q) Pre-Hearing Conference. At any time on or before the day of any hearing, the hearing officer may direct the parties to appear before the hearing officer for a pre hearing conference. Such conferences shall be conducted informally. The hearing officer shall prepare an order reciting or shall read into the record the results of the conference. The pre-hearing order will control the course of the hearing unless modified by the presiding officer to prevent manifest injustice. A party who believes a pre-hearing order

does not fully cover the issues presented, or is unclear, may petition for a further ruling within ten days after receipt of the order. The pre hearing conference shall be convened to consider:

- (i) the simplification of the issues;
- (ii) the necessity or desirability of amending the pleadings;
- (iii) the possibility of obtaining admissions of fact and of documents to avoid unnecessary proof;
- (iv) formulating additional procedures to govern the hearing; and,
- (v) other matters as may aid in the disposition of the case.

(r) **Additional Rules for Contested Ratemaking Proceedings.** The following additional rules shall apply to contested cases involving the Division's annual rate filing pursuant to W.S. § 27-14-201(c) *et seq.*

(i) Any employer wishing to contest the rate filing shall file a written request for hearing with the Division, received by the Division no later than 30 days after the mailing of the proposed rates by the Division. Counsel for any employer shall enter a written appearance within the same time period.

(ii) The contested rate hearing shall be held no later than 75 days after the mailing of the proposed rates by the Division. Only those employers who filed a timely written request for hearing directly or through counsel will be permitted to participate in the hearing.

(iii) Written interrogatories shall be filed no later than 30 days before the scheduled hearing date. Responses to interrogatories shall be served on the requesting party ten days after receipt of the interrogatories. Depositions shall be completed at least ten days before the hearing.

(iv) Pre-hearing conferences may be conducted informally by the hearing officer, without prior written notice if such notice is impractical, but the hearing officer shall keep a detailed log of the date, time and subject matter of all contacts by parties to the contested case. Such log shall be made a part of the formal record in the case.

(v) At the hearing, those employers wishing to make an unsworn statement may do so in writing or shall be heard before the taking of any sworn testimony or evidence. Unsworn statements shall not be subject to cross-examination. The Division shall proceed next, presenting evidence in support of the rate filing, followed by those employers desiring to present sworn testimonial and documentary evidence against the proposed rate filing.

(vi) All parties shall have an opportunity to present proposed findings of fact and conclusions of law within ten days after the close of the evidence.

(vii) The hearing officer shall render findings of fact, conclusions of law and recommended orders within 30 days after the close of the evidence, and shall serve such findings, conclusions and orders upon the Administrator, Director, and all employers and counsel of record. The Director shall act on the recommendations of the hearing officer by written decision within 30 days of receiving the hearing officer's report.

Section 5. Hearing Requests Regarding Timeliness.

(a) Hearing. Upon timely request or appeal, the party filing or paying in an apparently untimely manner shall be given a hearing on the question of the timeliness of the filing or paying.

Section 6. Rules Governing Public Records Requests.

(a) Applicability. This section applies to requests for access to public records pursuant to W.S. § 16-4-201, *et seq.*

(b) Custodian. For the purpose of any public records request, the Administrator is the custodian of all public records maintained or kept in the custody or control of the Division.

(c) Right of Inspection. Public records of the Division shall be available for inspection by any person at reasonable times, subject to reasonable restrictions imposed by the Administrator. No person shall inspect public records of the Division without the prior approval of the Administrator and all requests for access to public records shall be in writing.

(d) Grounds for Denial. In addition to any grounds for denial listed in W.S. § 16-3-203, the Administrator shall deny the right to inspect any information whose disclosure is prohibited by W.S. § 27-14-805. The Administrator may also deny the right to inspect records of investigations conducted by the Division, investigatory or security procedures of the Division, or any investigatory files of the Division, when disclosure would be contrary to the public interest.

(e) Response to Request; Statement of Reasons; Time Limits. The Administrator or designee shall issue a response to all written requests for access to public records within 30 days, after the request is received by the Division. Any written request for access shall be deemed denied if the Administrator has not issued a response within 30 days after the request was received by the Division. A party whose request for access is denied may request a written statement of reasons. Any request for a statement of reasons shall be in writing. The Administrator shall issue a written response to any such request, stating the reasons for denying access, including citations to legal authority, within 30 days after the request was received by the Division. Any denial of access shall be final, unless the party seeking access files an application in district court pursuant to W.S. § 16-4-203(f) within 30 days after the Administrator's statement of reasons is issued. At the same time it is filed in the district court, any application pursuant to W.S. § 16-4-203(f) shall be served on the Administrator by certified mail.

(f) Procedures, Fees, Costs, and Charges for Inspecting, Copying, and Producing Public Records.

(i) Authority. The Department of Workforce Services, Workers' Compensation Division is required under W.S. 16-3-103(j)(ii) to adopt the Department of Administration and Information's uniform rules pertaining to procedures, fees, costs, and charges for inspecting, copying, and producing public records.

(ii) Adoption of Uniform Rules. The Department of Workforce Services, Workers' Compensation Division hereby incorporates by reference the following uniform rules:

(A) Chapter 2 – Uniform Procedures, Fees, Costs, and Charges for Inspecting, Copying, and Producing Public Records adopted by the Department of Administration and Information and effective on September 6, 2016, found at: <https://rules.wyo.gov> . See Current Rules, Administration & Information, Dept., Director's Office, Chapter 2. This incorporated rule may also be requested from the Wyoming Secretary of State Office (Administrative Services Division) in writing at 2020 Carey Avenue, Suite 600, Cheyenne, WY 82002-0020; by email at: rules@wyo.gov; by telephone at: (307) 777-5348; or by fax at: (307) 777-5339.

(B) For these rules incorporated by reference:

(I) The Department of Workforce Services, Workers' Compensation Division has determined that incorporation of the full text in these rules would be cumbersome or inefficient given the length or nature of the rules;

(II) The incorporation by reference does not include any later amendments or editions of the incorporated matter beyond the applicable date identified in subsection (a) of this section; and

(III) The incorporated rules are maintained at the Department of Workforce Services, Workers' Compensation Division's office (1510 East Pershing Boulevard, Cheyenne, Wyoming 82002) and are available for public inspection and copying at the same location.

(g) The provisions of this section notwithstanding, the Division shall, upon request, provide one photocopy of the official workers' compensation file, free of charge, to both the employee and the employer.

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CHAPTER 1 GENERAL PROVISIONS

Section 1. Authority. These rules, regulations and fee schedules are adopted by the Administrator pursuant to the requirements and authority of the Wyoming Worker²s' Compensation Act (the "Act"). Specific authority and direction is found in W.S. § 27-14-102(a)(i), 102(a)(xii), 201(o), 201(q), 202(e), 205(b), 306(d), 401(e), 402, 404(a), 408(e)(ii), 501(a), 502(a), 506(a) and (b), 601(e), 616(b)(i) and (ii), 616(d), 802(a) and (c) and in the requirements of the Wyoming Administrative Procedure Act, W.S. § 16-3-101 through 115.

Section 2. Effective Date. These rules, regulations and fee schedules become effective on the date filed with the Wyoming Secretary of State, and replace all prior rules and regulations of the Employment Tax Division and Workers' Compensation Division within the Wyoming Department of Workforce Services. However, to the extent these rules affect a worker's substantive right to benefits; the rules in effect at the time of injury apply. Pursuant to W.S. § 27-14-602, eligibility for and amount of benefits are determined pursuant to the law in effect on the date of injury.

~~**Section 3. Introduction.** Workers' Compensation is a program, authorized by the Wyoming Constitution and created by statute, to provide medical, wage and disability benefits to workers injured while working in covered employment. The benefits are available without regard to any fault of the employer. For covered injuries, the program takes the place of the injured worker's right to sue the employer. In some cases, benefits are also available to the injured worker's dependent family. The purpose of these rules and regulations and fee schedules is to implement the provisions of the Wyoming Workers' Compensation Act, Wyoming Statutes §§ 27-14-101 through 27-14-805.~~

Section 43. Definitions.

(a) 49 CFR Part 40. Means Title 49, Part 40 of the Code of Federal Regulations (CFR) as revised October 1, 2004.

(b) AB Rated. Drug products made by different distributors and/or repackagers that are considered therapeutically equivalent based on demonstrated bioequivalence.

(c) Actively Seeking Work. For purposes of benefit eligibility, a claimant is actively seeking work if the claimant provides tangible evidence of the work search to the Division. Completion of the work search form will be considered tangible evidence. The work search must contain a minimum of five contacts per week over the course of a six week period. The six week period must be immediately preceding the date the

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application is filed with the Division or immediately following the date the application is filed with the Division. The contacts listed on the work search must be made for work the claimant is reasonably qualified to perform and is willing to accept. Actions that would be considered an active search for employment include completing job applications, faxing or mailing resumes (include proof), or visiting the employers in person. Claimant must contact the employer he was working for at the time of injury to inquire if the employer has work available within their medically documented restrictions.

(d) Actual Monthly Earnings.

(i) Income the employee was receiving from all employment at the time of injury and which is lost due to the injury, including:

(A) actual value of board, lodging, rent, or housing and per diem expenses to be included within the actual wage as remuneration, if such board, lodging, rent or housing and per diem is lost as a result of the injury;

(B) commissions and bonuses;

(C) the average amount of overtime pay received in the six months before the injury or guaranteed by written agreement between the employer and employee entered into before the injury;

(D) gratuities received in the course of employment, from others than the employer, only when such gratuities are received with the knowledge of the employer and reported to the United States Internal Revenue Service by the employee or the employer;

(E) wages earned from employment at more than one occupation or employer other than the employer at the time of injury, if those wages are lost due to a compensable injury; and

(F) unemployment insurance benefits paid to the injured employee during the 12 months preceding the month of injury will be taken into account when computing the actual monthly earnings in cases where there are special circumstances under which the actual monthly earnings cannot be determined.

(ii) The term "actual monthly earnings" does not include:

(A) severance pay;

(B) the cash value of health, medical, life or other insurance benefits or retirement benefits;

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(C) social security benefits;

(D) passive investment income such as income from stocks, bonds, trust accounts, or individual retirement accounts;

(E) any adjustments to the employee's income, as defined in paragraph (i) of this subsection, made subsequent to the date of accident or incident causing the original injury; and,

(F) the amount reimbursed to an employee for any special expense incurred by the employee by the nature of the employment.

~~(e) — Administrator. The Administrator of the Workers' Compensation Division (the "Division") within the Wyoming Department of Workforce Services. The Administrator is the person selected by the Director of the Department to manage the Division. W.S. § 27-14-102(a)(v) and (vi).~~

~~(f)~~(e) Alcohol. Ethyl alcohol or other low molecular weight alcohols, including methyl or isopropyl, from whatever source or by whatever process produced.

~~(g)~~(f) Alcohol Test. Means an analysis of breath or saliva or any other analysis, which determines the presence and level or absence of alcohol, as authorized by the United States Department of Transportation in its rules and guidelines concerning alcohol testing and drug testing.

~~(h)~~(g) Certified Laboratory. Any United States laboratory certified by the United States Department of Health and Human Services (HHS) under the National Laboratory Certification Program as meeting the minimum standards of Subpart C of the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs.

~~(i)~~(h) Chain of Custody. The methodology of tracking specified materials or substances for the purpose of maintaining control and accountability from initial collection to final disposition for all such materials or substances, and providing for accountability at each stage in handling testing, storing specimens, and reporting test results.

~~(j)~~(i) Claim. An application for benefits under the Act using the forms provided by the Division.

~~(k)~~(j) Clerical Office Occupations. Employees whose duties are confined to keeping the books and records of the business or who are engaged wholly in office work where such books and records are kept, having no other duties of any nature in or about the premises of the business. Employees who qualify for the clerical office occupation

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classification may include personnel with supervisory duties if the performance of those duties does not require any work away from the office environment. Employees qualifying for the clerical office occupation classification who perform any duty away from the office environment become disqualified for the clerical office occupation classification in the reporting period when the non-clerical work is performed, with a limited exception allowed solely for direct travel to and from a local post office or bank.

~~(h)~~(i) Employers must request the clerical coverage classification in writing on a form prescribed by the Division showing the name and a detailed description of job duties and responsibilities for each worker for whom clerical coverage is requested.

~~(m)~~(k) Chiropractic Utilization Guidelines. Means ~~the most recent edition of the~~ *Chiropractic Utilization Guidelines for the Care and Treatment of Injured Workers (11/21/13)*, as policy for the determination of compensability of appropriate and reasonable chiropractic treatment in the provision of care for injured workers. This does not include any later amendments or editions of the incorporated matter. These guidelines are available upon request through the Division and may be obtained on-line at: <http://doe.wyo.gov> <http://www.wyomingworkforce.org/docs/providers/Chiropractic-Guidelines.pdf>

(l) Collective Group of County Governments or County Government Entities. County government employer means any employer operating with a primary classification of "county government". Only one county collective system may exist for workers' compensation reporting purposes under Wyoming Statute 27-14-109.

~~(n) Comparable Wage.~~ A wage that is at least ninety five (95%) percent of the gross earnings paid for the worker's regular employment at the time of the injury. W.S. § 27-14-405(h)(i).

~~(o)~~(m) Computation of Time.

(i) In computing any period of time prescribed by the Act or these rules, except the seventy-two (72) hour period prescribed in W.S. § 27-14-502 and Chapter 4, Section 1 of these rules Wyoming Uniform Rules for Contested Case Practice and Procedure, Chapter 2, Section 12, the day of the act, ~~or event, or default~~ from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or legal holiday, or, when the act to be done is the filing of a paper, a day on which weather or other conditions have made ~~the agency offices of the Division~~ inaccessible, in which event the period runs until the end of the next following day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than eleven (11) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. When the period of time prescribed or allowed is eleven (11) or more days, intermediate Saturdays, Sundays, and legal holidays shall be included in the computation. As used in this rule, "legal holiday" includes any day officially recognized as a legal holiday in this state by designation of the legislature or appointment as a holiday by the governor.

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(ii) Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon the party, and the notice or paper is served upon the party by mail or by delivery to the agency for service, three (3) days shall be added to the prescribed period.

~~(p)~~(n) Concurrent Review. Concurrent review is performed while the injured worker is still an inpatient and services are being rendered. The review can occur if there is a need to extend a current hospitalization, during an emergency admission, or when a provider/facility notifies the Division of an admission for a non-emergent procedure and a preauthorization was not performed.

~~(q)~~(o) Confirmation Test. A second analytical procedure used to identify the presence of a specific drug, alcohol or metabolite in a specimen. The confirmation test shall be different in scientific principle from that of the initial test procedure. The confirmation method shall be capable of providing requisite specificity, sensitivity, and quantitative accuracy.

~~(r)~~(p) Corporate Officers and Members of Limited Liability Companies.

(i) Elective coverage for officers of a corporation or members of a limited liability company; under W.S. § 27-14-108(k) must be requested in writing on a form provided by the WSCD.

~~(A) Initial registration means the first time a corporation or limited liability company files a joint registration form with the WSCD, regardless of the status of the corporation or limited liability company as a result of that filing.~~

(ii) Corporations which elect to obtain coverage under the act must notify the ETD within 30 days of a change in corporate officers. The election of corporate officers will transfer from the prior individual to the newly elected officer in the same position.

(iii) Corporate officers shall be clearly identified as such on all reports to WSCD.

(iv) Coverage will be discontinued at the end of the month in which the position no longer exists or the position becomes vacant. The WSCD must be notified in writing within 30 days of such changes.

~~(v) Elected coverage is reported at and based on the statewide average wage, pursuant to W.S. § 27-14-205(c). When coverage is elected upon initial registration, premiums are due based on the monthly statewide average wage beginning with the month in which the coverage was elected.~~

(q) County government or county government entities. Means any employer operating with a primary classification of county government.

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~~(s)~~ Dependent. For purposes of W.S. § 27-14-102(a)(vii)(E), “dependent” means any person claimed as a dependent for Federal Income Tax purposes by the employee.

~~(t)~~ Division. The Division of Workers' Compensation of the Department of Workforce Services.

~~(u)~~(r) Drug. Marijuana, Cocaine, Amphetamine, Opiate, Phencyclidine (PCP), a metabolite of any of the substances, or any other controlled substance subject to testing pursuant to drug testing regulations adopted by the United States Department of Transportation.

~~(v)~~(s) Drug Test. Means any chemical, biological, or physical instrumental analysis administered by a certified laboratory for the purpose of determining the presence, or absence of a drug or its metabolites pursuant to regulations governing drug or alcohol testing adopted by the United States Department of Transportation.

~~(w)~~(t) Elective Surgery. Elective Surgery is surgery, which may be required in the process of recovery from an injury or illness but need not be done as an emergency to preserve life, function or health.

~~(x)~~ Extrahazardous Employment. Those industries, employment and occupations specified in W.S. § 27-14-108(a), (d) and (e).

(y)(u) Emergency Health Care Services. Emergency health care services means health care services for a medical condition manifesting itself by acute symptoms of sufficient severity such that the absence of immediate medical attention could reasonably be expected to place the injured worker's health in serious jeopardy.

~~(z)~~(v) Expert Reviewer. Expert reviewer means a physician competent to evaluate the specific clinical issues involved in the medical treatment services and where these services are within the scope of the physician's practice.

~~(aa)~~(w) Filing. Except as otherwise provided in the Act or these rules and regulations, a document shall be deemed to have been filed with the Division on the date it is received by the Division in the manner prescribed by the Act or these rules and regulations.

~~(ab)~~(x) Fiscal Year. A 12-month period of time used for State budgetary purposes which commences on July 1 of each year and ends on June 30 in the following year.

~~(ae)~~(y) Fixed Base of Operations. See definition for “Principal Place of Business” in subsection ~~(aw)~~(an) of this section.

~~(ad)~~(z) Gainful Employment. The individual having returned to work at a wage of no less than minimum wage, for at least 20 hours per week for a period of two consecutive months. W.S. §§ 27-14-404(b) and 27-14-408(a)(ii).

~~(ae)~~(aa) Hearing Examiner or Officer. ~~The Office of Administrative Hearings (OAH) or Medical Commission, as appropriate. See Wyoming Uniform Rules for Contested Case Practice and Procedure, Chapter 2, Section (e) or refer to:~~
<http://deq.wyoming.gov/media/attachments/Administration/Proposed%20Rules%20and%20Regulations/2014-1017-OAH-Ch-2-Uniform-Rules.pdf>

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~~(af)(bb)~~ Inside Sales. (Automotive Vehicle Sales) A position predominantly engaged in automotive vehicle sales at the premises of the business. Positions with duties involving servicing equipment do not qualify for coverage under the sales classification.

(i) Employers must request the inside sales (automotive vehicle sales) classification in writing on a form provided by the Division. An election under this subsection shall become effective the first day of the calendar quarter following the calendar quarter in which the election is made.

~~(ag)(cc)~~ Intoxicated. Means pursuant to W.S. § 27-14-102(a)(xi)(B)(I) a positive alcohol test result at or above .08 alcohol concentration level.

~~(ah)(dd)~~ Maximum Medical Improvement (MMI). A medical condition or state that is well stabilized and unlikely to change substantially in the next year, with or without medical treatment. Over time, there may be some change; however, further recovery or deterioration is not anticipated. This term may be used interchangeably with the term "ascertainable loss", defined in W.S. § 27-14-102(a)(ii).

~~(ai)(ee)~~ Medical and Hospital Care. For purposes of WS 27-14-102(a)(xii), "personal items" are defined as:

- (i) Clothing;
- (ii) Footwear, unless such items are professionally altered to accommodate the compensable injury;
- (iii) Hot tubs, spas or any other devices wherein water is heated and/or circulated;
- (iv) Programs, aids, medications or dietary supplements primarily intended to help the worker stop smoking or lose weight;
- (v) Exercise equipment;
- (vi) Beds, mattresses or mattress toppers; and
- (vii) Recliners or lift chairs.

~~(aj) Medical Disability Advisor. Means the most recent of the Medical Disability Advisor, as published by Reed Group, Ltd., as guidelines for disability duration. Exceptions to this include any mental injury unless it is compensable pursuant to W.S. § 27-14-102(a)(xi)(J). This publication is intended to be used as a reference only, not as a definitive determination of disability durations, subject to the following conditions:~~

- ~~(i) — For uncomplicated medical and surgical cases;~~

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~~(ii) — Used as a tool against which the provider or medical professional should weigh the totality of his/her professional knowledge;~~

~~(iii) — Used in conjunction with current case specific information; and~~

~~(iv) — Not to be used as a substitute for quality case management of any medical disability situation.~~

~~(ak)(ff)~~ Medical Service. ~~Medical—service~~ Means any medical, surgical, diagnostic, chiropractic, hospital, nursing care, ambulances, drugs, medicine, durable medical equipment, prosthetic appliances, and physical restorative services.

~~(al)(gg)~~ Medically Necessary. “Medically necessary treatment” means those health services for a compensable injury that are reasonable and necessary for the diagnosis and cure or significant relief of a condition consistent with any applicable treatment parameter.

~~(am)(hh)~~ Mentally Incompetent. For purposes of W.S. § 27-14-505, an individual is mentally incompetent if, due to a medically diagnosed mental disorder, the individual lacks the ability to comprehend that an injury is compensable and lacks the ability to comprehend that certain statutory guidelines must be complied with in order to receive benefits.

~~(an)(ii)~~ Normal Activities of Day-to-Day Living (ADL). ~~When — the employer retains the right to control the manner in which an activity is performed, the activity is not within “the normal activities of day to day living”~~ Routine activities that people tend to do every day without needing assistance. There are six (6) basic ADLs: eating, bathing, dressing, toileting, transferring (walking) and continence as used in W.S. §27-14-102(a)(xi)(G).

~~(ao)(jj)~~ Other Related Expenses. As used in W.S. § 27-14-403(e)(ii), “other related expenses” means expenses related to a funeral, burial or cremation, including a wake or reception, headstone or marker, ~~and~~ transportation, and lodging for the immediate family; in those situations where a work-related injury culminated in death.

(i) The surviving family member, or guardian, eligible to receive reimbursement for other related expenses must submit a request for reimbursement on a form provided by the Division and follow the procedure outlined in Chapter 7, Section 43(a)(iii) of these Rules.

(A) The term “immediate family” is defined as the spouse, child(ren), step-child(ren), grandchild(ren), parent(s), step-parent(s), parent in-laws, grandparent(s), step grandparent(s), grandparent in-law(s), sibling(s), step-sibling(s), half sibling(s), and sibling in-law(s) of the deceased.

~~(ap)(kk)~~ Outside Sales. A position with duties predominantly engaged in

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sales or collections away from the premises of the business. The position may include duties performed at the business premises that are necessary to the positions outside sales duties. Positions with duties involving servicing equipment or delivery of the employer's product do not qualify for coverage under the outside sales classification.

(i) Employers must request the outside sales classification in writing on a form provided by the Division. Duties for each outside sales classification position must be clearly identified.

(ii) An election under this subsection shall become effective the first day of the calendar quarter following the calendar quarter in which the election is made.

~~(aq) Positive Drug Test. Means a level of drugs or metabolites in the body at or above the cutoff concentration levels as specified in Chapter 10 Section 2(c)(i)(A).~~

~~(ar) Preauthorization. Prospective review and approval of health care based on medical necessity and reasonableness.~~

~~(i) Injured worker through their health care provider must request preauthorization before the health care is provided.~~

(sll) Prescription Medication. A drug or medication lawfully prescribed by a physician for an individual and taken in accordance with the prescription.

~~(at) Prescription Lenses. The term "prescription lenses" refers to any lens, whether eyeglass, contact or implant prescribed to correct one's visual impairment. When referring to eyeglasses, this term includes lenses and eyeglass frames.~~

(~~mm~~) Primary Treating Health Care Provider. The health care provider selected by the employee to administer and direct medical treatment for his compensable injury W.S. § 27-14-401(f).

(~~nn~~) Principal Place of Business. For purposes of W.S. § 27-14-301(b) and W.S. § 27-14-107(j), a "principal place of business within the state established for legitimate business-related purposes" must have the following characteristics:

(i) exclusive use of fixed premises with a recognizable physical address;

(A) A business sharing building or trailer space must have a clearly defined location used exclusively for its business.

(ii) at least one employee who regularly performs most of his services for the business in or based out of the fixed premises;

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(iii) is accessible by mail or other recognized delivery service; and

(iv) regularly conducts its primary business or necessary ancillary services at the fixed premises.

(~~w~~oo) Rating System.

(i) Base Rate. As used in these rules and regulations, the term “base rate” means that percentage of total payroll necessary to maintain an actuarially sound workers’ compensation insurance program. Each major industry classification shall have a separate base rate based upon that industry’s primary nature of business regardless of individual occupations within that industry.

(ii) Experience Rating. As used in these rules and regulations, the term “experience rating” means that percentage increase or decrease which is applied to the base rate charged an eligible employer based upon its claims experience.

(iii) Consolidated Accounts. Employers electing a consolidated account as provided in W.S. § 27-14-202(d) shall report each worker within the classification for which the worker performs the largest percentage of services.

(iv) Presumed Pay of Specified Workers. Deemed income for those categories of workers identified in W.S. § 27-14-205(b) shall be calculated by determining the amount of premium income necessary to pay actuarially anticipated losses in each category during the rating period, and considering the anticipated number of covered workers and the appropriate premium rate for each category.

(v) Pursuant to Wyoming Statute § 27-14-102(K), a collective group of county governments is defined as all county government employers consolidating into one workers’ compensation account in order to operate as defined under Wyoming Statute § 27-14-109.

(~~x~~pp) Reasonable Period of Recuperation. As used in W.S. § 27-14-404(b), a “reasonable period of recuperation” includes the day of surgery and the period of recuperation for the surgery performed, ~~as specified in the Medical Disability Advisor, as adopted by the Administrator in Chapter 1, Section 4 of these Rules.~~

~~(i) The recuperation period may be extended to include the day before surgery, if the treating physician certifies that in-patient confinement is medically necessary to ensure that the compensable surgery is not compromised.~~

~~(ii) When the period of recuperation extends beyond that specified in the Medical Disability Advisor, TTD must be certified by the treating physician every 60 days.~~

~~(iii) When the period of recuperation extends beyond that specified in the Medical Disability Advisor, the Division will contact the treating health care provider~~

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~~to determine the basis for the extended disability.~~

~~(A) — When the explanation for extended disability is deemed insufficient, the Division may obtain a second opinion from an independent evaluator to determine the basis for the continuing disability.~~

(yqq) ~~Rehabilitation Therapy Utilization Guidelines.~~ Means the ~~Revised February 8, 2008~~ May 2015 edition of the of the *Rehabilitation Therapy Utilization Guidelines for the Care and Treatment of Injured Workers*, as policy for the determination of compensability of appropriate and reasonable physical, occupational and speech therapy treatment in the provision of care for injured workers. These guidelines are available upon request through the Division and may be obtained on-line at ~~<http://doe.wyo.gov>~~ <http://www.wyomingworkforce.org/providers/>

(zrr) ~~Remuneration.~~ Except as provided in W.S. § 27-14-102 (a)(ix), if board, lodging or any other payment in kind, considered as payment for services performed by a worker, is in addition to or in lieu of a monetary wage, the Division shall determine or approve the cash value of such payment in kind, and the employer shall use these cash values in computing the employee's wages and contributions due under the law. ~~Remuneration shall not include reimbursement for actual travel expenses or a reasonable per diem amount, or the cash value of insurance or retirement benefits if the employer maintains an "Accountability Plan" as required in Chapter 2, Section 15 of these rules.~~

(ass) Specimen. Means tissue, fluid, or a product of the human body capable of revealing the presence of alcohol, drugs or their metabolites.

(btt) Suitable Employment. Employment for which the worker has the necessary physical capacities, knowledge, transferable skills and abilities. W.S. § 27-14-405(h)(iii).

(beuu) Under the Influence of a Controlled Substance. Means pursuant to W.S. § 27-14-102(a)(xi)(B)(I) a positive drug test conducted in accordance with the U.S. DOT drug and alcohol testing regulations from an HHS-certified laboratory.

(bdvv) United States Territoryies. ~~Extraterritorial coverage shall be limited to the other states,~~ United States territories include: Washington D.C., Puerto Rico, Virgin Islands, American Samoa, Guam, Northern Marianas, Marshall Islands, the Federated States of Micronesia, Palau, Midway Islands, Wake Island, Johnston Island and Sand Island. American Samoa, Bajo Nuevo Bank, Baker Island, Howland Island, Guam, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Islands, Navassa Island, Northern Mariana Islands, Puerto Rico, Serranilla Bank, U.S. Virgin Islands and Wake Island. W.S. § 27-14-301(a)(ii).

(beww) University of Wyoming .

(i) UW Professionals with Lab. Professional faculty, administrators, and support personnel of institutions of learning whose duties include performing in a scientific laboratory environment.

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(ii) UW Professional without Lab. Professional faculty, administrators, and support personnel of institutions of learning whose duties do not include performance in a scientific laboratory environment.

(iii) UW Clerical. Support staff of institutions of learning who typically work in an office environment, whose duties do not include performing in a scientific laboratory environment.

(iv) UW Non-Professional. Positions not defined in (i), (ii) or (iii) of this subsection.

(~~bfxx~~) Usual and Customary. The provider's charge to the general public for the same or similar service.

Section 54. Rules of Procedure for Hearings before the Workers' Safety and Compensation Division.

(a) Applicability. These rules and procedures shall apply to all contested cases, as defined by the Wyoming Administrative Procedure Act (W.S. 16-3-101 through 115), which are not required to be referred to the Office of Administrative Hearings (OAH) or Workers' Compensation Medical Commission. For example, this section shall govern contested cases over such matters as rate classification and the Division's annual premium rate filing.

(b) Definitions.

(i) Department. The Department of Workforce Services.

(ii) Director. The Director of the Department of Workforce Services or the Director's deputy, examiner or assistant appointed by the Director in writing.

(iii) Petitioner. The person(s) or organization(s) requesting a hearing as provided in the Wyoming Worker's Compensation Act and the Administrative Procedure Act.

(iv) Hearing. The evidentiary proceeding in any "contested case" as defined in the Wyoming Administrative Procedure Act which is not required to be referred to the Office of Administrative Hearings (OAH) or Workers' Compensation Medical Commission.

(v) Hearing Officer. The Administrator of the Division or such person or persons as the Administrator designates in writing to preside over the contested case

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and conduct the hearing. No person shall serve as hearing officer who directly participated in making the determination which is the subject of the contested case.

(vi) Commencement of Case. All contested case proceedings shall be commenced by filing a written petition/request for hearing with the Division. The petition shall include:

(A) The name, address and telephone number of each petitioner.

(B) A statement of the facts upon which the petition is based, including, whenever applicable, particular reference to the determination, statutes, rules, regulations and orders that the applicant believes are relevant to the case.

(C) The determination or other relief requested by the petitioner.

(c) Notice. Upon filing of a petition, the Division shall issue a notice as required by the Wyoming Administrative Procedure Act, stating:

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

(ii) The legal authority and jurisdiction under which the hearing is to be held;

(iii) The particular sections of the statutes and rules involved; and,

(iv) A short and plain statement of the matters asserted.

(d) Service of Notice. Notice may be served personally, by mail or by publication, as provided by the Wyoming Administrative Procedure Act. Service by mail shall be deemed complete at the date of mailing. The hearing officer may require additional notice to be given in such manner, as the hearing officer shall direct.

(e) Docket. When a petition/request for hearing is filed, it shall be assigned a docket number in accord with a system established by the Division. The Division shall establish a separate file for each hearing in which shall be systematically placed all related papers, pleadings, documents, transcripts, evidence and exhibits. All documents filed in the case shall note the docket number assigned and the date of filing.

(f) Subpoenas. As authorized by the Administrative Procedure Act and Worker's Compensation Act, subpoenas for appearance and to produce books, papers, documents or exhibits will be issued by the hearing officer upon written request of any party.

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(g) Hearing. At the date, time and place of hearing the hearing officer shall hear all matters presented in accord with the Wyoming Administrative Procedure Act. Parties shall appear in person or by telephone and may be represented by counsel, provided that such counsel be duly authorized to practice law in the State of Wyoming or is otherwise associated at the hearing with one or more attorneys authorized to practice law in this State.

(h) Order of Procedure at Hearing. Hearings shall generally be conducted informally, in accordance with the following procedure:

(i) The hearing officer shall announce that the hearing is convened, the title of the matter and case to be heard and shall note for the record all subpoenas issued and all appearances. The hearing officer shall state that the hearing is informal, that strict rules of evidence will not apply, and shall briefly describe the method in which the hearing will be conducted.

(ii) Short opening statements may be permitted at the discretion of the hearing officer.

(iii) Presentation of evidence by petitioner(s). Witnesses may be cross-examined by the Division or other parties. All exhibits shall be marked for identification.

(iv) Presentation of evidence by the Division. Witnesses may be cross-examined by the other parties. All exhibits shall be marked for identification.

(v) Closing statements or arguments may be made at the discretion of the hearing officer.

(vi) After all proceedings have been concluded, the hearing officer shall excuse all witnesses and declare the hearing closed. The record may be supplemented with additional evidence or written briefs at the discretion of the hearing officer and within such time as directed by the hearing officer.

(i) Witnesses to be Sworn. All persons testifying at any hearing shall stand and be administered the following by the hearing officer:

“Do you swear (or affirm) to tell the truth, the whole truth and nothing but the truth in this hearing now before the hearing officer?”

(j) Applicable Rules of Civil Procedure to Apply. The Wyoming Rules of Civil Procedure shall apply and be followed in hearings before the Division, to the extent not inconsistent with these rules.

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(k) Presence of Attorney General. In all hearings before the Division, the Division may request the Attorney General of the State of Wyoming, or a representative of his staff, to be present to assist and advise the Division.

(l) Record of Proceedings-Reporter. Hearings shall be electronically recorded unless a party provides for a court reporter at its own expense. The hearing officer may direct the party or parties requesting a transcript to assume the cost of the transcript.

(m) Depositions. In all contested cases the taking of depositions and discovery shall be available to the parties as provided in the Wyoming Rules of Civil Procedure and the Administrative Procedure Act.

(n) Decision, Findings of Fact and Conclusions of Law, and Order. The hearing officer shall make a written decision and order containing Findings of Fact, Conclusions of Law and Recommended Decision. Such decision and order shall be filed with the Division within 15 days of the close of the hearing. The Division shall send a copy by prepaid mail to each party, or their attorneys of record. The Administrator shall act on the recommendation of the hearing officer within 30 days of receiving the hearing officer's report.

(o) Appeals to District Court. Appeals to the district court from decisions of the hearing officer are governed by the Wyoming Administrative Procedure Act and Rule 12 of the Wyoming Rules of Appellate Procedure.

(p) Transcript in Case of Appeal. In case of an appeal to the district court, the party appealing shall secure and file a transcript of the testimony and all other evidence offered at the hearing, which transcript must be verified by the oath of the person who transcribed the testimony as a true and correct transcript of the testimony and other evidence in the case. The compensation of the person making the transcript and all other costs involved in the appeal shall be borne by the party prosecuting the appeal unless otherwise ordered by the district court at the conclusion of the appeal.

(q) Pre-Hearing Conference. At any time on or before the day of any hearing, the hearing officer may direct the parties to appear before the hearing officer for a pre hearing conference. Such conferences shall be conducted informally. The hearing officer shall prepare an order reciting or shall read into the record the results of the conference. The pre-hearing order will control the course of the hearing unless modified by the presiding officer to prevent manifest injustice. A party who believes a pre-hearing order does not fully cover the issues presented, or is unclear, may petition for a further ruling within ten days after receipt of the order. The pre hearing conference shall be convened to consider:

- (i) the simplification of the issues;

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- (ii) the necessity or desirability of amending the pleadings;
- (iii) the possibility of obtaining admissions of fact and of documents to avoid unnecessary proof;
- (iv) formulating additional procedures to govern the hearing; and,
- (v) ~~such~~ other matters as may aid in the disposition of the case.

(r) Additional Rules for Contested Ratemaking Proceedings. The following additional rules shall apply to contested cases involving the Division's annual rate filing pursuant to W.S. § 27-14-201(c) *et seq.*

(i) Any employer wishing to contest the rate filing shall file a written request for hearing with the Division, received by the Division no later than 30 days after the mailing of the proposed rates by the Division. Counsel for any employer shall enter a written appearance within the same time period.

(ii) The contested rate hearing shall be held no later than 75 days after the mailing of the proposed rates by the Division. Only those employers who filed a timely written request for hearing directly or through counsel will be permitted to participate in the hearing.

(iii) Written interrogatories shall be filed no later than 30 days before the scheduled hearing date. Responses to interrogatories shall be served on the requesting party ten days after receipt of the interrogatories. Depositions shall be completed at least ten days before the hearing.

(iv) Pre-hearing conferences may be conducted informally by the hearing officer, without prior written notice if such notice is impractical, but the hearing officer shall keep a detailed log of the date, time and subject matter of all contacts by parties to the contested case. Such log shall be made a part of the formal record in the case.

(v) At the hearing, those employers wishing to make an unsworn statement may do so in writing or shall be heard before the taking of any sworn testimony or evidence. Unsworn statements shall not be subject to cross-examination. The Division shall proceed next, presenting evidence in support of the rate filing, followed by those employers desiring to present sworn testimonial and documentary evidence against the proposed rate filing.

(vi) All parties shall have an opportunity to present proposed findings of fact and conclusions of law within ten days after the close of the evidence.

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(vii) The hearing officer shall render findings of fact, conclusions of law and recommended orders within 30 days after the close of the evidence, and shall serve such findings, conclusions and orders upon the Administrator, Director, and all employers and counsel of record. The Director shall act on the recommendations of the hearing officer by written decision within 30 days of receiving the hearing officer's report.

Section 65. Hearing Requests Regarding Timeliness.

(a) Hearing. Upon timely request or appeal, the party filing or paying in an apparently untimely manner shall be given a hearing on the question of the timeliness of the filing or paying.

Section 76. Rules Governing Public Records Requests.

(a) Applicability. This section applies to requests for access to public records pursuant to W.S. § 16-4-201, *et seq.*

(b) Custodian. For the purpose of any public records request, the Administrator is the custodian of all public records maintained or kept in the custody or control of the Division.

(c) Right of Inspection. Public records of the Division shall be available for inspection by any person at reasonable times, subject to reasonable restrictions imposed by the Administrator. No person shall inspect public records of the Division without the prior approval of the Administrator; and all requests for access to public records shall be in writing.

(d) Grounds for Denial. In addition to any grounds for denial listed in W.S. § 16-3-203, the Administrator shall deny the right to inspect any information whose disclosure is prohibited by W.S. § 27-14-805. The Administrator may also deny the right to inspect records of investigations conducted by the Division, investigatory or security procedures of the Division, or any investigatory files of the Division, when disclosure would be contrary to the public interest.

(e) Response to Request; Statement of Reasons; Time Limits. The Administrator or designee shall issue a response to all written requests for access to public records within 30 days, after the request is received by the Division. Any written request for access shall be deemed denied if the Administrator has not issued a response within 30 days after the request was received by the Division. A party whose request for access is denied may request a written statement of reasons. Any request for a statement of reasons shall be in writing. The Administrator shall issue a written response to any such request, stating the reasons for denying access, including citations to legal authority, within 30 days after the request was received by the Division. Any denial of access shall

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be final, unless the party seeking access files an application in district court pursuant to W.S. § 16-4-203(f) within 30 days after the Administrator's statement of reasons is issued. At the same time it is filed in the district court, any application pursuant to W.S. § 16-4-203(f) shall be served on the Administrator by certified mail.

~~(f) Fees. The Division shall provide photocopies or printouts of any public record, when practical, upon request. The Division shall charge a fee of \$0.25 per page for any such photocopies or printouts. Public records of the Division shall not be removed from the place where they are kept absent a showing of extraordinary necessity, and, upon such a showing, shall be removed only under the continuous supervision of Division personnel. In addition to fees for copies or printouts, the Division may charge a reasonable administrative fee for services rendered by Division personnel in the supervision of any inspection or in the production of any photocopies or printouts pursuant to this subsection.~~

Procedures, Fees, Costs, and Charges for Inspecting, Copying, and Producing Public Records.

(i) Authority. The Department of Workforce Services, Workers' Compensation Division is required under W.S. 16-3-103(j)(ii) to adopt the Department of Administration and Information's uniform rules pertaining to procedures, fees, costs, and charges for inspecting, copying, and producing public records.

(ii) Adoption of Uniform Rules. The Department of Workforce Services, Workers' Compensation Division hereby incorporates by reference the following uniform rules:

(A) Chapter 2 – Uniform Procedures, Fees, Costs, and Charges for Inspecting, Copying, and Producing Public Records adopted by the Department of Administration and Information and effective on September 6, 2016, found at: <https://rules.wyo.gov> . See Current Rules, Administration & Information, Dept., Director's Office, Chapter 2. This incorporated rule may also be requested from the Wyoming Secretary of State Office (Administrative Services Division) in writing at 2020 Carey Avenue, Suite 600, Cheyenne, WY 82002-0020; by email at: rules@wyo.gov; by telephone at: (307) 777-5348; or by fax at: (307) 777-5339.

(B) For these rules incorporated by reference:

(I) The Department of Workforce Services, Workers' Compensation Division has determined that incorporation of the full text in these rules would be cumbersome or inefficient given the length or nature of the rules;

(II) The incorporation by reference does not include any later amendments or editions of the incorporated matter beyond the applicable date identified in subsection (a) of this section; and

(III) The incorporated rules are maintained at the Department of Workforce Services, Workers' Compensation Division's office (1510 East Pershing

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Boulevard, Cheyenne, Wyoming 82002) and are available for public inspection and copying at the same location.

(g) The provisions of this section notwithstanding, the Division shall, upon request, provide one photocopy of the official workers' compensation file, free of charge, to both the employee and the employer.