

**WEST VIRGINIA
SECRETARY OF STATE**

Betty Ireland

ADMINISTRATIVE LAW DIVISION

Form #1

Do Not Mark In this Box

2008 APR 29 PM 5:49

NOTICE OF A PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Offices of the Insurance Commissioner (Workers' Compensation Rules) TITLE NUMBER: 85

RULE TYPE: Exempt Legislative CITE AUTHORITY WV Code §§23-2C-22; 33-2-10(b)
& 33-2-21(a)

AMENDMENT TO AN EXISTING RULE: YES ☒ NO ☐

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: Claims Management and Administration

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

DATE OF PUBLIC HEARING: Thursday, May 29, 2008 TIME: 3:00 PM

LOCATION OF PUBLIC HEARING: Offices of the WV Insurance Commissioner
1124 Smith Street – 4th Floor – Room 400
Charleston, WV 25301

COMMENTS LIMITED TO: ORAL ☐ WRITTEN ☐ BOTH ☒

DATE WRITTEN COMMENT PERIOD ENDS: Thursday, May 29, 2008 TIME: 3:00 PM

WRITTEN COMMENTS MAY BE MAILED TO: Ryan Sims, Associate Counsel

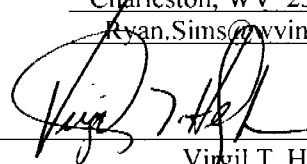
The Department request that persons wishing to make
comments at the hearing make an effort to submit written
comments in order to facilitate the review of these comments.

Offices of the Insurance Commissioner
P.O. Box 50540

The issues to be heard shall be limited to the proposed rule.

Charleston, WV 25305-0540
Ryan.Sims@wvinsurance.gov

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL



Virgil T. Helton
Cabinet Secretary
West Virginia Department of Revenue

**Department of Revenue
Agency Questionnaire**

Re: Amendment to Rule 1

**TITLE 85, SERIES 1
CLAIMS MANAGEMENT AND ADMINISTRATION**

Question 1: Are regulations required?

Yes. The Insurance Commissioner believes that the amendments being made to this Rule will provide more clarity regarding the topics being addressed in the amendment, and will in turn promote a more efficient and sound workers' compensation market for workers, employers and private carriers. See the Brief Summary and Statement of Circumstances for more detail.

Question 2: Is the rule you are proposing controversial? If yes, what are the pros and the cons?

Not particularly. As with any rule amendment, it is anticipated that there will be stakeholder and public comment by those potentially affected. However, the insurance commissioner does not anticipate an inordinate amount of debate over this rule.

Question 3: Is the rule you are proposing a copy of another state's rule? A model rule? Custom-drafted?

This rule amendment is not a copy of another state's rule or a model rule. It is custom-drafted.

Question 4: What are the really important things you think the Secretary of Tax and Revenue should know about this rule and the issues that surround it?

The primary purpose of the rule changes in this draft are to update the various claims handling standards contained in the Rule to be consistent with current law and add self-insured employers to the scope of the rule's applicability. It is not anticipated that there will be any particularly controversial issues related to this rule draft.

Insurance Commissioner (Workers'
Compensation Rules)
Exempt Legislative Rule
Title 85, Series 1

CLAIMS MANAGEMENT AND ADMINISTRATION

TITLE 85, SERIES 1

BRIEF SUMMARY OF RULE

This amended rule sets forth certain standards, clarification, guidelines and procedures applicable to workers' compensation claims management and administration. The original draft of W. Va. Code St. R. § 85-1-1 et seq. ("Rule 1", "Claims Management and Administration") was promulgated by the former West Virginia Workers' Compensation Board of Managers with a most recent effective date of June 1, 2005.

As with all Title 85 Rule amendments following the passage of SB 1004 in 2005, general technical and stylistic cleanup was implemented to reflect the termination of the former WV Workers' Compensation Commission, privatization of West Virginia's workers' compensation insurance market and the transfer of regulatory authority for workers' compensation to the Insurance Commissioner, and to otherwise eliminate provisions rendered obsolete by changes in the law. Additionally, several substantive changes were made to the Rule. Most notably, self-insured employers were added to the scope of the Rule, so that the claims standards therein apply to self-insureds as well as insurers. (Previously, the claims standards for self-insureds were found in Title 85, Series 18, but it is believed that having a single set of standards in Rule 1 would be desirable). Additional notable changes being made in the current draft include updating certain time standards for taking actions in claims to be consistent with the law and eliminating the unnecessary provision requiring protestable orders to be issued when a carrier or self-insured wish to administratively deactivate a claim in their system.

Insurance Commissioner (Workers'
Compensation Rules)
Exempt Legislative Rule
Title 85, Series 1

CLAIMS MANAGEMENT AND ADMINISTRATION

TITLE 85, SERIES 1

STATEMENT OF CIRCUMSTANCES

Pursuant to Senate Bill 1004, First Special Session, 2005, workers' compensation in West Virginia was changed from a state run, monopolistic system to a private market system. This bill also transferred all regulatory authority for workers' compensation insurance to the Insurance Commissioner.

To provide standards, clarification, guidelines and procedures applicable to workers' compensation claims management and administration, the former West Virginia Workers' Compensation Commission Board of Managers promulgated W. Va. Code St. R. § 85-1-1 et seq. ("Rule 1", "Claims Management and Administration") with a most recent effective date of June 1, 2005. It has become apparent to the Insurance Commissioner that there is a need for certain stylistic, technical and substantive amendments to this Rule to properly reflect West Virginia's new privatized workers' compensation system and to otherwise reflect West Virginia's statutory law regarding workers' compensation. The substantive amendments in the instant draft are more specifically referenced in the "Brief Summary" for this Rule.

This amended rule is being promulgated to implement the above referenced changes necessary to Title 85, Series 1 of the West Virginia Code of State Rules.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Claims Management and Administration (Title 85, Series 1)

Type of Rule: X Exempt Legislative Interpretive Procedural

Agency: Insurance Commission

Address: Post Office Box 50540
1124 Smith Street, Greenbrooke Building
Charleston, West Virginia 25305-0540

Phone Number: (304) 558-0401 Email: Ryan.Sims@wvinsurance.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The rule will have no additional fiscal impact upon state government.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	N/A	N/A	N/A
Personal Services	N/A	N/A	N/A
Current Expenses	N/A	N/A	N/A
Repairs & Alterations	N/A	N/A	N/A
Assets	N/A	N/A	N/A
Equipment	N/A	N/A	N/A
Other	N/A	N/A	N/A
2. Estimated Total Revenues	N/A	N/A	N/A

Rule Title: Claims Management and Administration (Title 85, Series 1)

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

N/A

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Date: _____

Signature of Agency Head or Authorized Representative

Ryan Sims, Associate Counsel

TITLE 85
EXEMPT LEGISLATIVE RULE
WORKERS' COMPENSATION RULES OF THE
WEST VIRGINIA INSURANCE COMMISSIONER

SERIES 1
CLAIMS MANAGEMENT AND ADMINISTRATION

§85-1-1. General.

1.1. Scope. -- This exempt legislative rule establishes the requirements and procedures to be followed by the ~~West Virginia Insurance Commissioner~~, private carriers, self-insured employers, third-party administrators, claimants, health care providers, vocational professionals, and others involved in the administration of claims. ~~This rule also applies to self-insured employers to the extent that provisions of this rule expressly reference self-insured employers or to the extent that this rule addresses subject matter applicable to private carriers and not addressed by W. Va. Code St. R. §85-18-1 et seq.~~

1.2. Authority. -- W. Va. Code §§23-2C-22; 33-2-10(b); and 33-2-21(a). Pursuant to W. Va. Code §§23-2C-5(c)(2) and 33-2-10(b), workers' compensation rules proposed by the Insurance Commissioner and approved by the Industrial Council are not subject to legislative approval as would otherwise be required under W. Va. Code §29A-3-1 et seq. Public notice requirements of that chapter and article, however, must be followed.

1.3. Filing Date. -- ~~September 11, 2007.~~

1.4. Effective Date. -- ~~October 15, 2007.~~

§85-1-2. Definitions.

As used in this exempt legislative rule, the following terms have the stated meanings unless the context of a specific use clearly indicates another meaning is intended.

2.1. "Acted upon" means, but shall not be limited to, any one of the following: 1) received and processed; 2) contacted an injured worker, employer, or medical provider in any fashion requesting more information; 3) reviewed and examined by medical personnel; 4) conducted a potential overpayment analysis; 5) cross-checked with other state agencies for relevant information; and 6) and other similar administrative steps which must be taken before a request can be ruled upon.

2.2. "Board of Review" is the workers' compensation board of review pursuant to W. Va. Code §23-5-1 et seq.

2.3. "Decision" means any determination by a responsible party regarding the compensability of a claim, whether any type of benefit should be granted in a claim, or

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pertaining to any other substantive request by a claimant in a claim.

~~2.3~~ 2.4. ~~"Filing"~~ "File" means actual receipt by the recipient ;

a. If mailed, the date on which document being postmarked;

b. If faxed, the date on which fax is sent;

c. If emailed, the date on which email is sent to the email address for the recipient; and

d. If hand delivered, the date on which the document is delivered.

~~2.4~~ 2.5. "Injured worker" means an employee entitled to West Virginia workers' compensation benefits as the result of a work-related injury or disease, as provided under W. Va. Code §23-4-1.

~~2.5~~ 2.6. "Injured worker's employer" or "employer" means an employer within the meaning of W. Va. Code §23-2-1, et seq.

~~2.6~~ 2.7. "Injury" and derivative words have the meaning ascribed to the term "injury" by W. Va. Code §23-4-1.

~~2.7~~ 2.8. ~~"Insurance Commissioner"~~ means the ~~insurance commissioner~~ Insurance Commissioner of West Virginia as provided in W. Va. Code §33-2-1, or any designated third-party administrator of the Insurance Commissioner.

~~2.8~~ 2.9. "Office of Judges" means the workers' compensation office of administrative law judges pursuant to W. Va. Code §23-5-1 et seq.

~~2.9~~ 2.10. "Paid" means the time the check is deposited in the mail or presented in person to the claimant, claimant's attorney or anyone acting in his behalf.

~~2.10~~ 2.11. "Private carrier" means an insurer authorized by the ~~insurance commissioner~~ Insurance Commissioner to provide workers' compensation insurance pursuant to ~~chapter~~ chapters twenty-three and thirty-three of the West Virginia Code and any third-party administrator designated by the private carrier to adjust West Virginia workers' compensation claims.

~~2.11~~ 2.12. "Receipt" means: ~~the day the document is scanned or otherwise entered into the Insurance Commission's or private carrier's computer system.~~

a. If mailed or hand delivered, the date on which the document is delivered into the possession of the responsible party;

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b. If emailed, the date on which the document is received in the email inbox of the responsible party; or

c. If faxed, the date on which the document is received in the fax machine of the responsible party.

2.13. "Responsible party" means the Insurance Commissioner, private carrier or self-insured employer, whichever is applicable.

2.14. "Retire" means an individual has permanently ceased working due to age or years of service and has no intent to return to work.

~~2.12~~ 2.15. "Self-insured employer" means an employer who has applied for permission to elect and thereafter has elected to maintain its own benefit fund or system of compensation to ensure the payment of benefits to its injured employees and their dependents in amounts at least equal in value to the workers' compensation benefits provided by law and ordered to be paid under the provisions of chapter twenty-three of the West Virginia Code is eligible and has been granted self-insured status pursuant to the provisions of W. Va. Code §23-2-9 and the rules promulgated thereunder, and any third-party administrator designated by the self-insured employer to adjust West Virginia workers' compensation claims.

~~2.13~~ 2.16. "West Virginia workers' compensation coverage" means workers' compensation coverage which provides the employees of the insured employer workers' compensation benefits consistent with chapter twenty-three of the West Virginia Code and the rules promulgated thereunder.

§85-1-3. Injured Worker's Report of Injury and Application for Compensation.

3.1. General.

Immediately after a ~~work-place~~ sustaining an occupational injury or becoming aware of an occupational disease, an injured worker 1) should seek necessary medical care; 2) shall immediately on the occurrence of the injury or as soon as practicable give or cause to be given to the employer or any of the employer's agents a written notice of the occurrence of the injury; and 3) should file a workers' compensation claim or request that one be filed on his or her behalf. Failure to immediately give notice to the employer of the injury shall weigh against a finding of compensability in the weighing of the evidence mandated by W. Va. Code §23-4-1g and will dilute the credibility and reliability of the injured workers' claim. Notice provided to the employer within two (2) working days of the injury shall be deemed immediate notice; Provided, That under no circumstances shall the fact that notice of an occupational injury was provided by the claimant later than two (2) working days from the time of the injury be the sole basis for a claim denial. Enforcement of an employer's personnel policy requiring that an injured worker report an injury immediately shall not be deemed a discriminatory practice under chapter twenty-three of the West Virginia Code.

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3.2. Benefit rate calculation; wage information.

It is the joint responsibility of the injured worker and the employer to ensure that the correct wage information is provided to the Insurance Commissioner or private carrier so that the correct benefit rate can be paid the injured worker. If inaccurate wage information is received by the ~~Insurance Commissioner or private carrier, the Insurance Commissioner or private carrier~~ responsible party, the responsible party will, upon receipt of accurate wage information, adjust prospectively the benefit rate. There shall be no retroactive adjustments to previous underpayments beyond two (2) years. The submission of inaccurate wage information by the employer or the receipt of benefits based on inaccurate wage information by the injured worker may serve as evidence of abuse or fraud under the applicable provisions of the West Virginia Code.

§85-1-4. Employer's Report of Injuries.

4.1. ~~General.~~

The injured worker's employer shall report to the ~~Insurance Commissioner or private carrier~~ responsible party every injury sustained by any person in its employ within five (5) days of the employer's receipt of the notice of an employee's desire to file a claim. ~~Failure to comply with this reporting requirement may result in the employer being fined by the Insurance Commissioner up to \$250 per occurrence. Any employer that has five (5) or more occurrences within any three hundred sixty five (365) day period shall be fined up to \$500 per occurrence as determined in the sole discretion of the Insurance Commissioner.~~

4.2. ~~Benefit rate calculation; wage information.~~

~~It is the joint responsibility of the injured worker and the employer to ensure that the correct wage information is provided to the Insurance Commissioner or private carrier so that the correct benefit rate can be paid the injured worker. If inaccurate wage information is received by the Insurance Commissioner or private carrier, the Insurance Commissioner or private carrier will, upon receipt of accurate wage information, adjust prospectively the benefit rate. There shall be no retroactive adjustments to previous underpayments beyond two (2) years. The submission of inaccurate wage information submitted by the employer or the receipt of benefits based on inaccurate wage information by the injured worker may serve as evidence of abuse or fraud under the applicable provisions of the West Virginia Code.~~

§85-1-5. Special Rules for Temporary Total Disability Claims.

5.1. To qualify for temporary total disability benefits, the injured worker must have missed more than three (3) days of work due to the compensable injury before benefits become payable. To receive temporary total disability benefits for the first three (3) days of work, the injured worker must have missed more than seven (7) days due to the compensable injury.

5.2. If an individual retires, as long as the individual remains retired, he or she is

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disqualified from receiving temporary total disability indemnity benefits as a result of an injury received from the place of employment from which he or she retired, unless the application for benefits was received prior to his or her retirement. Individuals who have retired also shall be barred from reopening for indemnity benefits an earlier claim filed in connection with an injury received at the place of employment from which he or she retired. This section shall not preclude payments of benefits otherwise due an injured worker if the retiree has returned to employment and suffers a compensable injury and shall not preclude payment of benefits if the compensable injury causes the individual to retire.

5.3. If a period of disability includes a reasonably ascertainable period of time during which the injured worker would not have been ~~compensated from his or her performing work for any~~ employer, then temporary total disability indemnity benefits shall not be paid during that period. This ~~Section~~ section shall not apply to periods of time caused by a reduction in force, lay-off, or time-off provided in connection with an employee benefit.

§85-1-6. Special Rules for Permanent Partial Disability Claims.

~~6.1. Notice.~~

~~Upon the making of or refusing to make an award of benefits, the Insurance Commissioner or private carrier shall send to each interested party a written notice setting forth its decision, and the terms thereof and informing the parties of their right to protest its decision by filing objection with the Office of Judges thereto in writing at any time within thirty (30) days after receipt of notice.~~

~~6.2. Computation of awards.~~

~~When an injured worker is found to be entitled to a permanent partial disability award, the award shall be computed in accordance with the law in effect when the award is payable.~~

~~6.3. Payment of permanent partial disability award.~~

~~Permanent partial disability awards shall be paid in monthly installments equal to the impairment awarded. For instance, a 10% permanent partial disability award would be paid over a ten (10) month period, with the first payment being made the month following the award.~~

[RESERVED]

§85-1-7. Notice and Litigation.

7.1. In all workers' compensation claims, the parties shall be limited to: (1) the claimant or the claimant's dependants; (2) the employer; and (3) in claims involving funds created by article two-c, chapter twenty-three of the West Virginia Code, the Insurance Commissioner.

7.2. Upon the making of any decision, the responsible party shall send the parties a

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written notice of the decision setting forth the decision and the basis thereof, and informing the claimant or claimant's dependants of the right to protest the decision by filing a protest with the Office of Judges within sixty (60) days of the receipt of the decision.

7.3. In claims in which there was insurance coverage on the date of injury or last exposure, the private carrier providing coverage has sole authority to act on behalf of the employer in the claim, including, but not limited to, the ability to make claims decisions, appoint counsel for defense of the claim and make determinations regarding litigation strategy. An insured employer generally may not independently protest a decision issued by its carrier. However, in order to place certain issues into litigation, the employer's right to protest a decision issued by its carrier exists in the following limited circumstances:

a. Decisions incorporating findings made by the Occupational Pneumoconiosis Board; and

b. Decisions entered pursuant to W. Va. Code §23-4-7a(c)(1).

In the circumstances set forth in subdivisions a. and b. of this subsection, the employer's protest shall be subject to the carrier's sole authority to act on the employer's behalf in the litigation of the claim.

§85-1-7 8. Special Rules for Permanent Total Disability Claims.

[RESERVED]

§85-1-8 9. Special Rules for Non-Awarded Partial Benefits.

§ 9.1. Non-awarded partial disability benefits pursuant to W. Va. Code §23-4-7a will only be payable if the weight preponderance of the evidence indicates that a permanent impairment exists.

§ 9.2. Non-awarded partial disability benefits shall not be payable in a claim that has been re-opened for temporary total disability benefits if a permanent partial disability award was previously made in the claim.

§ 9.3. Non-awarded partial disability benefits paid prior to entry of the permanent disability award are to be deducted from the permanent partial disability award when it is granted. If the non-awarded partial disability benefits exceed the amount of the award, the injured worker will not be entitled to any further benefits from the award. The excess is considered to be an overpayment and shall may be collected from any future disability award in the same or any future claim, including, but not limited to, an award for temporary total disability benefits, permanent partial disability benefits, permanent total disability benefits, non-awarded partial disability benefits pursuant to section 12. of this rule.

§ 9.4. ~~The Insurance Commissioner or private carrier~~ responsible party may cease paying

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non-awarded partial disability benefits if the ~~Insurance Commissioner or private carrier~~ responsible party concludes that the amount of non-awarded partial disability benefits already paid will likely exceed the expected partial disability award and may, as soon as practicable thereafter, enter a permanent partial disability award based on the most current information available and the guidelines set forth in W. Va. Code St. R. §85-20-1 et seq., if applicable.

§ 9.5. If the injured worker begins to receive rehabilitation benefits, non-awarded partial disability benefits shall not be paid until the rehabilitation process is completed.

§ 9.6. Non-awarded partial disability benefits shall be immediately suspended if the injured worker fails, without good cause, to present for an examination or rating. If suspended with good cause, benefits can be reinstated, without back pay, once the injured worker presents for the examination or rating.

§ 9.7. Non-awarded partial disability benefits are paid at the same rate as the permanent partial disability rate.

§85-1-9 10. Time Standards.

9 10.1. Injury and occupational disease claims. -- Those claims based upon injuries and occupational diseases other than occupational pneumoconiosis that are properly executed and filed on prescribed forms with the ~~Insurance Commissioner or private carrier upon properly executed, prescribed forms~~ responsible party shall be ruled on within fifteen (15) ~~working~~ days from the ~~date of receipt of all required information by the Insurance Commissioner or private carrier~~ responsible party. The ~~Insurance Commissioner or private carrier~~ responsible party shall consider all information and proof properly submitted in connection with each claim. ~~Whenever it is of the opinion that a claim has not been adequately or properly developed for consideration, it may require the parties to produce additional evidence.~~ Whenever a claim has not been adequately or properly developed for consideration, the responsible party may require the production of additional evidence. The fifteen (15) ~~working~~ days to rule on the claim shall be tolled during this evidence gathering process.

9 10.2. Occupational Pneumoconiosis claims. -- Non-medical rulings shall be entered in occupational pneumoconiosis claims within ~~fifteen (15)~~ ninety (90) ~~working~~ days from the date of receipt by the ~~Insurance Commissioner or private carrier~~ responsible party of properly executed, prescribed forms from all parties involved. The ~~Insurance Commissioner or private carrier~~ responsible party shall consider all information and proof properly submitted in connection with each claim. Whenever the ~~Insurance Commissioner or private carrier~~ responsible party is of the opinion that a claim has not been adequately or properly developed for consideration, it may require the ~~parties to produce~~ production of additional evidence. The ~~fifteen (15)~~ ninety (90) ~~working~~ days shall be tolled for no more than thirty (30) additional days during this evidence gathering process.

9 10.3. Medical Treatment and appliances, devices and supplies. -- Requests for authorization of medical treatment and appliances, devices and supplies shall be acted upon

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within fifteen (15) ~~working~~ days from the date of receipt by the ~~Insurance Commissioner or private carrier~~ responsible party.

~~9.4. Appliances, Devices, and Supplies. Requests for authorization of purchase of prosthetic or other appliances, devices or medical supplies shall be acted upon within fifteen (15) working days from the date of receipt by the Insurance Commissioner, or private carrier.~~

~~9.5~~ 10.4. Medical evaluations.

a. Referral of claimants to physicians for examinations and evaluations as required by W. Va. Code §23-4-7a~~(d)~~, shall be made within twenty (20) ~~working~~ days of the end of the one hundred twenty (120) day period of temporary total disability: Provided, That if the period of expected temporary total disability exceeds one hundred twenty (120) days, the referral shall be made within twenty (20) days of the end of the expected period of disability.

b. Examinations and evaluations to be performed by the Occupational Pneumoconiosis Board shall be scheduled and notice of the scheduling shall be transmitted to the parties within sixty (60) days from the date of non-medical rulings directing referral to the Board.

~~9.6~~ 10.5. Permanent disability rulings.

a. Permanent disability evaluation reports received from physicians to whom claimants have been referred by the ~~Insurance Commissioner or private carrier~~ responsible party in claims based upon injuries and occupational diseases other than occupational pneumoconiosis shall be acted upon within thirty (30) days of the receipt of the report.

b. The responsible party shall make referrals of claimants to physicians for examinations and evaluations in response to requests by or on behalf of claimants for consideration of permanent disability awards in claims based upon injuries and occupational diseases other than occupational pneumoconiosis within thirty (30) ~~working~~ days from the date of receipt of such requests.

c. Permanent partial disability awards may be paid either by lump sum or in installments. Payment of permanent partial awards shall commence within thirty (30) days of the decision granting the award.

~~e~~ d. Findings of the Occupational Pneumoconiosis Board shall be transmitted to the parties within thirty (30) ~~working~~ days from the date of examination by the Board.

~~9.7~~ 10.6. ~~Petitions~~ Application for reopening.

a. ~~Petitions~~ Applications for reopening of claims for temporary or permanent total disability benefits ~~and/or medical benefits~~ shall be ruled upon within ~~ten (10) working~~ thirty (30) days from the date of receipt by the ~~Insurance Commissioner or private carrier~~ responsible

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party. The ~~Insurance Commissioner or private carrier~~ responsible party shall consider all information and proof properly submitted in connection with ~~each claim~~ the application. ~~Whenever it is of the opinion that a claim has not been adequately or properly developed for consideration, it may require the parties to produce additional evidence.~~ Whenever a claim has not been adequately or properly developed for consideration, the responsible party may require the production of additional evidence. The ~~ten (10) working~~ thirty (30) days to rule on the claim shall be tolled during this evidence gathering process.

b. ~~Petitions for reopening of claims upon a permanent disability basis shall be ruled upon within thirty (30) days from the date of receipt in the Fund.~~

~~9.8. Applications for modification of awards. Applications for modification of awards filed by employers shall be ruled upon within twenty (20) working days from the date of receipt in the Fund.~~

10.7. Orders.

Responsible parties shall comply with all orders of the Office of Judges and the Board of Review and all mandates of the West Virginia Supreme Court of Appeals within thirty (30) days from the date of receipt, unless required to act sooner under the terms of the order or mandate, or the order or mandate is subject to a lawfully ordered stay.

~~§85-1-40~~ 11. Child Support and Spousal Support Orders.

~~40~~ 11.1. W. Va. Code §23-4-18 allows child and/or spousal support payments to be withheld from an injured worker's compensation and sent to the bureau for Child Support Enforcement. The term "compensation" refers to temporary total disability benefits, temporary partial rehabilitation benefits, non-awarded partial benefits, permanent partial disability benefits and permanent total disability benefits only.

~~40~~ 11.2. The amounts to be withheld from an injured worker's compensation will be those which are set out in the withholding notice issued pursuant to the West Virginia Domestic Relations Act.

~~40~~ 11.3. When an award of compensation is for permanent partial or non-awarded partial benefits, the ~~Insurance Commissioner or private carrier~~ responsible party can withhold 100% of those benefits to collect payment of child and/or spousal support benefits.

~~40~~ 11.4. When compensation is for temporary total, temporary partial, rehabilitation temporary total, permanent total, or dependent benefits, the ~~Insurance Commissioner or private carrier~~ responsible party may only withhold the amount or amounts specified on the withholding notice, subject to the limitations set out in Table 1a.

~~85-1-44~~ 12. Overpayments.

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44 12.1. Overpayments include ~~the receipt of any monies from any monies received from, or paid on an injured workers' behalf by, the Insurance Commissioner or private carrier responsible party to which it is subsequently determined the injured worker was not entitled, to receive or have paid on his or her behalf and~~ Overpayment may include, but shall not be limited to, the payment of temporary total disability benefits, permanent partial disability benefits, permanent total disability benefits, non-awarded partial disability benefits, temporary total rehabilitation benefits, temporary partial rehabilitation benefits, dependents benefits, fatal (104 week) benefits, travel reimbursement, and medical benefits.

44 12.2. Overpayments to injured workers may be collected by the ~~Insurance Commissioner or private carrier responsible party~~ by withholding future disability benefits payable to the injured worker or the worker's dependents in the same claim or other claims which are pending with the same responsible party to whom the overpayment is due. The overpayment specifically can be withheld from temporary total disability benefits, permanent partial disability benefits, permanent total disability benefits, non-awarded partial disability benefits, temporary total rehabilitation benefits, temporary partial rehabilitation benefits, ~~dependents benefits, fatal (104 week) benefits,~~ travel reimbursement, and any other monies awarded or paid by the ~~Insurance Commissioner or private carrier responsible party~~.

44 12.3. Collection of overpayments from temporary total disability benefits, permanent total disability benefits, temporary total rehabilitation benefits, and temporary partial rehabilitation benefits, ~~dependents benefits, and fatal (104 week) benefits~~ shall be limited to thirty percent (30%) of the periodic benefit amount (i.e. weekly, bi-weekly, monthly, etc.); Provided, that ~~That~~ if the overpayment was based upon fraud, abuse or mistake, caused in whole or in part, by the injured worker or his or her agent, then the amount of the overpayment may be recovered in full by withholding 100% of the periodic benefit amount until the overpayment is recaptured.

44 12.4. Collection of overpayments from travel reimbursement, permanent partial disability benefits and non-awarded partial disability benefits shall not be limited and may be withheld in full until the overpayment is satisfied.

§85-1-12 13. Occupational Pneumoconiosis and Occupational Disease Claims.

42 13.1. ~~Occupational disease claims that involve disability or death resulting from occupational pneumoconiosis must be filed, processed, and litigated in accordance with statutory provisions prescribing the administration of occupational pneumoconiosis claims. Claims involving cancers caused by inhalation of minute particles of dust over a period of time in the course of and resulting from employment are occupational pneumoconiosis claims and must be filed, processed and litigated as such. Statutes of limitation for occupational pneumoconiosis cancer claims will begin to run on the date when the occupational cancer was made known to the claimant by a physician or on the date when the claimant should reasonably have known of the cancer, whichever shall last occur.~~ In any claim involving an occupational disease, other than occupational pneumoconiosis, resulting from inhalation of minute particles of dust over a period of time in the course of and resulting from employment: (1) which is filed as an occupational

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disease claim (as opposed to being filed as an occupational pneumoconiosis claim); and (2) in which a permanent disability determination is required, the claim shall be referred to the Occupational Pneumoconiosis Board for a determination of whole body medical impairment: *Provided*, That this subsection shall in no event affect the applicability of benefits or any other procedures available under the West Virginia Code for occupational disease claims other than occupational pneumoconiosis claims. In the claims described in this subsection, the Occupational Pneumoconiosis Board's findings and conclusions regarding whole body medical impairment shall have the same legal force and effect as any other findings and conclusions issued by the Board: *Provided*, That in such claims, the jurisdiction of the Occupational Pneumoconiosis Board is limited solely to the determination of whole body medical impairment.

42 13.2. Carpal tunnel and all other nerve entrapment syndromes of the upper extremity shall be filed as occupational disease claims unless the syndrome is a secondary diagnosis to an otherwise compensable injury.

42 13.3. An occupational disease claim filed based on the opinion of a psychologist shall be denied. Psychologists are not treating physicians and are not permitted to certify occupational disease disability.

~~§85-1-13. Special Rules on Closure of Claims.~~

~~13.1. Medical benefits in all no lost time claims and claims for temporary total disability benefits shall cease and the claim administratively closed six (6) months after the last date of service in the claim. A protestable order shall be issued by the Insurance Commissioner or private carrier upon said administrative closure. Nothing in this provision shall be deemed to abridge an injured worker's right to attempt to reopen the claim at a later date under applicable law.~~

§85-1-14. Procedures for Suspension for Claimant Abuse.

14.1. When evidence is obtained justifying a finding that an injured worker has engaged or is engaging in abuse, including, but not limited to, engaging in physical activities inconsistent with his or her compensable workers' compensation injury, or when evidence is obtained establishing a failure to undergo examinations or needed treatment, then the injured worker's temporary total disability benefits will be suspended by the ~~Insurance Commissioner or private carrier~~ responsible party.

14.2. Abuse may also include working at an unreported job while drawing temporary total disability benefits, making false or misleading statements to the ~~Insurance Commissioner or private carrier~~ responsible party or a health care provider for the purpose of securing any benefit, and altering, falsifying, destroying, or concealing workers' compensation related records.

14.3. Any claimant found to be engaging in abuse or who fails to undergo examinations or needed treatment shall receive a notice of benefit suspension. This notice will not be protestable. The injured worker will have thirty (30) days to submit evidence justifying the

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reinstatement of benefits. If justification is not established, then the injured worker will receive notice that the claim has been closed for temporary total disability payments and said notice shall be protestable. If justification is established, benefits will be reinstated with back benefits awarded.

14.4. In claims pending prior to approval of a managed health care plan, failure to select a treating physician from an approved managed health care plan within sixty (60) days of notification to do so will result in a suspension of medical and indemnity benefits until said selection is made, unless the injured worker is eligible to opt out of the managed care plan network.

§85-1-15. Travel Expenses-Medical Examination and Treatment.

15.1. General.

Claimants are entitled to reasonable travel, meals and lodging expenses actually incurred in connection with authorized medical examinations or treatment. In making a determination of the reasonableness of such expenses, the ~~Insurance Commissioner or private carrier~~ responsible party shall utilize the travel regulations for State employees as a guide, unless specific provisions to the contrary are otherwise contained herein. Claimants may be reimbursed for mileage in connection with medical examination or treatment at a rate of 15 cents (\$0.15) per mile. This rate shall not apply to mileage reimbursement requests involving treatment provided when the ~~Commission or private carrier~~ responsible party requires the claimant to undergo the medical examination and has selected the physician, or when an employer is required to reimburse reasonable travel and other expenses, as provided for in the W. Va. Code §23-4-8. The rate provided for in the travel regulations for State employees shall apply to these latter reimbursement requests.

15.2. Physical limitations.

Where a medical vendor certifies that a claimant, because of the state of his or her health, requires special travel arrangements in order to report for an authorized examination, the claimant shall be reimbursed for the cost of such arrangements.

15.3. Claimant's residence.

It shall be the policy of the ~~Insurance Commissioner and private carriers~~ responsible party to arrange for examination as near as practicable to the claimant's residence. If the claimant changes his residence after his or her date of injury to a location outside of West Virginia or to a location substantially further from the state than the residence on the date of injury, the following limitations shall be observed:

a. Where the change of residence is necessitated by reason of health or financial hardship, as determined in the sole discretion of the ~~Insurance Commissioner or private carrier~~ responsible party upon a proper showing of such reasons, the ~~Insurance Commissioner or private~~

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~~carrier~~ responsible party shall, in writing, endorse the change of residence and direct payment of meal and lodging expenses as follows:

1. Where the distance between the residence and the situs of the examination is less than four hundred (400) miles, meal and lodging expenses shall be payable as provided in subsections 15.1. and 15.2. of this section;

2. Where the distance between the residence and the situs of the examination is greater than four hundred (400) miles, expenses actually incurred en route shall be payable, to a maximum amount of the round trip air fare, economy class, between the closest airports offering scheduled commercial passenger service, as of the date said examination was scheduled;

3. Where the claimant objects to any order or finding, and the employer does not object thereto, and the claimant is subsequently directed to report for examination upon request of the employer, the claimant will be entitled to reimbursement of expenses from point of entry into West Virginia;

b. Where the claimant's change of residence is not necessitated by reason of health or financial hardship, expenses shall be payable only from point of entry into West Virginia.

§85-1-16. Complaints.

Upon receipt of any inquiry from the Insurance Commissioner regarding a complaint filed with the Commissioner, all private carriers and self-insured employers shall, within fifteen (15) days of the date appearing on the inquiry, furnish the Commissioner with a complete written response. A "complete written response" addresses all issues raised by the complainant or the Commissioner and includes copies of any documentation requested. This subsection is not intended to permit delay in responding to inquiries by the Commissioner or the Commissioner's staff in conjunction with a scheduled examination.

§85-1-16 17. Expert Witness Appearances.

~~46~~ 17.1. An authorized treating physician, or an authorized consulting physician acting upon referral from an authorized treating physician, appearing at a hearing to give testimony regarding an examination of an injured worker will be paid a fee by the ~~Insurance Commissioner~~ or ~~private carrier~~ responsible party commensurate with the service rendered for such appearance and testimony, not to exceed \$100 per quarter hour.

~~46~~ 17.2. All other expert witness appearance fees, including, but not limited to, any physician other than those physicians mentioned in subsection ~~46.4~~ 17.1. of this section, medical vendors, rehabilitation providers, physical therapists or vocational specialists, shall be paid for by the party wishing to examine or cross-examine the expert witness at an amount agreed to by the parties based upon usual and customary rate for the profession involved, not to exceed \$100

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per quarter hour. If the expert witness demands an amount in excess of \$100 per quarter hour to appear, then it will be the sole responsibility of the party who has retained the services of the expert or submitted a report or records of the expert as evidence in the case to pay for the difference.

§85-1-17 18. Implementation and Stay of Orders from the Office of Judges.

~~17.1.~~ Subject to the provisions of subsections ~~17.2.~~ through ~~17.6.~~ of this section, the Insurance Commissioner, private carriers, and self-insured employers responsible parties shall comply with any Order entered by the Office of Judges within thirty (30) calendar days of the entry of the Order. This provision is intended to apply to self-insured employers in lieu of W. Va. Code St. R. §85-18-15.5.j., thereby repealing that subdivision in favor of this subsection regarding self-insured employers.

~~17.2~~ 18.1. The ~~Insurance Commissioner or private carrier~~ responsible party may move for stay of any order entered by the Office of Judges for the payment of indemnity benefits, or which will necessarily require or result in the payment of such benefits, including, but not limited to, an order which finds a claim to be compensable, by filing a motion with either the Administrative Law Judge who entered the order or with the Board of Review.

~~17.3~~ 18.2. A motion as described in subsection ~~17.2~~ 18.1. of this section filed with the Office of Judges must be filed within ten (10) ~~calendar~~ days of the date of entry of such order. A motion as described in subsection ~~17.2~~ 18.1. of this section filed with the Board of Review must be filed contemporaneously with the petition for appeal. Any such motion that is not timely filed in accordance with this subsection shall be dismissed with prejudice. In either case, the claimant may file a response to the motion within ten (10) ~~calendar~~ days of the date on which the motion was filed, and the Office of Judges or Board of Review, whichever is applicable, shall enter an order granting or denying the motion within the ten (10) ~~calendar~~ days from the end of the response period.

~~17.4~~ 18.3. Any motion as described in subsection ~~17.2~~ 18.1. of this section must include the following minimum content: (1) A statement of the reasons why the stay is being sought; and (2) a statement of the grounds for the underlying appeal. Failure to include the minimum content as described in this section shall be grounds for the motion to be summarily denied.

~~17.5~~ 18.4. Any order granting a motion as described in subsection ~~17.2~~ 18.1. of this section shall expressly limit the stay to temporary total or permanent partial indemnity benefits paid in the claim as a result of the underlying Office of Judges order. No order granting a motion as described in subsection ~~17.2~~ 18.1. of this section may stay any medical, rehabilitation or permanent total disability benefits.

~~17.6~~ 18.5. Any order granting a motion as described in subsection ~~17.2~~ 18.1. of this section by the Office of Judges shall expressly limit the time duration of the stay to the expiration of the jurisdictional time limit for the filing of an appeal of the underlying order, or to the entry of a decision by the Board of Review of the underlying appeal if an appeal is filed.

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Any order granting a motion as described in subsection ~~17.2~~ 18.1. of this section by the Board of Review shall expressly limit the time duration of the stay to the entry of a decision by the Board of Review of the underlying appeal: Provided, that if the Board of Review enters a decision remanding a case to the Office of Judges for further proceedings, any stay granted by the Office of Judges or Board of Review shall remain in effect until the Office of Judges enters a new order on the issue which was remanded, at which time the stay will be lifted.

~~§85-1-18~~ 19. Miscellaneous Administrative Matters.

~~18.1. Incidents that do not result in material medical treatment, or that are not reasonably expected to result in medical treatment need not be reported to the Insurance Commissioner or private carrier by the worker or the employer.~~

~~18.2. If mail sent by the Insurance Commissioner or private carrier~~ responsible party to an injured worker, an employer, a vendor or any other party to a claim is returned due to an incorrect address, a reasonable effort will be made to determine the correct address. If after reasonable effort and due diligence a correct address cannot be located, the ~~Insurance Commissioner or private carrier~~ responsible party shall cease mailing correspondence to the party until such time as a correct address is provided.

~~§85-1-19~~ 20. Preferred Drug List.

In accordance with the provisions of the Workers' Compensation Act [23-4-3(a)(3)] that require pharmacists filling a prescription for medication for a workers' compensation claimant to dispense a generic brand of the prescribed medication if the generic brand exists, the ~~Insurance Commissioner and any private carrier~~ responsible party may establish a Preferred Drug List (PDL) for the purposes of:

- a. Improving the quality of care of claimants by utilizing a PDL of generics and brand medications in the absence of generics;
- b. Affecting cost savings in the provision of health care services by determining what is reasonably required; and
- c. Optimizing pharmaceutical care and cost effectiveness.

~~§85-1-20. Severability.~~

~~If any provision of these rules or the application thereof to any entity or circumstance shall be held invalid, such invalidity shall not affect the provisions or the applications of these rules which can be given effect without the invalid provisions or application and to this end the provisions of these rules are declared to be severable.~~

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TABLE 1a

Family	Arrears	Percentage
Not supporting another family	Less than 12 weeks old	Maximum of 50%
Not supporting another family	Greater than 12 weeks old	Maximum of 55%
Supporting another family, even just a spouse	Less than 12 weeks old	Maximum of 40%
Supporting another family, even just a spouse	Greater than 12 weeks old	Maximum of 45%

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