

**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: 2

TITLE OF RULE BEING AMENDED: Workers' Compensation Claims Index

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

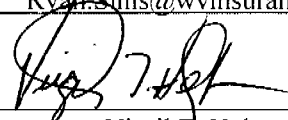
P.O. Box 50540

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: Amendments to Rule 2

**TITLE 85, SERIES 2
WORKERS' COMPENSATION CLAIMS INDEX**

Question 1: Are regulations required?

Yes. W. Va. Code § 23-2C-5(c)(8) requires the Industrial Council to establish a method of indexing claims of injured worker that will make information concerning the injured workers of one insurer available to other insurers.

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.

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 Rule is necessitated by the provisions of W. Va. Code § 23-2C-5(c)(8) regarding the responsibilities of the Industrial Council.

The collection and dissemination of information regarding workers' compensation claims is a function that was formerly provided under the old workers' compensation system, and is currently exercised by Brickstreet Mutual, self-insured employers and the Insurance Commissioner, as the regulatory agency for workers' compensation insurance. With the participation of third-party administrators and the anticipation of multiple providers of workers compensation insurance in West Virginia after January 1, 2008, the need for the Industrial Council to administer a common database for claims history information is important.

Insurance Commissioner (Workers'
Compensation Rules)
Exempt Legislative Rule
Title 85, Series 2

WORKERS' COMPENSATION CLAIMS INDEX

TITLE 85, SERIES 2

BRIEF SUMMARY OF RULE

Title 85, Series 2 ("Rule 2," "Claims Index") sets forth procedures and processes for the administration of the Workers' Compensation Claims Index, as established by W. Va. Code § 23-2C-5(c)(8). The initial version of this Rule was promulgated by the OIC with an effective date of January 20, 2008.

This Rule is being updated with necessary technical and stylistic cleanup. Additionally, several substantive changes are being made. The most significant substantive change is that percentage of permanent disability award is being added as a specific field included in the claims index, to enable employers or carriers to view previously percentage awards given to claimants.

Insurance Commissioner (Workers'
Compensation Rules)
Exempt Legislative Rule
Title 85, Series 2

WORKERS' COMPENSATION CLAIMS INDEX

TITLE 85, SERIES 2

STATEMENT OF CIRCUMSTANCES

As of July 1, 2005, an Industrial Council was created under the Insurance Commissioner by W. Va. Code § 23-2C-5. Among the responsibilities given to the Council was the creation and administration of a workers' compensation claims index for injured workers, which provides carriers and employers basic information about an injured workers' claims history. This responsibility is specified in W. Va. Code § 23-2C-5(c)(8).

Title 85, Series 2 ("Rule 2," "Workers' Compensation Claims Index"), originally promulgated by the OIC with effective date of May 12, 2007, provides standards, clarification, guidelines and procedures regarding the workers' compensation claims index. 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 Rule 2.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Workers' Compensation Claims Index (Title 85, Series 2)

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: Workers' Compensation Claims Index (Title 85, Series 2)

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 2
WORKERS' COMPENSATION CLAIMS INDEX

§85-2-1. General.

1.1. Scope. -- These rules shall govern the administration of the West Virginia Workers' Compensation claims index established pursuant to W. Va. Code §23-2C-5(c)(8).

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. -- ~~December 21, 2007.~~

1.4. Effective Date. -- ~~January 20, 2008.~~

§85-2-2. Purpose.

The purpose of this rule is to establish guidelines to govern the administration of the Workers' Compensation claims index pursuant to W. Va. Code §23-2C-5(c)(8).

§85-2-3. 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.

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

3.2. "EDI" is the Electronic Data Interchange Project of the International Association of Industrial Accident Boards and Commissions ("IAIABC"), Release 3 standards.

3.3. "Industrial Council" means the Industrial Council created pursuant to W. Va. Code §23-2C-5.

3.4. "Private carrier" means any insurer authorized by the Commissioner to provide workers' compensation insurance pursuant to chapters twenty-three and thirty-three of the West

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Virginia Code and any third-party administrator designated by the private carrier to adjust West Virginia workers' compensation claims.

3.5. "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.

3.6. "WV OIC EDI IG" is the West Virginia Offices of the Insurance Commissioner's EDI Implementation Guide.

3.7. "Workers' Compensation claims index", or "claims index" is a method for indexing claims of injured workers filing for West Virginia workers' compensation benefits that will make information concerning the injured workers of one insurer or self-insured employer available to other insurers or self-insured employers, as required to be established by the Industrial Council pursuant to W. Va. Code §23-2C-5(c)(8).

3.8. "West Virginia workers' compensation" means workers' compensation coverage which provides injured employees workers' compensation benefits consistent with chapter twenty-three of the West Virginia Code and the rules promulgated thereunder.

§85-2-4. Claims Index.

4.1. Consistent with the provisions of W. Va. Code §23-2C-5(c)(8), a West Virginia workers' compensation claims index shall be maintained in the form of an electronic database and administered by staff of the Commissioner, utilizing selected data reported by private carriers and ~~self-insured~~ self-insured employers to the Commissioner through EDI. The purpose of the claims index will be to make available basic information regarding claims filed by injured workers to private carriers, self-insured employers and the Commissioner.

4.2. The claims index shall contain basic information on all West Virginia workers' compensation claims reported consistent with this rule. Such information shall include the following minimum requirements, based upon the best available information available to the private carrier, self-insured employer or Commissioner:

- a. Claim number;
- b. Accident date/Date of injury or last exposure;
- c. Claimant's full name;

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- d. Claimant's social security number;
- e. Name, address and phone number of a contact person for the private carrier, self-insured employer or third-party administrator, as applicable; and
- f. Body part that is the subject of the claim.
- g. The percentage of permanent partial disability award granted in the claim.
- gh. Any other fields of information as the Commissioner deems necessary.

4.3. The required fields for the claims index shall be established by the Commissioner with advice and consent of the Industrial Council consistent with an objective of providing sufficient basic information regarding West Virginia workers' compensation claims to private carriers, self-insured employers and the Commissioner without creating unduly burdensome reporting requirements.

§85-2-5. Access to Claims Index.

5.1. Upon application to the Commissioner on forms prescribed by the Commissioner, a private carrier or self-insured employer or any designated agent thereof, including, but not limited to, an attorney for the private carrier or self-insured employer, may be granted access to the claims index. ~~Upon receiving a report that a claimant has made a claim for West Virginia workers' compensation benefits, any private carrier or self-insured employer may access a list of the claimant's prior claims available from the claims index.~~ Such access shall be permitted in a method and manner prescribed by the Commissioner.

5.2. Any information in the claims index may only be used for the purposes of administering and defending the workers' compensation claim upon which the request was based in a manner otherwise consistent with chapter twenty-three of the West Virginia Code and the rules promulgated thereunder.

5.3. A claimant, an attorney representing a claimant, or a healthcare provider duly authorized by the claimant shall be permitted to request a list of the claimant's prior claims available from the claims index. Such request shall be permitted in a method, manner and form created by the Commissioner.

§85-2-6. Duty to Timely Report to EDI Claims Data.

6.1. All private carriers and self-insured employers shall report claims data to ~~EDI the Commissioner~~ consistent with the provisions of the WV OIC EDI IG. ~~All required data shall be reported to EDI within five (5) business days of the receipt of relevant information.~~

6.2. Failure of an insurer or self-insured employer to timely report data to ~~EDI the Commissioner~~ as required in subsection 6.1. of this section may subject the private carrier or

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self-insured employer to a fine not to exceed \$500 per occurrence of untimely reporting;
~~Provided, That this penalty may not duplicate penalties provided for in other applicable rules~~
relating to reporting to EDI.

~~§85-2-7. Severability.~~

~~If any provision of these rules or the application thereof to any person, party, or~~
~~circumstances is held unconstitutional or invalid, such unconstitutionality or invalidity shall not~~
~~affect the other provisions or application of these rules, and to this end the provisions of these~~
~~rules are declared to be severable.~~