WEST VIRGINIA
SECRETARY OF STATE
Betty Ireland
ADMINISTRATIVE LAW DIVISION

Form #1

Do Not Mark In this Box

FILED

2007 AUG 14 PM 5:00

OFFICE WEST VIRGINIA
SECRETARY OF STATE

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: ____________

TITLE OF RULE BEING AMENDED: ____________

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 2

TITLE OF RULE BEING PROPOSED: Workers' Compensation Claims Index

---

DATE OF PUBLIC HEARING: Thursday, September 13, 2007 TIME: 3:00 PM

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

COMMENTS LIMITED TO: ORAL ☐ WRITTEN ☐ BOTH ☒

DATE WRITTEN COMMENT PERIOD ENDS: Thursday, September 13, 2007 TIME: 3:00 PM

WRITTEN COMMENTS MAY BE MAILED TO:

Ryan Sims, Associate Counsel
Offices of the Insurance Commissioner
P.O. Box 50540
Charleston, WV 25305-0540
Ryan.Sims@wvinsurance.gov

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.

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

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

James Robert Alsop
Cabinet Secretary
West Virginia Department of Revenue

Insurance Commission
Exempt Legislative Rule
Title 85, Series 2

WORKERS' COMPENSATION CLAIMS INDEX

TITLE 85, SERIES 2

BRIEF SUMMARY OF RULE

This new rule 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 purpose of the rule is to govern the claims index. It discusses the establishment of the claims index and specifies various fields of information to be included. It identifies who may obtain access to the claims history of a claimant, and how information is to be added to the index. The Rule requires carriers and self-insured employers to make a first report of injury ("FROI") for any claim made for West Virginia workers' compensation benefits within five (5) business days of the receipt of the claim, and update reports on injuries as required by the Insurance Commissioner to maintain the claims index.

Insurance Commission
Exempt Legislative Rule
Title 85, Series 9

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. This responsibility is specified in W. Va. Code § 23-2C-5(c)(8). Rule 2 is a new rule intended to implement the provisions of the Code regarding the establishment and regulation of a system for collecting, retaining, and disseminating necessary information on workers' compensation claims to insurers, claimants, or designated counsel in a manner consistent with chapter twenty-three of the West Virginia Code.

APPENDIX B

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.

This proposed new rule addresses procedures and processes to be used in the administration of a database for workers' compensation claims consistent with the provisions of W. Va. Code §23-2C-5(c)(8). The Insurance Commissioner currently has staff in place to administer the claims index. This Rule will merely provide standards for the information to be contained in the index, and how and to whom that information is to be disseminated. Therefore, the changes in this rule should not significantly impact the budget of the Insurance Commissioner.

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	Unknown	Unknown	Unknown
Personal Services	0	0	0
Current Expenses	Unknown	Unknown	Unknown
Repairs & Alterations	N/A	N/A	N/A
Assets	N/A	N/A	N/A
Equipment	N/A	N/A	N/A
Other	Unknown	Unknown	Unknown
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.

As indicated above, the Insurance Commission already has staff in place to administer the claims index. The Rule simply sets the parameters for the data to be included in that database, and the circumstances under which that information would be disseminated to interested parties. Additional costs are not anticipated to implement this Rule.

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.

The Rule does not require the implementation of any technology not currently in use by the Insurance Commission, and it is not anticipated that its implementation would require any changes in staffing or equipment.

Date: 8/14/07

Signature of Agency Head or Authorized Representative

Mary Jane Pickens

Mary Jane Pickens, General Counsel

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

SERIES 2
WORKERS' COMPENSATION CLAIMS INDEX

Section

85-2-1. General.

85-2-2. Purpose.

85-2-3. Definitions.

85-2-4. Claims Index.

85-2-5. Access to Claims Index.

85-2-6. Duty to Make First Report of Injury.

85-2-7. Duty to Update Claims Information.

85-2-8. Severability.

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. --

1.4. Effective Date. --

§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 §23-2-1, or any designated third-party administrator of the Insurance Commissioner.

3.2. "First Report of Injury" or "FROI" means a first report of an occupational injury by an employee making a claim for West Virginia workers' compensation benefits.

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 Virginia Code.

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, and any third-party administrator designated by the self-insured employer to adjust West Virginia workers' compensation claims.

3.6. "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).

3.7. "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. The purpose of the claims index will be to make available basic information regarding 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 to the claims index consistent with this rule. Such information shall include the following minimum requirements, based upon the best available information 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;

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. 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 making a showing that a claimant has made a claim for West Virginia workers' compensation benefits, any private carrier or self-insured employer may request access to a list of the claimant's prior claims available from the claims index. Such access shall be permitted in a method, manner and form created by the Commissioner.

5.2. Any information received pursuant to subsection 5.1. of this section shall 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 or an attorney representing a claimant shall be permitted to request access to a list of the claimant's prior claims available from the claims index. Such access shall be permitted in a method, manner and form created by the Commissioner.

§85-2-6. Duty to Make First Report of Injury.

6.1. All private carriers and self-insured employers shall report a FROI of any claim made for West Virginia workers' compensation benefits within five (5) business days of the receipt of the claim.

6.2. The FROI shall be reported in a manner, method and form as prescribed by the

Commissioner for purposes of maintenance of the claims index, including reporting data electronically. It is the responsibility of the private carrier or self-insured employer to report timely and accurate data in all fields required by the Commissioner based on the best available information at the time.

§85-2-7. Duty to Update Claims Information.

7.1. Subsequent to reporting FROI information timely as required in subsection 5.1. of this rule, all private carriers, self-insured employers and the Commissioner shall report updated information on all claims made for West Virginia workers' compensation benefits within (5) business days of the receipt of any updated information in a claim.

7.2. Updated claims information shall be reported in a manner, method and form as prescribed by the Commissioner for purposes of the maintenance of the claims index, including reporting data electronically. It is the responsibility of the private carrier or self-insured employer to report timely and accurate data in all fields required by the Commissioner based on the best available information at the time.

§85-2-8. 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.