

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #1

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2005 JUN 10 P 4: 07

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Workers' Compensation Commission

TITLE NUMBER: 85

RULE TYPE: Exempt Legislative

CITE AUTHORITY: W. Va. Code §§23-3-5 and 23-1-1a(j)(3)

AMENDMENT TO AN EXISTING RULE: YES X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 17

TITLE OF RULE BEING AMENDED: Electronic Submittal of Invoices and Receipt of Payments

IF NO, SERIES NUMBER OF RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

DATE OF PUBLIC HEARING: July 12, 2005

TIME: 1:00 p.m.

LOCATION OF PUBLIC HEARING: Workers' Compensation Commission

4101 MacCorkle Avenue, S.E.

Charleston, WV 25304

COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH X

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: T.J. Obrokta, General Counsel

Executive Offices

Workers' Compensation Commission

4700 MacCorkle Avenue, S.E.

Charleston, WV 25304

Fax # (304) 926-5372

The Department requests 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

R. P. Obrokta

Authorized Signature

#4.00



Office of General Counsel
4700 MacCorkle Avenue, S. E.
Charleston, West Virginia 25304
Phone Number (304) 926-3423
Fax Number (304) 926-5441

June 10, 2005

The Honorable Betty Ireland
Secretary of State
State Capitol Complex
Building 1, Room W-157
Charleston, West Virginia 25305

Re: Proposed Rule
Title 85, Series 17
"Electronic Submittal of Invoices and Receipt of
Payments"

Dear Secretary Ireland:

Please consider this letter to be my written approval for the filing of the above-noted proposed Rule.

Pursuant to Senate Bill 2013, Second Extraordinary Session, 2003, the Workers' Compensation Commission is established as a government entity separate from the Bureau of Employment Programs. The Board of Managers of the Workers' Compensation Commission has approved the enclosed 85 C.S.R. 17 for filing as a proposed rule of the Workers' Compensation Commission.

Thank you very much for your assistance in this matter.

Very truly yours,

Gregory A. Burton
Executive Director

Enclosure

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Series 17: Electronic Submittal of Invoices and Receipt of Payments

Type of Rule: X Legislative Exempt Interpretive Procedural

Agency: Workers' Compensation Commission

Address 4700 MacCorkle Ave. S.E.

Charleston, WV 25304

1. Effect of Proposed Rule

	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$0	\$0	\$0	\$0	N/A
PERSONAL SERVICES	0	0	0	0	N/A
CURRENT EXPENSE	0	0	0	0	N/A
REPAIRS & ALTERNATIONS	0	0	0	0	N/A
EQUIPMENT	0	0	0	0	N/A
OTHER	0	0	0	0	N/A

2. Explanation of above estimates:

Proposed changes since the last filing for this rule address the responsibilities for the Workers' Compensation Commission (commission) and the Insurance Commissioner, whichever is applicable, to continue the electronic submission of invoices by vendors and receipt of payments by vendors. The above estimates are based on the assumption that the rule changes become effective in the current fiscal year (FY'05). There should be no significant change in the estimated costs associated with the commission continuing to use electronic vendor billing submissions and payments thru 12/31/05. Subject to the governor issuing the proclamation set forth in chapter twenty-three, article 2C of the Code of West Virginia that terminates the Workers' Compensation Commission, the Insurance Commissioner as the administrator of the Old Fund beginning on 1/1/06, should continue to use electronic submission of invoices and receipt of payments by vendors.

3. Objectives of this rule:

The purpose of this rule is to define the provisions related to the submission of vendor bills by electronic means and the receipt of payments by vendors from the workers' compensation commission and the insurance commission by electronic means.

Rule Title: Series 17: Electronic Submittal of Invoices and Receipt of Payments

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

It is expected that there will be no direct economic impact from the rule changes.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

It is expected that there will be no impact from the rule changes.

C. Economic Impact on Citizens/Public at Large.

The rule changes will not have a direct economic impact on the citizens of West Virginia.

Date: 6/10/05

Signature of Agency Head or Authorized Representative

R. P. Dip Shien Sr
Gregory A. Burton
Executive Director, Workers' Compensation Commission

**SUMMARY OF PROPOSED RULE
STATEMENT OF CIRCUMSTANCES
TITLE 85, SERIES 17
ELECTRONIC SUBMITTAL OF INVOICES AND RECEIPT OF PAYMENTS**

Pursuant to Senate Bill 1004, First Special Session, 2005, the Workers' Compensation Commission may terminate. Thereafter, Workers' Compensation insurance in West Virginia will be provided through the successor to the Commission and other private insurance carriers.

This rule is amended to address the termination of the Commission and to transition certain activities to Office of the Insurance Commissioner and its Administrator for the purpose of processing vendor bills involving the administration of Old Fund matters. The rule amendments also recognize that, in a private insurance setting, the rule will have no force and effect over vendor billing practices involving private carriers or self-insured employers.

FILED

TITLE 85
EXEMPT LEGISLATIVE RULE
 BUREAU OF EMPLOYMENT PROGRAMS
 WORKERS' COMPENSATION DIVISION COMMISSION

2005 JUN 10 P 4: 08

OFFICE WEST VIRGINIA
SECRETARY OF STATE

SERIES 17
 ELECTRONIC SUBMITTAL OF INVOICES AND
 RECEIPT OF PAYMENTS

§85-17-1. General.

1.1. Scope. -- These exempt legislative rules implement the provisions of W. Va. Code §23-3-5 regarding the submission of vendor bills by electronic means and the receipt of payments by vendors from the workers' compensation division commission by electronic means.

1.2. Authority. -- ~~W. Va. Code, §§21A-2-6(1), 6(2) & 6(14); 21A-2-19; 21A-3-7(b) & 7(e); 23-1-1; 23-1-13 and 23-1-14. Pursuant to W. Va. Code §21A-3-7(e), rules adopted by the compensation programs performance council and the commissioner are not subject to legislative approval as would otherwise be required under W. Va. Code §29A-3-1 et seq. W. Va. Code §§23-1-1a(j)(3) and 23-3-5. Pursuant to W. Va. Code §23-1-1a(j)(3), rules adopted by the board of managers 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 25, 1997.~~

1.4. Effective Date. -- ~~November 1, 1997.~~

1.5. Reference. -- ~~Reference should be made to section 8 of this rule concerning effective date.~~

§85-17-2. Purpose of These Rules.

2.1. The purpose of this rule is to implement the provisions of W. Va. Code §23-3-5 regarding the submission of vendor bills by electronic means and the receipt of payments by vendors from the workers' compensation division commission by electronic means.

§85-17-3. Definitions.

As used in these rules, the following terms have the stated meanings unless the context of a specific use clearly indicates another meaning is intended.

3.1. "Act" means the workers' compensation laws of the state of West Virginia which are codified at W. Va. Code §23 et seq.

3.2. "ASAP" means that software program known as "Accelerated Submission and Processing System."

3.3. "Code" means the Code of West Virginia of 1931, as amended.

3.4. ~~"Compensation programs performance council" means that entity created pursuant to W. Va. Code §21A-3-1 et seq.~~ "Board" means the workers' compensation board of managers created pursuant to the provisions of W. Va. Code §23-1-1a.

3.5. "Current fiscal year" means the fiscal year existing at the time a new invoice is to be submitted by a vendor. A fiscal year runs from the first day of July to the thirtieth day of the following June.

3.6. ~~"Division" means the workers' compensation division within the bureau of employment programs, W. Va. Code §5F-2-1(b)(2), as provided for by W. Va. Code §§21A-1-4, and by 23-1-1 et seq.~~ "Commission" means the workers' compensation commission created pursuant to the provisions of W. Va. Code §23-1-1.

3.7. "Executive director" means the executive director of the workers' compensation ~~division~~ commission, ~~who is appointed by the commissioner and~~ who serves as the chief operating officer of the daily operations of the workers' compensation ~~division~~ commission as provided by W. Va. Code §23-1-4.

3.8. An "invoice" is any legal demand, whether written, oral, or by computer generated medium, for the payment by the workers' compensation to a vendor.

3.9. "Vendor" means any health care provider or other entity who performs a service or provides a thing of value to a claimant for workers' compensation benefits and who then submits an invoice or otherwise seeks payment from the workers' compensation ~~division~~ commission for the rendering of that service or thing of value. Under no circumstances is a claimant for workers' compensation benefits to be deemed a vendor under these rules. Unless a self-insured employer elects to take the option provided for in section 6.1 of this rule, the term "vendor" does not include an entity which is submitting invoices or other demands for payment directly to a self-insured employer. In addition, the executive director may, on a case-by-case basis, exclude certain entities from the definition of this subsection.

3.10. "Insurance Commissioner" means the insurance commissioner of West Virginia as provided in section one, article two, chapter thirty-three of the West Virginia Code.

3.11. "Private Carrier" means any insurer, including the successor to the Commission, authorized by the insurance commissioner to provide workers' compensation insurance pursuant to chapters twenty-three and thirty-three of the West Virginia Code, but shall not include self-insured employers.

3.12. "Self-insurer" and "self-insured employer" mean employers who are eligible and have been granted self-insured status under the provisions of W. Va. Code §23-2-9.

§85-17-4. Electronic Submission of Invoices.

4.1. Any vendor who, in the previous fiscal year, submitted in excess of one hundred (100) invoices totaling in excess of ten thousand (\$10,000.00) dollars to the workers' compensation ~~division~~ commission shall, in the current fiscal year, submit all invoices to the workers' compensation ~~division~~ commission by electronic means.

4.1.1. For example, a vendor submitting 110 invoices which total \$25,000.00 would be required to submit invoices by electronic means.

4.1.2. For example, a vendor submitting 90 invoices which total \$25,000.00 would not be required to

submit invoices by electronic means.

4.1.3. For example, a vendor submitting 110 invoices which total \$9,000.00 would not be required to submit invoices by electronic means.

4.2. The electronic means required to be used on the effective date of this rule is the software program designated "ASAP." The executive director shall notify each vendor meeting the requirements of subsection 4.1 of these rules that the vendor must submit all future invoices by use of the ASAP software and shall provide a copy of that software to the vendor without charge.

4.3. The vendor shall be responsible for acquiring the necessary computer system, other software, and telephone lines by which the ASAP program will be utilized. The workers' compensation ~~division~~ commission shall not be responsible nor liable for the costs of acquiring or maintaining the necessary computer system, other software, or telephone lines.

4.4. In the event that the executive director wishes to change the software program from ASAP to some other software program, such change shall first be reviewed and approved by the ~~compensation programs performance council~~ board of managers.

4.5. Any vendor, who is required by subsection 3.1 of these rules, to submit invoices by use of the ASAP software program and who does not do so shall not receive payment upon that invoice and such invoice shall be immediately rejected and returned to the vendor. Upon proper resubmittal of the invoice by use of the ASAP software program, the vendor shall then be entitled to such payment as may be proper under the rules of the ~~division~~ commission.

§85-17-5. Payment by Electronic Means.

5.1. Any vendor who, in the previous fiscal year, submitted in excess of one hundred (100) invoices totaling in excess of ten thousand (\$10,000.00) dollars to the workers' compensation ~~division~~ commission shall, in the current fiscal year, receive payment from the workers' compensation ~~division~~ commission by electronic means.

5.1.1. For example, a vendor submitting 110 invoices which total \$25,000.00 would be required to receive payment by electronic means.

5.1.2. For example, a vendor submitting 90 invoices which total \$25,000.00 would not be required to receive payment by electronic means.

5.1.3. For example, a vendor submitting 110 invoices which total \$9,000.00 would not be required to receive payment by electronic means.

5.2. Any vendor who meets the requirements of subsection 5.1 of these rules and who wishes to receive payment from the workers' compensation ~~division~~ commission shall provide the ~~division~~ commission with the name and address of its bank and an appropriate account number or other designation to which the ~~division~~ commission may direct the state auditor's office to render appropriate payments. The vendor shall provide such additional information as the state auditor may require in order to effectuate the payments.

5.3. Any vendor who is required by subsection 5.1 of these rules to receive payments by electronic means and who does not provide the necessary information in order that payments may be made electronically or who fails to otherwise cooperate with the requirements of the ~~division~~ commission or the state auditor to make

payments by electronic means shall not receive payment on any submitted invoice until such information is provided or cooperation is obtained.

§85-17-6. Reserved. Self-insured Employers.

~~6.1. Any self-insured employer who is permitted by the division to receive invoices directly from vendors and to make direct payments to the vendors may elect to require the submission of invoices by electronic means or to require receipt of payments by electronic means, or both, as provided for in this rule.~~

~~6.2. Any self-insured employer who wishes to make the subsection 6.1 selection shall first submit the details of its proposed program to the compensation programs performance council for its review and written approval. Until the proposed program is approved, the self-insured employer may not implement the program. Upon obtaining written approval of the proposed program, the self-insured employer may implement it. However, no change shall be made to the program without first presenting the proposed change to the compensation programs performance council and obtaining its written approval of the change.~~

§85-17-7. Exemptions.

Any vendor who believes that the imposition of the requirements of all or part of this rule will cause an undue economic or other burden upon that vendor may file a written petition with the executive director requesting an exemption from all or part of the requirements of this rule. Such written petition shall state in detail the nature of the asserted burden and the consequences to the vendor should the vendor not be exempted.

The executive director shall then issue a decision on the petition which decision shall be subject to appeal pursuant to the provisions of 85 CSR 7, "Rules for Selected Hearings."

§85-17-8. Implementation.

~~The division shall implement the provisions of this rule in the sequence and time frames required and in such a manner as the division, with the agreement of the compensation programs performance council, sees fit. The implementation of this rule is contingent upon the capacity of the division to properly administer the same. It is the intent of this rule, although it is not a requirement of this rule, that it be implemented in its entirety on or before July 1, 1998. As the rule is implemented, the persons affected by this rule shall receive written notice of the implementation dates and the requirements that will be enforced.~~

Termination of the Commission.

Upon termination of the commission, this rule shall be administered by the insurance commissioner for the purpose of the submission of vendor bills by electronic means to the administrator of the Old Fund and the receipt of payments by vendors from the Insurance Commissioner or its agent by electronic means. This rule shall have no force and effect over the collections or disbursements or other matters private carriers and self-insured employers.

§85-17-9. Severability.

The provisions of W. Va. Code §2-2-10(cc), 1931, as amended, are incorporated herein by reference as if fully set forth herein. 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.

