West Virginia
Secretary of State
Ken Hechler
Administrative Law Division

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OFFICE OF WEST VIRGINIA SECRETARY OF STATE

Form #5

NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW

AGENCY: Bureau of Employment Programs, Workers' Compensation Division TITLE NUMBER: 85

CITE AUTHORITY WEST VIRGINIA CODE §§ 21A-2-6(1); 21A-2-6(2); 21A-2-6(14); 21A-2-19; 21A-3-7(B) & -7(C); 23-1-1; 23-1-14; 23-3-5(d)

RULE TYPE: PROCEDURAL _____ INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE ____X____
CITE STATUTE(s) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW
WEST VIRGINIA CODE § 21A-3-7(B) & -7(C)

AMENDMENT TO AN EXISTING RULE: YES ____, NO __X__

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING ADOPTED: 17

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

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE EFFECTIVE DATED OF THIS RULE IS [redacted] NOV. 1, 1997.

William F. Vieweg
Commissioner

$12.40

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

SERIES 17
ELECTRONIC SUBMITTAL OF INVOICES AND RECEIPT OF PAYMENTS

§85-17-1. General.

1.1. Scope. -- These rules implement the provisions of West Virginia 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 by electronic means.

1.2. Authority. -- West Virginia Code, §21A-2-6(1), -6(2) & -6(14); §21A-2-19; §21A-3-7(b) & -7(c); §23-1-1; §23-1-13 and §23-1-14. Pursuant to West Virginia Code § 21A-3-7(c), rules adopted by the compensation programs performance council and the commissioner are not subject to legislative approval as would otherwise be required under West Virginia Code § 29A-3-1 et seq.

1.3. Filing Date. September 25, 1997.

1.4. Effective Date. This rule shall be effective on November 1, 1997. Reference should, however, be made to section 8 of this rule.

§85-17-2. Purpose of these rules.

The purpose of this rule is to implement the provisions of West Virginia 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 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 chapter twenty-three of the Code of West Virginia of 1931, as amended.

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 West Virginia Code § 21A-3-1 et seq.

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, West Virginia Code § 5F-2-1(b)(2), as provided for by West Virginia Code § 21A-1-4, and by West Virginia Code § 23-1-1 et seq.

3.7. "Executive director" means the executive director of the workers' compensation division, who is appointed by the commissioner and who serves as the chief operating officer of the daily operations of the workers' compensation division as provided by West Virginia 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 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.

§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 shall, in the current fiscal year, submit all invoices to the workers' compensation division 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 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.

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.

§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 shall, in the current fiscal year, receive payment from the workers' compensation division 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 shall provide the division with the name and address of its bank and an appropriate account number or other designation to which the division 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 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. 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 my file a written petition with the executive director requesting an exemption from the 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.

§85-17-9. Severability

The provisions of subdivision (cc) of section ten, article two, chapter two of the Code of West Virginia, 1931, as amended, are incorporated herein by reference as if fully set forth herein.

UNION CARBIDE

UNION CARBIDE CORPORATION

HUMAN RESOURCES DEPARTMENT
FIELD SKILL CENTER

437 MACCORKLE AVENUE, SW (P.O. BOX 8004)
SOUTH CHARLESTON, WEST VIRGINIA 25303
FAX (304) 747-5894

February 19, 1997

Mr. John Kozak
Director, Legal Services
West Virginia Workers Compensation Division
PO Box 3922
Charleston WV 25339-3922

Dear Mr. Kozak:

I am writing regarding the proposed changes to Workers Compensation Rules which will be addressed in the public hearing on February 25, 1997.

I have concerns especially regarding Series 17, and Series 5, which will be addressed individually.

Series 17: I strongly recommend that a feasibility study be undertaken before considering electronic submittal of invoices and receipt of payments. Our experience on the administration of health care claims through our third party administrator has indicated an immense amount of pre-work is required before such a system is workable, and an equally large amount of training and follow-up system maintenance is required after the system is operational. It isn't cheap to start or maintain such a system, and a prudent step would be to study the feasibility and the cost before mandating such a process. As a citizen of the State of West Virginia, and as a manager for Union Carbide Corporation, I expect the Workers Compensation Division to use knowledge, discretion and fairness in serious evaluation of claims before a claim is approved, and I expect as an employer to have the opportunity to have access to the information considered, as well as the opportunity to submit evidence so that a proper decision is made. It is essential that the evaluation and review process is included and adequate in an electronic processing system.

Further, it has been our experience at Union Carbide that system changes such as this require a considerable amount of lead time. We are in the process of such a change at the present time, and I can tell you that we are talking years – not days, not weeks – to do the job right. There are coordination issues, system compatibility issues, security issues, and networking issues which must be addressed prior to making the switch.

I ask that you conduct a feasibility study prior to mandating this change.

Employers Service Corporation represents Union Carbide in Workers Compensation matters. We strongly urge you to be responsive to their recommendations.

Very truly yours,

R. J. Richardson
Regional Manager – Benefit Plans

cc: Employers Service Corporation
Jo-Ann Michaud – UCC Danbury CT
C. R. Steinmetz – UCC Charleston WV

UNION CARBIDE CORPORATION
P.O. BOX 8361, SOUTH CHARLESTON, WV 25303

February 21, 1997

Mr. John Kozak, Director
Legal Services
P. O. Box 3922
Charleston, WV 25339-3922

Dear Mr. Kozak:

SUBJECT: TWO RULES AFFECTING SELF-INSURED EMPLOYERS

As I will be unable to attend the WV Workers Compensation Health Care Advisory Panel hearing February 25, I would like to submit the following comments. Union Carbide has been and remains a self-insured employer in good standing with the Fund and supports the "proper and prompt" payment of our Workers Compensation claims.

Series 17 "Electronic Submittal of Invoices and Receipt of Payments.". Under the proposal in this Rule, any vendor who submitted 100 invoices totaling ore than $10,000 shall be required to submit invoices electronically to the Workers' Compensation Division. We believe a feasibility study should be performed prior to the promulgation of any Rule regarding electronic submission. This study would define whether the "100 invoice $10,000 threshold" is appropriate and should define the tasks and processes associated with electronic submission?

Series 5: We have reviewed the Rule and suggest the following changes:

1. §85-5-2 lists the definitions and should include a definition of what constitutes a proper pay order. We believe a proper pay order is one that orders to pay compensation and expenses which is accurate as to time frame, benefit rate, and is substantiated by a proper order, ruling and/or other such documentation as to permit the auditing of such payment within generally accepted accounting procedures.

2. The Rule changes who has authority in certain processes. In the current Rule, the Commissioner is responsible for carrying out certain actions. The proposed Rule changes the authority from the Commissioner to the Executive Director, the Commissioner or his designee, or leaves the Commissioner in place when another entity should be responsible.

   Specifically, §85-5-2, 2.1.1, deals with the filing of a written complaint and the written complaint is filed with the Commissioner. The proposed change has the written complaint filed with the Executive Director. We do not disagree with this change.

   §85-5-2, 2.2 and 2.3 deal with the notification to the self-insured employer of the complaint, investigation of the complaint, and notification of the findings. The Commissioner is responsible for these processes. The pending Rule changes the authority to the Executive Director. We do not disagree with this change.

§85-5-3, 3.1 deals with the hearing procedure and has the Commissioner responsible for this process. The proposed change reflects the "Commissioner or his designee." It is our opinion this should remain with the Commissioner and not his designee.

§85-5-4, 4.1 deals with the financial penalty portion of the Rule. Currently, the Commissioner can assess a financial penalty. The proposed change is again the "Commissioner or his designee." This should only be the Commissioner.

§85-5-4, 4.2 deals with revocation of an employer's self-insurance. The proposal adds the following." . . . the Commissioner shall first inform the compensation programs performance council of his or her conclusion and provide an opportunity for the council to comment upon the proposed action." To remain consistent with Series 9, "Risk Management" it seems logical that the entity that approves self-insurance, the Compensation Programs Performance Council, should also be the only entity that can revoke an employer's self-insurance.

3. §85-5-2, 2.1.2 currently states "Proper cause for failure to promptly honor a pay order for payment to a claimant includes instances where: (a) a self-insured employer fails to receive the pay order, (b) those instances in which a pay order (1) has been promulgated in substantive error, or (2) is on its face obviously in error as to he amount due, or (3) orders the payment of temporary total disability benefits past the date on which the claimant returned to work."

We recommend the following be added to number three (3) " . . . or released to return to work." This brings return to work or release to return to work situations in compliance with current law. We believe an additional reason for not honoring a pay order should be added. "(4) orders the payment of compensation and expenses where such order is in conflict with statute, or rules and regulations, treatment guidelines or fee schedule."

The Worker's Compensation Division has access to the Employment Security quarterly records for an injured employee's wages. The employer should be entitled to the same access to make sure that proper documentation exists regarding the calculation of the benefit rate. This would be in keeping with accepted general accounting procedures.

Sincerely,

C. R. Steinmetz, Manager
Human Resources
Member, Board of Directors
WVSIA

cc: H. Bowen
A. Stevens

INCO ALLOYS INTERNATIONAL

ROBERT D. ADKINS
SUPERVISOR - EMPLOYMENT & BENEFITS
TEL (304) 526-5374
FAX (304) 526-5309

97 FEB 21 PM 2:06

February 20, 1997

Mr. John Kozak, Director
Legal Services
Post Office Box 3922
Charleston, West Virginia 25339-3922

Dear Mr. Kozak:

We have reviewed the Rule and suggest the following changes in regard to Series 5 and 17:

1. §85-5-2 lists the definitions and should include a definition of what constitutes a proper pay order. We believe a proper pay order is one that orders to pay compensation and expenses which is accurate as to time frame, benefit rate, and is substantiated by a proper order, ruling and/or other such documentation as to permit the auditing of such payment within generally accepted accounting procedures.

2. The Rule changes who has authority in certain processes. In the current Rule, the Commissioner is responsible for carrying out certain actions. The proposed Rule changes the authority from the Commissioner to the Executive Director, the Commissioner or his designee, or leaves the Commissioner in place when another entity should be responsible.

   Specifically §85-5-2, 2.1.1. deals with the filing of a written complaint and the written complaint is filed with the Commissioner. The proposed change has the written complaint filed with the Executive Director. We do not disagree with this change.

   §85-5-3, 3.1 deals with the hearing procedure and has the Commissioner responsible for this process. The proposed change reflects the "Commissioner or his designee." It is our opinion this should remain with the Commissioner and not his designee.

   §85-5-4, 4.1 deals with the financial penalty portion of the Rule. Currently, the Commissioner can assess a financial penalty. The proposed changed is again the "Commissioner or his designee." This should only be the Commissioner.

§85-5-4, 4.2 deals with revocation of an employer's self-insurance. The proposal adds the following: "...the Commissioner shall first inform the compensation programs performance council of his or her conclusion and provide an opportunity for the council to comment upon the proposed action." To remain consistent with Series 9, "Risk Management," it seems logical that the entity that approves self-insurance, the Compensation Programs Performance Council, should also be the only entity that can revoke an employer's self-insurance.

3. §85-5-2, 2.1.2 currently states "Proper cause for failure to promptly honor a pay order for payment to a claimant includes instances where: (a) a self-insured employer fails to receive the pay order, (b) those instances in which a pay order (1) has been promulgated in substantive error, or (2) is on its face obviously in error as to the amount due, or (3) orders the payment of temporary total disability benefits past the date on which the claimant returned to work."

   We recommend the following be added to number (3) "...or released to return to work." This brings return to work or release to return to work situations in compliance with current law. We believe an additional reason for not honoring a pay order should be added. "(4) orders the payment of compensation and expenses where such order is in conflict with statute, or rules and regulations, treatment guidelines, or fee schedule."

   The Workers' Compensation Division has access to the Employment Security quarterly records for an injured employee's wages. The employer should be entitled to the same access to make sure that proper documentation exists regarding the calculation of the benefit rate. This would be in keeping with accepted general accounting procedures.

Series 17 is a new Rule involving "Electronic Submittal of Invoices and Receipt of Payments." Under the proposal in the Rule, any vendor who submitted 100 invoices totaling more than $10,000 shall be required to submit invoices electronically to the Workers' Compensation Division. While the self-insured employer is not required to accept electronic submission of billings, we believe a feasibility study should be performed prior to the promulgation of any Rule regarding electronic submission. This study would define whether the "100 invoice $10,000 threshold" is appropriate and should define the tasks and processes associated with electronic submission.

Sincerely,

R. D. Adkins

RDA/nr

PERSONNEL DIRECTOR

SANDRA K. HARDING

EUGENE A. KNOTTS, MAYOR

CITY OF PARKERSBURG
ONE GOVERNMENT SQUARE
P.O. BOX 1627
PARKERSBURG, WV 26102
304-424-8541
FAX NO. 304-424-8403

February 20, 1997

Mr. John Kozak, Director, Legal Services
P.O. Box 3922
Charleston, WV 25339-3922

97 FEB 24 AM 8:08 PERSONNEL DIVISION

Dear Mr. Kozak:

The City of Parkersburg is a Workers' Compensation Self-Insured employer. Our third party administrator, Employers Service Corporation, has informed us of potential changes in two rules affecting self-insured employers. The City of Parkersburg would like to comment on those changes as follows:

(1) Series 17 Rule. We believe a feasibility study should be performed prior to the promulgation of any Rule regarding electronic submission. This study would define whether the "100 invoice $10,000 threshold" is appropriate and should define the tasks and processes associated with electronic submission.

(2) Series 5 Rule.

(a) 85-5-2. We believe this section should include a definition of what constitutes a proper pay order. We believe a proper pay order is one that orders to pay compensation and expenses which is accurate as to time frame, benefit rate, and is substantiated by a proper order, ruling and/or other such documentation as to permit the auditing of such payment within generally accepted accounting procedures.

(b) 85-5-2,2.1.1. We do not disagree with this change.

(c) 85-5-2,2.2 and 2.3. We do not disagree with this change.

(d) 85-5-3,3.1. We believe the Commissioner should remain responsible for this process.

(e) 85-5-4,4.1. We believe the Commissioner should be the only person who can assess a financial penalty.

(f) 85-5-4,4.2. We believe that the entity that approves self-insurance, the Compensation Programs Performance Council, should also be the only entity that can revoke an employer's self-insurance.

(g) 85-5-2,2.1.2. We believe that the following should be added to (3) "...or released to return to work." and that an additional reason for not honoring a pay order be added as follows: "(4) orders the payment of compensation and expenses where such order is in conflict with statute, or rules and regulations, treatment guidelines, or fee schedule."

Thank you for allowing us to express our comments regarding these proposed changes.

Sincerely,

Sandra K. Harding

Sandra K. Harding
Personnel Director

pc: Ms. Antonneta Stevens, Employers Service Corporation

PHILIPS

Philips Lighting Company

Philips Lighting Company, Fairmont, West Virginia would like you to consider the following comments and concerns on the following two rule proposed changes:

(1) "Electronic submittal of invoices and receipt of payment
Title 85 - Series 17

We believe you need to come up with some guidelines and feasibility studies.

(2) "Hearing and review process" regarding the performance of self-insured employers
Title 85 - Series 5

We have reviewed the rule and support the following changes:

(A) 85-52 - A list of definitions and include the definition of what constitutes a proper pay order. We feel a proper pay order should be accurate as to time frame, benefit rate and must be substantiated by a proper order, ruling and documentation to support it.

(B) These rule changes who has authority in certain processes. In the current rule, the Commissioner is responsible for carrying certain action. We feel this responsibility should remain with the Commissioner.

85-5-2, 2.11 deals with the filing of a written complaint. We do not disagree with this change.

85-5-2, 2.2 and 2.3 deals with the notification to the self-insured employers, investigation and notification of findings. We do not disagree with this change.

85-5-3, 3.1 deals with the hearing procedure and has the Commissioner responsible for this process. It is our opinion this responsibility should remain with the Commissioner.

85-5-4, 4.1 deals with the financial penalty portion of the rule. This responsibility should remain with the Commissioner.

PHILIPS LIGHTING COMPANY
ROUTE 3 • BOX 505 • FAIRMONT, WEST VIRGINIA 26554 • (304) 367-3500 • FAX (304) 367-3578

CERTIFIED TO ISO 9001

85-5-4, 4.2 deals with revocation of an employer's self insurance. It is our opinion to remain consistent with Series 9 "Risk Management", it only seems logical that the Compensation Programs Performance Council that approves self-insurance should also be the only one that can revoke an employer's self insurance.

(C) 85-5-2, 2.1.2 concerns the proper cause for failure to promptly honor a pay order, etc. We recommend the following to be added to (C) ".....or release to return to work. Also we believe and additional reason for not honoring a pay order should be added to (C) orders the payment of compensation and expense where such order is in conflict with statute, or rules and regulations, treatment, guidelines, or fee schedule.

Marilyn G. Gifford

Prepared: 2/20/97

Prepare By: Marilyn G. Gifford

Public Hearing on Proposed Rules

Attendance Sheet (WVC, §6-9A-3)

Public Hearing February 25, 1997
Charleston Civic Center
Charleston, West Virginia

Please Sign in and Mark if you wish to speak.

Name	Who do you Represent?	Your Mailing Address	Do you wish to Speak? (Yes/No)	
Rita Richardson	Union Carbide	PO Box 8004, Charleston WV 25303	Yes	✓
Randi Preston Dick	Pittston	Po Box 5100 Lebanon, VA 24266	yes	✓
GARY NEWBERRY	"	"	NO	
Henry Bowen	WVSIA	P.O. Box 1791 Charleston, WV	yes	✓
Michael Keenan	Employers Service	P.O Box 3389 Chas. WV 25333	ye	✓
AL TOOSMAN	RAVENSWOOD ALUMINUM	P.O. BOX 98 RAVENSWOOD 26164	YES	✓
Babette Robinson	Frank Gates Services			
Tim Huffman	Jackson Kelly	P.O. Box 553 Chas	NO	
Pam Farris	ESC		yes	✓
Paige Stephens	ESC		yes	✓

Rozall

ORIGINAL

WEST VIRGINIA WORKERS' COMPENSATION DIVISION
BUREAU OF EMPLOYMENT PROGRAMS

RE: RULES 5, 17, 26 and 27

Transcript of proceedings had in the above-entitled matter held in Room 202, Civil Center, Charleston, West Virginia, on the 25th day of February, 1997, commencing at 10:11 a.m., pursuant to notice.

KARON L. VORHOLT
Certified Court Reporter
634 Pioneer Lane
Charleston, West Virginia 25312
(304) 984-1242

APPEARANCES: PERFORMANCE COUNCIL MEMBERS:

Thad D. Epps

Chris E. Jarrett

Fred Tucker

Everette Sullivan

Paul E. Thompson

David Harris

CHAIRMAN JARRETT: My name is Chris Jarrett. I am Vice-Chairman of the Workers' Comp Performance Council. Today we're here to address four rules, Rule 5, 17, 26 and 27.

Before we begin today, I'm going to ask those members of the Workers' Comp Council that are here to introduce themselves, starting from my left.

MR. SULLIVAN: I'm Everette Sullivan, and I represent the construction trades.

MR. EPPS: Thad Epps, representing the manufacturers.

MR. TUCKER: Fred Tucker, U.M.W.A.

MR. THOMPSON: Paul Thompson, industrial.

MR. HARRIS: I'm David Harris, small businesses.

CHAIRMAN JARRETT: According to the sign-in chart, I have seven people that have elected to make oral presentations.

What I would like to do is call upon the Legal Staff, John Kozak and Carol Egnatoff, to address each of them and give you a brief explanation what each one of them pertain to. I guess we'll just go in order, John, Rule 5 first.

MR. KOZAK: Just briefly on Series 5 Rule, the

Commissioner to make a decision coming out of the hearing process.

The rule as drafted, which is also a change causes the Commissioner to have to solicit the input from the Performance Council following the hearing and their comments on his or her contended action.

There's been a couple comments in writing suggesting that that may be in conflict with Series 9, with the way Series 9 turned out, and I would suggest that when we get the comments and all this back, we'll have to look at whether or not the ultimate power to revoke the self-insurer status should be vested solely within the Council, which of course the Commissioner is the chair of, or whether to leave it as the draft of the rule is now presently written. There is a physical note that the financial reporting specialist put together on the note, attached to the package.

On the Series 17 Rule, the '95 legislation also provided that the Council, by rule, could enact a program requiring vendors to submit the bills to the Workers' Comp Division by electronic means rather than by paper.

It also provides that the Council, by rule,

can adopt a program to require the acceptance of electronic payment, rather than by check.

The Legislature did modify or put a caveat to the latter provision and said that we cannot require claimants to accept their benefits by checks. They have the option of doing so and there are a number of those claimants who actually take advantage of that and do get direct deposit from their banks.

What the rule does is require that any vender who in the prior year submitted in excess of 100 invoices totally more than $10,000 has to bill by electronic means as well as accept payment by electronic means.

The rule mentions in its definitions that the current system for doing that is referred to as ASAP, which is -- those are on Page 2 of the definitions of 3.2, at the very top. ASAP stands for Accelerated Systems and Processing.

That system has been in use at the Fund for at least five years that I'm aware of. It started when I was still Executive Secretary, and it's been used by a number of providers on a voluntary basis for the submission of payments. It is the same system as the Medicaid

program.

This was developed by an outfit called Consultech out of Atlanta, Georgia, and has been working extremely well, given any kind of electronic software, extremely well with occasional computer glitches. But overall it has worked extremely well.

The payments on the invoices would flow out of the Auditor's Office through the same mechanism that payroll checks are issued these days. The state employees, which get paid, as well as I mentioned before, a number of claimants. So that system is in place and seems to be working fairly well, as well.

With that, I'll turn to Ms. Egnatoff to express the other views.

MS. EGNATOFF: Series 26 is a -- both of these are new rules. Series 26 is with regard to the Health Care Advisory Panel, and it to some extent codifies or places in rule form some of the same practices already in place with regard to the Panel.

It does provide for appointments, not less than five members, and it establishes the different specialties which must be represented on the panel, and establishes the term of an appointment at six years. It

here. So those are the only two that we're going to have public comment relating to.

I know of no other way than just go right down the list. If you would, I'll ask you to come forward. Sit down in front of the mike so that the reporter can get all the information.

Please state your name and your organization and the rule for which you want to address. First on the list, I have Rita Richardson.

MS. RICHARDSON: Good morning. My name is Rita Richardson. I'm the Regional Manager for Benefit Plans for Union Corporation.

Union Carbide has been and remains a self-insured employer in good standing with the Fund and supports the proper and prompt payment of our Workers' Compensation claims.

I want to thank you for the opportunity to be here today. I do have some concerns regarding two of the rules proposed and being heard today. The first regarding Series 5.

As a citizen of the State of West Virginia and as manager for Union Carbide Corporation, I expect the Workers' Compensation Division to use knowledge, discretion

and fairness in the serious evaluation of claims before a claim is approved and to use a process consistently applied and known to all.

The employer needs to have the ability to submit evidence, understand the facts of the situation, have access to information from the Employment Security quarterly records and have recourse to correct errors.

I have examples of errors we've experienced, including such things as a one-cent check, which while it may be proper, it doesn't make a lot of sense.

We also have an instance where a pay order was issued where the employee had a second injury and the records were not checked to reflect the correct dates of payment due.

In another instance, the benefit was ordered with a gross check amount of $150.66. The next check amount ordered was $18.51, instead of $107.14 it should have been. We need the ability in the rules to be able to correct such errors.

Regarding proposed changes to Sections 5-3.3.1 and 5-4.4.1, changes the responsibility from the Commissioner to "or his designee." It's important to us

that we keep that responsibility with the Commissioner, and I'd ask you to reconsider that.

Next, proposed changes to Sections 5-4 4.2 regarding revocation of an employer's self-insured status. It seems only logical that the same body that approved self-insurance would be the one to revoke it. And I ask you to reconsider the wording of this rule to reflect that.

My second area of concern is Series 17 which requires electronic submittal of invoices and receipt of payments for certain employers and vendors.

Please undertake a feasibility study before passing such a rule. In concept, I fully support the economies that can result from the use of technology.

However, our experience in the administration of health care claims through our third-party administrator who has an electronic claims process has indicated that an immense amount of pre-work is required before such a system is workable.

An equally large or perhaps even larger amount of resources are used in training and in maintaining the system after it is operational. It is not cheap to start up or to maintain such a system, and a prudent step would be to study the feasibility and the cost before

mandating such a process to determine what the impact is going to be on vendors and on the Fund.

We have issues in this section regarding systems compatible, establishing an interface with proper security and access control features, the planning and execution of system parameters, authorizations and approvals.

In addition, we have to be able to withstand an audit both internally and outside of the Union Carbide Corporation in the payments that we make. We need to be able to have a clear trail through the system.

I would want to note that the evaluation and review processes are included and adequate in electronic tracking system, as well as that ability to trace incorrect errors.

In the Kanawha Valley at the present time, Union Carbide spends about $460,000 a month for Workers' Compensation payments.

This money comes directly from operating profits and it speaks to the issue of being able to produce goods and services of high quality at low costs in order to compete in the marketplace.

We are talking about jobs. Over a year's

time, this amount of money would equate to employing another 125 to 140 people.

Employer Service Corporation represents Union Carbide in the Workers' Compensation matters, and I urge you to be responsive to their recommendations.

The bottom line, we all want the same thing. We want healthy, productive workers at work in a safe environment.

We know that injuries and illnesses do happen in spite of extensive efforts and many, many dollars are spent for training and responsible care. When a work-related injury or illness does occur, the employer community wants to accomplish the same thing you do, and that is pay the proper benefit, secure the appropriate treatment in a timely manner and insure a speedy return to work. And I thank you for your time this morning.

CHAIRMAN JARRETT: Ms. Richardson, we thank you very much. Now if you'll sit there just a moment and see if anyone on the panel would like to ask you any questions.

MR. TUCKER: Yes, ma'am. You say you have a problem with errors that have been accumulating with the tentative payments, you said a one-cent check?

MS. RICHARDSON: Yes.

MR. TUCKER: Have you had any conversation with anyone at the Division pertaining to these types of situation?

MS. RICHARDSON: Yes. Employer Service Corporation does represent us and they do investigate these claims and work with the Commission in order to resolve them.

MR. TUCKER: Do you have any idea how many of these type of errors that your corporation deals with on a monthly basis?

MS. RICHARDSON: No, sir, I'm sorry, I don't have the information.

MR. TUCKER: Rule 17, the implementation process, you said electronic transfer, would you enlighten me. Did I understand it, you said implementation may be a problem that needed to be worked out prior to making it mandatory?

MS. RICHARDSON: Absolutely.

MR. TUCKER: What kind of problems are you referring to?

MS. RICHARDSON: The security issues. Within the Union Carbide computer systems we need to have the compatibility, we need to have the system's parameters so that those things can be established prior to it being

mandated that we have to do it this way. We would like to be in compliance.

CHAIRMAN JARRETT: Just one question or two here. Is it a law we must issue a one-cent check or do we have any discretion at all to set a limit that says nothing under a dollar? I know in my county we don't do that. If it's less than a dollar, we don't cut a check because it costs --

MR. KOZAK: We limited size of checks one time and got an extreme outburst of negative responses from the claimant community, in particular, on size of the checks, down to a penny. I don't recall anything from medical community on that. It's more possible generally to aggregate their checks. So that's usually not a problem with medical folks.

I'll just mention now, and we can discuss it more. It was never my thought that this rule would apply to transactions between the self-insured community and the Fund as far as, say, reimbursements for improperly paid benefits and that sort of thing, some of the checks that go back and forth that way. But that is something I think we can discuss in committee. We can look at the whole rule.

when and if he gets a Workers' Comp benefits, he'll pay us back the difference in what he gets from Workers' Comp versus what he's paid in S & A. If he doesn't get Workers' Comp benefits, then he was entitled to the S & A benefit that he did receive.

MR. THOMPSON: So what if his time off after Comp he exceeds the S & A benefits, what happens to him then?

MR. TOOTHMAN: Well, I haven't experienced that. But I can tell you that anybody with more than ten years service at Ravenswood gets S & A benefits for 104 weeks. I would hope in two-years time we could resolve that issue.

MR. THOMPSON: Just for discussion, what if you didn't resolve it?

MR. TOOTHMAN: I really don't -- I've never had to handle that situation.

CHAIRMAN JARRETT: Mr. Toothman, thank you very much. Again, I'll echo some of the comments up here. That's a tremendous growth record for Ravenswood, and it doesn't get enough good press. I agree with that.

MR. TOOTHMAN: Thank you.

CHAIRMAN JARRETT: I have three representatives from Employer Services Corporation that want to speak. The first one I've got on my list, I think, and it's the only

three speakers I have left. Mr. Keener, I believe you're up first.

MR. KEENER: Good morning, gentlemen. I assume it is still morning. My name is Michael Keener. I'm vice-president of Operations for Employer Service Corporation.

My scope of responsibility is West Virginia, Virginia, Pennsylvania and Kentucky. And what I'd like to talk to you about today is really Rule 17, which is the EDI rule, as I call it.

What I'd like to bring to you is a little bit of practical experience and observations from a variety of states in which we work relative to EDI.

One state in which I work promulgated a rule, and then the Division of Workers' Claims had to scramble and respond thereafter. I think what you have before you postures you to do something dramatically different in that you can listen to my comments and observations and perhaps not set a date immediately, but to cause at least a feasibility study to be done first and then a comprehensive implementation plan to be presented before you, before you set a date.

Now there are some benefits to that. The one benefit I think is beneficial to all parties, and I

believe strongly in this, is that the feasibility study allows you to surface as many issues as possible before you install a program that has ramifications on a variety of constituencies.

It also, through the design and development of a comprehensive implementation plan will allow you to value or cost it before, in fact, you install it. I realize and recognize that there is a physical note attached to that, but based upon my experience, I'm not sure that that cost actually encompasses the true cost to the installation of EDI.

I want to talk to you about the four basic issues, and I'll hit them rather quickly so if there are questions, I'll certainly stand ready to answer the questions.

EDI is wonderful in that it will provide you the opportunity to reduce cost, but one of the things I have learned is that when all of those about you are pressing you for increased productivity, doing the wrong thing more quickly does not, in fact, increase or improve your service.

So one of the things I want to caution you about is that the receipt of medical bills more quickly

positions you to make errors more quickly. Specifically, I know that the normal sequence of Workers' Compensation claims is that you generally will receive a medical bill before in any instances you receive what is called the WC-123, Notification of Claim.

If, in fact, you choose to set up a claim on your system and pay the medical bill prior to the receipt of an adequate amount of information to make a correct judgment or at least a reasonable judgment, several consequences can occur. The first of which is you pay the bill erroneously. That is, that you may have back paid for medical that's unrelated to the compensable claim.

You may not, in fact, know that these claim was compensable in the first place and you paid for a condition that may not be related to a claim. And the consequences thereafter have a cost too. Believe me, I've observed this. You've got recovery time on behalf of the employer attempting to recover an expense that was paid erroneously.

In the event that you've got a situation that requires that you may have an additional expense, you also have the loss of time and use of money. And then, of course, you have to generate, in fact, the employer is a

subscriber to the Fund or if, in fact, you're a self-insurer to the Fund, as you made the payment erroneously, you have to give a refund or a credit.

Now, let me remind you that with the implementation of Rule 9, a credit, that is payments made in error can accumulate over time. It will have a multiplier effect on a rate. And I see some heads shaking, so you know the necessity of getting errors corrected as expeditiously as possible.

So in summary what I'm saying to you is that one of my observations has been is that -- one positive effect is that you have an opportunity to respond more quickly to the medical provider community, but you also have an opportunity to make errors more quickly.

So what I'm asking you to do is to do a feasibility study and do an implementation plan to make sure that you've addressed as many issues as possible up front rather than having to go in and do recovery after the fact. Two, access --

MR. KOZAK: Before you go on, I know you're talking from about five different states, but I'd be real curious about any examples where our system is telling folks to pay on a medical bill before the compensability is

ruled has gone out.

Now I'm not disputing that that may happen, but I do know that all of our systems are designed against that. If there's instances of that happening, then I know that we'd like to stop it.

MR. KEENER: We can do that for you.

MR. KOZAK: That would be appreciated.

MR. KEENER: We can do that for you. Two, is access to care. I was looking at your threshold and your threshold appears to me to be a bit low. And the reason I bring that to your attention, as you well know we're a rural state and in many areas of the state there's a limited number of willing providers who are willing to treat Workers' Compensation claims for a variety of reasons.

If some of those providers are mandated to forward their billings electronically, what you're actually saying is that you're incurring costs on their behalf. If they see the cost as being erroneous and prohibitive and/or prospectively the support unnecessary to support those systems as being difficult to maintain, they may, in fact, choose not to treat, and I would hate to see that.

Even with larger providers that are more

sophisticated such as the hospitals, believe it or not, I think that you will find even the more sophisticated hospitals may not have all their billings coming from the same specific entity within the hospital.

So you may, in fact, cause some consolidation costs in the hospitals. And I think that if you do an initial feasibility study and perhaps a survey of providers to find out what condition their condition is in, so to speak, and their ability to respond to this type of requirement, you would in fact surface those issues and be able to address them. And you would also probably be able to make it a lot easier on them respectively.

I understand that you currently have what I would call a pilot ongoing at this point and you probably are learning a bit about that. Those providers that are currently responding that way are probably your more enlightened medical practitioners and are ready and willing to respond electronically.

You're also creating an expectation with those providers and as you expand it further in the medical community, expanding that expectation further in the medical community, then if I give you a bill quicker, I expect to be paid quicker. At least that would be my

expectation. I don't know. In fact, that may be your hook to get them to respond to the desire to respond electronically. But I think that's an expectation that you need to consider as well, and I'll address that in just a moment.

Also, my third point is, I question from the point of view of cost whether, in fact, you have considered the support necessary to bring this plan up to speed, particularly given what you're currently facing with the multi-factor task that, in fact, the Workers' Compensation Division is experiencing now.

When you do this, you're impacting a variety of constituencies. One is the Division itself, the provider community, as well as the employer. And what I'm suggesting to you is, I'm not sure whether you have taken into consideration of the impact of the support necessary to install this program and the concurrent cost ongoing thereafter after you install and maintenance and integrations costs thereafter with unlike software programs. Believe me, I'm very much aware of that in that we have worked in EDI in Kentucky, and just in a modest stance, I have over 500 programmer hours devoted to that to date with it ongoing. The taxing unit, of course, is still

going, and I'm sure it will go on for a considerable amount of time.

You need programmer support. I don't know whether you've anticipated that, even with programs that are compatible, let alone those that may not be speaking the same language.

You also have opportunities within that support network for errors. Now let's speak about those. As you receive medical bills, there's a lot of information on the medical bill and you've got to map that information into the right bucket in order to allow your edits to work properly. I'm sure people have thought about this in advance.

But there are many opportunities for a "no-match." What are you going to do with those no-matches? Who is going to address those no-matches? They'll go into a mystery bucket that needs to be addressed by human beings. In fact, they become difficult to resolve, particularly when you're dealing with electronic record.

Audit tracking, I don't know whether you've anticipated the need for audit tracking and whether, in fact, you'll have an audit record so you can audit back against payments that have been made relative to

compensable claim, et cetera. I'm sure you thought about that.

Finally, I raise this question as a question. It's the fourth issues, and I want to be careful in asking you to consider the question because I don't want it to be perceived negatively. But I think from a fiduciary responsibility point of view, I think that you have that fiduciary responsibility to at least ask the question and determine the impact not from a negative point of view.

I want to ask the question about cash flow consequences of increased repetition of payment. I'm not inferring a desire not to pay a lone provider and I'm not inferring an intent to willfully cause a problem to employees who have received care.

I am simply asking the question that when you speed up payment from a cash flow perspective you need to consider the increment of change that it causes and whether, in fact, you have the cash on hand to pay those bills. That's just simply a component of business planning that you need to embed in your comprehensive implementation plan as far as increments of change and repetition of payment.

So in summary what I'd like to say to you is, there is several issues that I've discussed and several issues I probably haven't discussed. I don't want to take the time to discuss, but when you pull the trigger on this thing, there are known consequences and there are unknown consequences, and I'll illustrate that with a little story.

When I was a kid, I didn't know enough, obviously -- the basis of the story is the punch line. But my mother instructed me that I had a pair of blue jeans that I loved very much. And as kids will, they will wear the knees and seats out of their blue jeans. So being the kid that I was, I thought well, I can fix that. I took a pair of scissors and cut the hole out. Well, I cut the hole out but I wasn't aware of the consequence of my decision. So I'm asking you up front to consider what you don't know and try to surface those issues and try to respond to those issues in planning. Obviously, I didn't know enough as to the consequence to cut the hole out. I succeeded, but I also failed. So that's the end of my comments. Thank you very much.

CHAIRMAN JARRETT: Mr. Keener, thank you very much and don't go away. I notice in the written comments that we received, we do not have one --

MR. KEENER: I will supply it.

CHAIRMAN JARRETT: I would again encourage you to take those same comments and reduce them to writing for us.

MR. EPPS: I do have a question. Mike, both from you and from others that have testified, the idea that we need to do some sort of a feasibility study has been made very clear.

My question is this, while I recognize West Virginia is unique probably amongst all the states that you serve because of our particular system, I would also assume that you have -- you said that you have seen these kinds of efforts in other places.

Mr. Kozak and I were just talking about the idea of feasibility study, and my question would be, would you-all be willing to work with us a little bit on what that feasibility study ought to look like? I'd hate to see us reinvent a wheel here, and I think that certainly other states and other places have dealt with this issue. Obviously the whole name of the game is -- I mean, why are we doing it? Well, we're supposed to be doing it because it's going to save money and be more efficient. And if it isn't going to save somebody money and be more efficient then we ought not be doing it at all.

So I think it would be very helpful if you could work with some of the people, with the Division, with your expertise so that we did it right the first time on that.

MR. KEENER: We have a history of cooperating with the Division and trying to help. We are working with their Managed Care pilot project pretty extensively. We would be more than happy to participate in this process.

It's in our best interest to cooperate because we also think there's a cost savings to us as a company, as well as to the Division. And the more efficient and effective the Division is, of course, the happier we are as well. So, yes, we would be glad to cooperate and help.

MR. EPPS: Thank you. And I think everybody recognizes if we do it right, you know, claimants ought to be served quicker, more efficiently, and it ought to cost everybody less money, so let's try to do it right. Thank you.

MR. KEENER: Sure.

MR. THOMPSON: You mentioned 4-123.

MR. KEENER: Yes.

MR. THOMPSON: Do you have any negative comments?

MR. KEENER: I don't think I have any negative comments at all about it. I think it's a form that allows an opportunity for the gathering of basic information input in the system. Because it is a three-part form in one part, sometimes there can be a time lag.

I know that prospectively, I think what the Division is also looking forward to is perhaps electronic reporting of the initial report of the injury in addition to electronic billing, as well as electronic payments. That will speed up the process.

But the one thing I want to be cautious about is to afford the employer, all parties, as a matter of fact, an opportunity to take a look at the claim to determine whether, in fact, they have a concern with it and investigate it thoroughly and proceed thereafter.

I think you will hear from people who follow me relative to the pay order issue that our basic recommendation to our employers is if you receive a pay order, even though it may not be absolutely perfect on the face of it if, in fact, the claim is compensable, you have an obligation to pay. And as such we make every effort to pay correctly based upon the information we have and that we wrestle with the Division thereafter about any

difference that we may have.

So I think historically that has been our posture. We will continue to have that. I will also -- and you recognize as well, that when you're working with 1,000 employers, organizations have personalities just like people. And so you run into different styles of leadership. And since we work for the employer, even though we give them recommendations, sometimes those recommendations aren't received as we'd like them to be received.

MR. THOMPSON: What do you do about the doctor? Do you have any control over his answering his opinions within a prescribed time under 123? Most of them don't.

MR. KEENER: No, we do not. Frankly, what we like is an opportunity to talk to the provider. We think it's in the best interest of all parties, including the injured claimant, to be back to work as quickly as possible.

We find that when we can work with the provider and be in touch with the provider as quickly as possible, we have an action plan in place and the provider becomes a member of the team in attempting to reconcile the situation to put the injured employee back to work.

We would like, and we often reach out to the provider community, and make an effort to communicate as quickly as possible, as soon as we know a claimant's hurt.

MR. THOMPSON: You know that's been a bad problem for years?

MR. KEENER: Yes.

MR. THOMPSON: And I think from the results of discussion with some people it's still a problem.

MR. KEENER: Yes. It makes it difficult on the Division to make good decisions, it makes it difficult on the employer to make good decisions when, in fact, a critical members of the team hasn't provided information upon which to go forward.

MR. THOMPSON: Well, most of the complaints is not with the employer, it's with the doctor.

MR. KEENER: The doctor coming -- I may not be understanding your point.

MR. THOMPSON: His opinion, under 123. You know, he has to give an opinion.

MR. KEENER: Yes, I understand that.

MR. THOMPSON: Most of them delay giving that opinion. That's a problem.

MR. KEENER: Yes. A lot of the 123s received actually stem from the emergency room. And what we try to do is we try to go out and talk to -- and we are doing this now. We are attempting to create better relationships with the provider community in order to get the information from the treating physician, as well as establish a routine in the emergency rooms to know what the process is.

As a matter of fact, the Division is attempting through its Managed Care pilot project to develop a means of better communicating with the provider community and educate the provider community as to what to do and how to do it.

MR. THOMPSON: 123 was revised.

MR. KEENER: Yes.

MR. THOMPSON: It didn't help the situation.

MR. KEENER: I under that. And with every type of provider, just as with every type of individual there are different levels of responses from those individuals.

CHAIRMAN JARRETT: Mr. Toothman originally introduced these to every member here. And knowing the type of organization you represent and you are the gentleman that handles that, the question has been asked among some of the Board members up here what kind of effort

was made to get it corrected, and what kind of response. And again, let me make absolutely clear, we're not trying to go on a witch hunt by any means.

I think the Division, it is very much interested in correcting these things. Particularly the one where the checks just keep coming and the guy was working. And I know that somebody notified somebody that, "Hey, this gentleman's back to work." But they just kept getting checks -- or pay order, excuse me. I'm not a self-employer, so I'm not familiar with how this thing works, but I'm confident you've got some documentation, and maybe you could also pass that along to Mr. Kozak there. I think there's a sincere interest to try to address the situation, get them corrected.

MR. KEENER: Never have I talked to Mr. Richardson, never have I talked to the Executive Director, Mr. Burdette, have I ever walked away without feeling that we have put the issues on the table and we've had an opportunity for a fair hearing.

The next two people who are going to speak to you are people who specialize in dealing with the Division on these particular types of documents.

What they're going to bring to you is

additional information that you may find beneficial. They are much more attractive than me and they know a whole lot more than I do, so it may be in your best interest to get me off the floor, Mr. Chairman.

CHAIRMAN JARRETT: Will they be addressing these?

MR. KEENER: Maybe those specifically, as well as some others.

CHAIRMAN JARRETT: You mean there may have been some communication prior to this hearing?

MR. KEENER: Oh, yes. Definitely.

MR. KEENER: They bring these forward as examples of some of the things that we face working on a day-to-day basis, and I think some of those things may, in fact, have been snafus that occurred as a result, as Mr. Kozak indicated, difficulties with a hugh change in software. I'm not sure that people understand the magnitude of that change. But you're going to have some glitches.

CHAIRMAN JARRETT: Mr. Keener, thank you very much. Next I have Pam Ferris.

MS. FERRIS: I'm going to be bringing up Paige Stevens with me.

MS. FERRIS: I guess the good news is, we're the last two to go. I guess the not so good news is we're

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

SERIES 17
ELECTRONIC SUBMITTAL OF INVOICES AND RECEIPT OF PAYMENTS

§85-17-1. General.

1.1. Scope. -- These rules implement the provisions of West Virginia 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 by electronic means.

1.2. Authority. -- West Virginia Code, §21A-2-6(1), -6(2) & -6(14); §21A-2-19; §21A-3-7(b) & -7(c); §23-1-1; §23-1-13 and §23-1-14. Pursuant to West Virginia Code § 21A-3-7(c), rules adopted by the compensation programs performance council and the commissioner are not subject to legislative approval as would otherwise be required under West Virginia Code § 29A-3-1 et seq.

1.3. ~~Filing Date.~~

~~1.4. Effective Dat~~ Filing Date. September 26, 1997

1.4. Effective Date. This rule shall be effective on October 1, 1997. Reference should, however, be made to section 8 of this rule.

§85-17-2. Purpose of these rules.

The purpose of this rule is to implement the provisions of West Virginia 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 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 chapter twenty-three of the Code of West Virginia of 1931, as amended.

3.2.-_"ASAP" means that software program known as "Accelerated ~~Systems and Processing~~ubmission and Processing System."

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

3.4.-~~"Commissioner" means the commissioner of the bureau of employment programs pursuant to West Virginia Code §21A-2-1 and West Virginia Code § 23-1-1 and any deputies designated pursuant to West Virginia Code § 2-2-5 and § 21A-2-12 & -13~~ "Compensation programs performance council" means that entity created pursuant to West Virginia Code § 21A-3-1 et seq.

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, West Virginia Code § 5F-2-1(b)(2), as provided for by §West Virginia Code § 21A-1-4, and by West Virginia Code § 23-1-1 et seq.

3.7.-~~" Executive D~~ "Executive director" means the executive director of the workers' compensation division, who is appointed by the commissioner and who serves as the chief operating officer of the daily operations of the workers' compensation division as provided by West Virginia 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 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.

§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 shall, in the current fiscal year, submit all invoices to the workers' compensation division 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 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 ~~commissioner and the~~ compensation programs performance council.

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.

§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 shall, in the current fiscal year, receive payment from the workers' compensation division 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 shall provide the division with the name and address of its bank and an appropriate account number or other designation to which the division 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 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. 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 ~~executive director for his or her~~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 ~~executive director and obtaining his or her~~compensation programs performance council and obtaining its written approval of the change.

§85-17-7. ~~Severability.~~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 my file a written petition with the executive director requesting an exemption from the 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.

§85-17-9. Severability

The provisions of subdivision (cc) of section ten, article two, chapter two of the Code of West Virginia, 1931, as amended, are incorporated herein by reference as if fully set forth herein.

Cecil H. Underwood
Governor

William F. Vieweg
Commissioner

West Virginia Bureau of Employment Programs
• Job Service/Job Training Programs • Labor Market Information
• Unemployment Compensation • Workers' Compensation
an equal opportunity/affirmative action employer

September 25, 1997

The Honorable Ken Hechler
Secretary of State
Office of the Secretary of State
Main Capitol Building
Charleston, WV 25305

Dear Secretary Hechler:

RE: Approval of Final Filing of Exempt Legislative Rule
"Electronic Submittal of Invoices and Receipt of Payment,"
85 CSR 17

Pursuant to West Virginia Code § 5F-2-1(b)(2), the Bureau of Employment Programs is not part of an executive department of state government and is not subject to the control of a departmental secretary.

Pursuant to West Virginia Code §§ 21A-2-6 and 23-1-1, the Commissioner of the Bureau of Employment Programs has the authority to promulgate rules that have been approved by the Compensation Programs Performance Council pursuant to West Virginia Code § 21A-3-7.

Accordingly, please accept this letter as my formal approval for the final filing of the above designated exempt legislative rule.

Sincerely,

William F. Vieweg
Commissioner

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

JAN CASTO
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 558-6000
Corporations: (304) 558-8000
FAX: (304) 558-0900

STATE OF WEST VIRGINIA
SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

PENNEY BARKER
Supervisor, Corporations

(Plus all the volunteer help we can get)

97 OCT -2 AM 10:59
WCP-LEGAL DIVISION

TO: JOHN KOZAK / LEGAL SERVICES

AGENCY: WORKERS' COMPENSATION

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: September 30, 1997

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 17 TITLE: 85 WORKERS' COMPENSATION

FILED
OCT 9 9 46 AM '97
OFFICE OF WEST VIRGINIA SECRETARY OF STATE

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

****

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: John Kozak

TITLE OF PERSON SIGNING: DIRECTOR, LEGAL SERVICES DIV.

DATE: 10/6/97

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.